

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.75, 76 and 164 of 2014

Dated: the 10th April, 2015

Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

Appeal No.75 of 2014

In the Matter of:

Punjab State Power Corporation Limited
Shed No.F-4, Shakti Vihar
Patiala-147 001

..... Appellant(s)

Versus

- 1. Nabha Power Limited**
1484, First Floor,
Sector 40 B,
Chandigarh
PIN-160 036
- 2. Punjb State Electricity Regulatory Commission**
SCO No.220-221, Sector-34-A,
Chandigarh-160 022

...Respondent(s)

Counsel for the Appellant(s) : Mr. Anand K Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh

Counsel for the Respondent(s): Mr. Tajender K Joshi
Mr. R S Joshi for R-1
Mr. Sakesh Kumar for R-2

Appeal No.76 of 2014

In the Matter of:

Punjab State Power Corporation Limited
Shed No.F-4, Shakti Vihar,
Patiala-147001

..... Appellant(s)

Versus

- 1. Talwandi Sabo Power Limited**
Village Banawala, Mansa,
Talwandi Sabo Road,
District Mansa

Punjab-151 302

- 2. Punjab State Electricity Regulatory Commission
SCO No.220-221, Sector 34-A,
Chandigarh-160 022**

...Respondent(s)

Counsel for the Appellant(s) : Mr. Anand K Ganesan
Ms. Mandakini Ghosh
Ms. Swapna Seshadri

Counsel for the Respondent(s): Mr. Sanjay Sen, Sr Adv
Ms. Shikha Ohri
Mr. Hemant Singh
Ms. Meghana Aggarwal
Mr. T K Joshi for R-1
Mr. Sakesh Kumar
Mr. Arushi Anthwal for R-2

Appeal No.164 of 2014

**In the Matter of:
Talwandi Sabo Power Ltd (TSPL)
Village Banwala,
Mansa-Talwandi Sabo Road,
Dist-Mansa,
Punjab-151 302**

..... Appellant(s)

Versus

- 1. Punjab State Electricity Regulatory Commission
SCO 220-221, Sector 34-A,
Chandigarh-160 022**
- 2. Punjab State Power Corporation Ltd.,
Through its
Engineer-in-Chief (Thermal Designs),
PSPCL, Shed No.T-2,
Thermal Design Complex,
Patiala-147 001**

...Respondent(s)

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr Adv
Ms. Shikha Ohri

Mr. Matrugupta Mishra
Mr. Hemant Singh
Ms. Meghana Aggarwal
Ms. Ruth Elwin

Counsel for the Respondent(s): Mr. Sakesh Kumar for R-1
Mr.. Anand K Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghoshfor R-2

J U D G M E N T

PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

1. These Appeals have been filed by the Appellants u/s 111 of the Electricity Act, 2003 before the Appellate Tribunal against the common order dated 8.1.2014 passed by the Punjab State Electricity Regulatory Commission (hereinafter referred to as the Commission) in Petition No.56 of 2013 for Appeal No.75 of 2014, Petition No.55 for Appeal No.76 of 2014. Appeal No.75 and 76 of 2014 are filed by Punjab State Power Corporation Limited. Appeal No.164 of 2014 against Petition No.55 of 2013 is a Cross Appeal filed by Talwandi Sabo Power Limited (TSPL) against the Impugned Order dated 8.1.2014.
2. The Appellant in Appeal No.164 of 2014 is Talwandi Sabo Power Limited, a Company registered under the Companies Act, 1956 having its registered office at Village Banwala, Mansa-Talwandi Sabo Road, Dist Mansa, Punjab 151 302. The Appellant Company is a Special Purpose Vehicle incorporated for setting up a 1980 (3 x 660) MW power plant at Mansa (herein the "Power Plant"). The entire power generated from the aforesaid Power Plant will be supplied to

State Distribution Licensee i.e. Respondent No.2/PSPCL under a Power Purchase Agreement dated 01.09.2008 (herein the “PPA”).

3. Nabha Power Limited the Respondent No.1 in Appeal No.75 of 2014 filed by the Punjab State Power Corporation Limited (PSPCL), is a Generating Company establishing a 1400 MW Thermal Generating Station at Rajpura in the State of Punjab. The said Generating Station is being established by the Nabha Power Limited pursuant to a competitive bidding process conducted u/s 63 of the Electricity Act, 2003, being a case II bid. Upon the completion of bid and selection of the successful bidder, the successful bidder being M/S. L&T Infrastructure Limited took over the entire shares and control of Nabha Power. The entire power generated from the aforesaid power plant will be supplied to PSPCL i.e. Respondent No.2 in the Cross Appeal No.164 of 2014 filed by Talwandi Sabo Power Limited (TSPL).
4. The Punjab State Electricity Regulatory Commission is the 1st Respondent whereas Punjab State Power Corporation Limited a Distribution Company is the second Respondent in Appeal No.164 of 2014. The Punjab State Power Corporation Limited is a Company incorporated under the provisions of the Companies Act, 1956 having its registered office, the Mall, Patiala in the State of Punjab. It is an unbundled entity of the erstwhile Punjab State Electricity Board and has been vested with the functions of generation and distribution of electricity in the State of Punjab.
5. The facts of the case pertaining to Appeal No.164 of 2014 against the Petition No.55 of 2013 are as under:

5.1 On 1.9.2008, the Punjab State Electricity Board, a Board, established under the Electricity (Supply) Act, 1948 having its Head Office at the Mall, Patiala-147 001, Punjab, India (hereinafter referred to as the Procurer), entered into a Power Purchase Agreement for procurement of power on Long Term basis from Coal based Thermal Power Station to be set-up near Talwandi Sabo at village Banawala, Distt Mansa, Punjab, India with M/s. Talwandi Sabo Power Limited, a Company incorporated under the Companies Act, 1956, having its registered office at PSEB Building, the Mall, Patiala-147 001, Punjab, India (hereinafter referred as the Seller) as per the guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensee. The relevant Clauses of the PPA for this Appeal are reproduced below:

“4. **ARTICLE 4: DEVELOPMENT OF THE PROJECT**

4.1 The Seller's obligation to build, own and operate the project.

4.1.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at Seller's own cost and risk for;

(a) obtaining (other than initial Consents) and maintaining in full force and effect all Consents required by it pursuant to this Agreement and Indian Law:

(b) executing the project in a timely manner so as to enable each of the Units and the Power Station as a whole to be Commissioned no later than its Scheduled Commercial Operations Date and such that as much of the Contracted Capacity as can be made available through the use of Prudent Utility practices will be made available reliably to meet the Procurer's Scheduling and dispatch requirements throughout the term of this

Agreement but under no event earlier than 36 months from NTP.

Note: Hon'ble PSERC has in its orders dated April 17, 2008 and April 23, 2008 passed in Petition No.7 of 2008 has allowed early commissioning incentive thereby permitting him to commission the unit prior to the scheduled COD of 48 months. However, "under no event earlier than 42 months from NTP" restricts the seller to commission the unit earlier. To remove this anomaly and bring the provisions of the PPA in accordance with the aforesaid orders of the Commission, the provision of 42 months is changed as "under no event earlier than 36 months from NTP". Accordingly, the date of synchronisation as mentioned in the PPA may be advanced. However changes incorporated is subject to the approval of PSERC. Further the Effective Date, as mentioned in the PPA shall remain unaltered.

(c) owning the project throughout the term of this Agreement free and clear of encumbrances, except those expressly permitted by Article 16;

(d) procure the requirements of electricity at the Project (including construction, commissioning and start up power) and to meet in a timely manner all formalities for getting such a supply of electricity.

(e) provide on a timely basis relevant information on Power Station specifications which may be required for interconnecting system with the transmission system;

(f) fulfilling all other obligations undertaken by him under this Agreement.

4.2 Procurer's Obligation

Subject to the terms and conditions of this Agreement, the Procurer:

(a) shall be responsible for procuring the Interconnection and Transmission Facilities to enable

the Power Station to be connected to the Grid System not later than the Scheduled Connection Date;

(b) shall ensure that the Seller is provided an electrical connection for reasonable construction, commissioning and start up power at the project as reasonably requisitioned by the Seller by written intimation to the Procurer, on the then prevalent terms and conditions as applicable to such consumers.

(c) shall be responsible for payment of the Transmission Charges and RLDC and SLDC charges.

(d) shall make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station subject to the availability of transmission lines and

(f) fulfilling obligations undertaken by them under this Agreement.

11.9 Payment for Start Up Power

The Seller shall be liable to pay, for the power and energy consumed for start-up of the project and commissioning to the Distribution Licensee(s) in whose area, the project is located or such other entity from whom such power/energy is sourced at the then prevalent rates payable by such industrial consumers.

11.10 The copies of all notices/offers which re required to be sent as per the provisions of this Article 11, shall be sent by either party simultaneously to all parties.

5.2 The Appellant TSPL addressed a letter No.TSPL/PSEB/165 dated 6.5.2010 to the Chief Engineer/Thermal Designs, Thermal Designs Complex, PSPCL, Patiala for 400 kV start up power requirement and for the power evacuation system for the 3x660 MW (1980 mw) TSPL Power project at Banawali, Distt-Mansa, Punjab.

- 5.3 The Chief Engineer/Thermal Design intimated to M/S. Talwandi Sabo Power Limited vide letter No.77 dated 21.5.2010 that 400 KV start up power and the evacuation system will be made available as per the provisions of the PPA.
- 5.4 On 17.8.2012 the TSPL vide letter No.TSPL/PSEB /356 addressed to Chief Engineer (Thermal Designs), PSPCL Patiala sought to provide the date of readiness of the interconnection and transmission facilities which will enable the power station to be connected to the Grid System.
- 5.5 On 12.9.2013, the AGM (Electrical, Control & Instrumentation), PSPCL vide letter No.1612/SWS/V-4 informed TSPL that its case was deliberated by competent authority and being a unique case of start-up power for commissioning of a project at 400 KV instead of specified voltage of 66 KV for 22 MVA load and decided to allow it to apply through a conventional method for feasibility clearance.
- 5.6 On 11.1.2013, the PSPCL accorded feasibility clearance for release of load for start-up power for the power plant at 400 KV fed from 400 KV Sub Station Bhalwan (Dhuri) under PSPCL under the subject case. The necessary Application and Agreement (A&A) form for HT/EHT supply was filed by the Appellant on 24.1.2003.
- 5.7 The Respondent (Distribution Licensee) vide letter dated 8.2.2013 demanded Rs.1,05,60,000/- towards Service Connection Charges for providing start up power which was opposed by the Appellant/Petitioner vide letters dated 22.2.2013 and 11.3.2013 on

the grounds that in terms of PPA, Appellant/Petitioner is liable to pay only for the energy consumed for start-up power.

5.8 The Petitioner deposited the Service Connection Charges on 11.3.2013 under protest and duress to avoid delay in the commissioning of the power plant.

5.9 On 13.8.2013, the TSPL requested for exemption towards payment of Service Connection Charges as decided by the PSPCL vide TSPL letter dated 11.3.2013 as under:

“In view of the above, we request that TSPL should not be treated as a consumer since TSPL shall be drawing start up power from the Grid for power generation which in turn will be supplied to PSPCL. Accordingly, we request your good office to kindly reverse the decision for payment of service connection charges by TSPL and facilitate the release of start-up power immediately”.

5.10 PSPCL by its letter dated 19.3.2013 disputed the reliance placed by the Appellant/Petitioner on the judgment passed by the Hon'ble Tribunal in Appeal No. 166 of 2010 and quoted Clause 4.1.1 (d) of the PPA and justified levy of Service Connection Charges.

5.11 The supply was released to the Appellant by PSPCL on 15.3.2013.

5.12 PSPCL levied various charges such as Power Factor Surcharge, Penalty, Peak Load Penalty etc. treating the Appellant/Petitioner as a consumer and also started imposing Peak Load Exemption Charges/ Peak Load Penalty w.e.f. October, 2013 as applicable to Large Supply Industrial Consumer.

- 5.13 The Appellant, TSPL requested Pubjab State Power Corporation Limited to consider the Appellant's service as an essential service for exemption from Peak Load Restrictions as the start-up power is essentially required for starting of the Generating Units. Accordingly, the PSPCL granted Peak Load Exemption to start-up connection vide Memo No.11682 dated 7.10.2013.
- 5.14 The Petitioner by a letter dated 30.7.2013 drew PSPCL's attention to Hon'ble APTEL order dated 24.5.2011 in Appeal No. 166 of 2010 to contest the treatment of Petitioner as consumer and opposed levy of various charges.
- 5.15 PSPCL in the energy bill for the period 5.7.2013 to 6.8.2013 received on 19.8.2013 by the Appellant/Petitioner imposed Peak Load Exemption Charges and Power Factor Surcharge which was contested by the Appellant/Petitioner vide letter dated 26.8.2013.
- 5.16 The Appellant/Petitioner vide letter dated 25.9.2013 made an application to PSPCL for Peak Load Exemption under protest and it was clarified by the Petitioner that a generator cannot be classified as a normal industrial consumer for availing start-up power. The Respondent Distribution Licensee, by a letter dated 7.10.2013 agreed to grant Peak Load Exemption of 4400 kW to the Appellant/Petitioner against payment of Peak Load Exemption Charges.
- 5.17 The Appellant/Petitioner applied for enhancement of load to 18800 kW with 20,000 kVA Contract Demand which was permitted by the Respondent vide letter dated 1.10.2013 and demanded Service Connection Charges of Rs.3,34,40,000/-

5.18 Aggrieved by the demand of PSPCL for Service Connection Charges, imposition of tariff applicable to Larger Supply Industrial Consumers, Peak Load Exemption Charges, Power Factor Surcharge/Penalty etc. the Appellant/Petitioner had filed Petition No.55 of 2013 before the State Commission and prayed to:

(a) declare that the Petitioner availing the facility of start up power is not liable to pay the following charges:

- Service Connection Charges
- Demand Charges
- Peak Load Exemption Charges
- Power Factor Surcharge/Penalty etc., as applicable to Large Supply Industrial Consumers.

(b) direct PSPCL to permit settling of consumption towards start up power in energy terms against the power which will be exported to the Grid post synchronization;

(c) direct Punjab State Power Corporation Ltd to file appropriate proceedings to enable creation of a separate category for start-up power keeping in view the established regulatory principles;

(d) approve the Start up power category as a separate category applicable to generating companies which avail start up power and separately determine tariff for the same;

(e) during the pendency of the present proceedings, grant interim prayers in terms of prayer (a) herein above; and

(f) pass any such other and further order(s) as the Commission may deem fit.

5.19 The Petition was admitted vide order dated 25.10.2013 and PSPCL was directed to file its reply by 7.11.2013 and PSPCL filed their reply on 18.11.2013.

5.20 The learned State Commission, after going through the submissions and after hearing the learned Counsel for both the parties passed the Impugned Order dated 8.1.2014 in Petition No.55 of 2013, the relevant part of which is reproduced below:

“Discussions, findings & decisions

1) Whereas the issue relating to jurisdiction is concerned, the present dispute relates to classification of the petitioner and applicability of the tariff and is not merely a billing dispute. The Commission has the jurisdiction under Section 86 (1) (a) and (f) to adjudicate dispute between a distribution licensee and a generating company on the issue of applicability of tariff and classification of consumer. This position has also been held by Hon'ble Appellate Tribunal of Electricity in its judgment dated 15.3.2011 in Appeal No. 176 of 2010. Accordingly, the Commission has the jurisdiction to adjudicate the present dispute between the distribution licensee and the generating company.

2) The second issue is regarding levy of Service Connection Charges by the respondent on the petitioner for availing start-up power on the basis of Power Purchase Agreement (PPA) signed on 1.9.2008 and provisions of Supply Code.

Section 46 of the Act provides for recovery of any expenses reasonably incurred by the distribution Licensee in providing any electric line or electric plant used for the purpose of giving

that supply as per the Regulations framed by the State Commission. Accordingly, Regulation 9 of PSERC (Supply Code & Related Matters) Regulations, 2007 provide for recovery of expenditure by the licensee from an applicant requiring supply of electricity or additional load/demand.

As per sub Regulation 9.1.1 (c) of the Supply Code, “the applicant seeking supply for new connection at voltage of 33000 volts and above, will be liable to pay the expenditure incurred for providing the service line and proportionate cost of back-up/common line (33000 volts or above) up to the feeding substation including bay, if any.

Provided that charges payable will not be less than those computed on per kW/kVA basis”.

The various provisions of the Act and Supply Code has to be read in tandem to settle this issue. The Act clearly provides that Distribution Licensee can recover only those expenses which have been reasonably incurred in providing electric line or plant for release of such connection. The Distribution Licensee must demonstrate that some expenditure has been incurred which will qualify for recovery as per the Regulations framed by the Commission. Secondly the sub-regulations 9.1.1(c) of the Supply Code permit recovery of expenditure incurred for providing the service line and proportionate cost of back up/common line up to the feeding sub station including bay if any. In this case, no service line has been provided by the respondent and also there is no backup/common line for which proportionate cost is to be recovered. The proviso to sub-regulation 9.1.1(c) shall come in to force only in case some expenditure has been incurred by the licensee which will then be subject to minimum of charges calculated on kW/kVA basis. The 400 kV line used for catering start up power is a transmission line of transmission licensee(PSTCL) to be used for evacuation of power from the generating plant and cannot termed as a service line of the Distribution Licensee. The Distribution Licensee has not given any proof of incurring any expenditure for giving start up power as per PPA. The cost of 400 kV system laid by PSTCL for evacuation/dispersal of power from TSPL has been

claimed by PSTCL in the ARRs. Thus no service connection charges are recoverable by the respondent from the petitioner. The Commission directs PSPCL to refund the Service Connection Charges already deposited by the petitioner for obtaining start up power.

3) Regarding use of start up power for testing of generator and its auxiliaries, the matter has already been settled by Hon'ble Appellate Tribunal of Electricity in its Judgment dated 15.03.2011 in Appeal No. 176 of 2010. Hon'ble APTEL has held that start-up power can be utilized for initial commissioning of a generator and its auxiliaries. So there is no distinction between commissioning and start-up power. Start up power can be used for initial testing and commissioning of generator and its auxiliaries as well as during forced/planned shutdown.

4) The issue regarding payment of various charges for use of start-up power by the petitioner is to be examined in the light of the Judgment of Hon'ble APTEL in Appeal No. 166 of 2010 and various provisions of Power Purchase Agreement signed between the parties.

Firstly, a consumer has been defined in the Act as a person who is supplied with electricity for his 'own use'. The start up power is only to start up the generating unit. Once a generating unit is synchronized with the grid the requirement of startup power ends and power generated is supplied back to the respondent. As per Hon'ble APTEL Judgment dated 24.5.2011 in Appeal No. 166 of 2010, a generating plant taking start up power from Distribution Licensee and supplying power to the same Licensee cannot be termed as a consumer. Thus it is a settled position that petitioner generating company cannot be termed as a consumer for availing start up power from the distribution licensee.

As per article 11.9 of the Power Purchase Agreement signed between the parties, the seller (petitioner) shall be liable to pay for the power and energy consumed for start up of the project and commissioning to the Distribution Licensee at the then

prevalent rates payable by such Industrial consumers. The interpretation of the counsel for the petitioner that 'such' means such 'generating company' is not sustainable since 'such' is followed by words 'industrial consumers'. Thus, in view of the agreement between the parties, settling of the consumption towards start up power in energy terms against the power which will be exported to the grid post synchronization, cannot be permitted and the petitioner is liable to pay various charges such as energy charges, demand charges, power factor surcharge/incentive, voltage surcharge/rebate etc. as provided in Schedule of Tariff for Large Industrial Power Supply (General) (SI of Schedules of Tariff) till a separate schedule for Start up power is approved by the Commission. However, Peak Load Hours Restrictions, Peak Load Hours Exemption Charges or penalty for violation of Peak Load Hours restrictions are not to be made applicable to the petitioner company since start up power is essentially required by every generating station and it should be treated at par with essential services as far as applicability of peak load hour restrictions or PLEC are concerned.

The petition is disposed of accordingly”.

5.21 Aggrieved by the Impugned Order dated 8.1.2014 passed by the State Commission, the Appellants have filed these Appeals before this Tribunal and prayed for the following:

- (i) to set aside the Impugned Order dated 08.01.2014 passed by the Punjab Electricity Regulatory Commission in Petition No.55 of 2013 to the extent challenged in the present Appeal;
- (ii) declare that the Appellant availing the facility of start-up power is not liable to pay the energy charges, demand charges, power factor surcharge/incentive, voltage surcharge/rebate, fuel surcharge adjustment etc.

as provided in Schedule of Tariff for Large Industrial Power Supply (General) (SI of Schedules of Tariff):

(iii) direct the Respondent licensee to permit netting of consumption towards start-up power in energy terms against the power which will be exported to the Grid post synchronization;

(iv) pass such other order or orders as the nature and circumstances of the case may deem fit may kindly be passed.

6. We have heard Mr. Sanjay Sen, learned Senior Advocate appearing on behalf of the Appellant (TSPL) in Appeal No.164 of 2014 and Mr. Sakesh Kumar on behalf of the Respondent-1 (PSERC) and Mr. Anand K Ganesan appearing on behalf of R-2 (PSPCL). We have gone through the written submissions filed by rival parties and the material available on record including the Impugned order.
7. In the light of the submissions made by the learned Counsel for the parties and the written submissions made by them, the following issues would arise for consideration:

(a) **Issue No.1: Whether the State Commission erred in disallowing the Service Connection Charges claimed by the Punjab State Power Corporation Limited (PSPCL) for providing start-up power supply connection to the Generating Companies Talwandi Sabo Power Limited (TSPL) and Nabha Power Limited ?**

(b) **Issue No.2: Whether the State Commission has erred in allowing various charges such as energy charges, demand**

charges, power factor surcharge incentive, voltage surcharges etc as provided in Schedule of Tariff for Large Industrial Consumers for start-up power supplied to TSPL by PSPCL ?

Issue No.1: Whether the State Commission erred in disallowing the Service Connection Charges claimed by the Punjab State Power Corporation Limited (PSPCL) for providing start-up power supply connection to the Generating Companies Talwandi Sabo Power Limited (TSPL) and Nabha Power Limited?

8. With regard to Issue No.1, the following submissions have been made by the Punjab State Power Corporation Limited (PSPCL/Distribution Licensee):

8.1 that the State Commission on an erroneous interpretation of the Supply Code Regulations, held that the Service Connection Charges are not applicable and are not required to be paid by the TSPL/Power Generating Companies.

8.2 that in terms of the Supply Code Regulations framed by the State Commission, any person requiring contract demand was required to pay the cost of infrastructure to be established or the Service Connection Charges specified by the State Commission whichever was higher. In this regard, Supply Code Regulations, interalia provide as under:

“9.1.1 For new connections

(i) Domestic, Non-Residential, Industrial and Bulk Supply categories:

(a) The Applicant requesting the Licensee for a new connection under Domestic, Non Residential, Industrial and

Bulk Supply categories will be required to pay per KW/KVA charges as approved by the Commission. Such charges will be payable by an Applicant where the load/demand required is up to and including 500 KW/500 KVA and the length of the service line is up to one hundred meters for Domestic & Non Residential Supply Category and two hundred fifty metres for Industrial and Bulk Supply categories.

Where the length of the service line exceeds the above prescription for the applied category, the Applicant will also pay for the additional expenditure for the extra length on actual basis at the rates approved by the Commission.

(b) Where the load/demand required exceeds 500 KW/500 KVA, the Applicant will be required to pay per KW/KVA charges as approved by the Commission or the actual expenditure for release of connection, whichever is higher.

*(c) **The applicant seeking supply at voltage of 33000 volts and above, will be liable to pay the expenditure incurred for providing the service line and proportionate cost of back-up/common line (33000 volts or above) up to the feeding substation including bay, if any.***

Provided that charges payable will not be less than those computed on per KW/KVA basis”.

8.3 that in terms of the above, the Applicant for the electricity supply is liable to pay the actual expenditure of the service line or per KW/KVA charges whichever is higher. This Regulation is applicable for all the consumers in the State of Punjab requiring supply of electricity.

8.4 that in terms of the PPA, the Power Generator was to be treated as an Industrial Consumer and was therefore, liable to pay the charges including Service Connection Charges in terms of Regulation 9.1.1 of the Supply Code Regulations.

- 8.5 that the State Commission has erred in holding that the Generator is not required to pay the Service Connection charges in view of the fact that the start up power connection has been given to the Generator through the 400 KV line established for evacuation of power.
- 8.6 that the State Commission has erred in holding that the Service Connection Charges in terms of Supply Code Regulations are applicable only when a new line is created by the Distribution Licensee and not otherwise. The State Commission has failed to appreciate that the Supply code Regulations specifically provide for charges to be paid by the consumers requiring a contract demand which is irrespective of any new line created by the Discom or not.
- 8.7 that the State Commission has failed to appreciate that once Supply Code Regulations are framed, the same being in the nature of delegated legislation, is binding on all including the State Commission and there is no occasion to deviate from the same.
- 8.8 that the State Commission has failed to appreciate that the charges levied by the Discom are strictly in terms of the Supply Code Regulations and Schedule of Charges and there is no occasion to deviate from the same.
- 8.9 that the State Commission has failed to appreciate that the Service Connection Charges is not restricted only to the actual line cost incurred for providing the service but is related to the total infrastructure and other service expenses incurred. In the

- circumstances, the State Commission has erred in coming to the conclusion that if now new line is erected, the Service Connection Charges are not payable.
- 8.10 that the State Commission has failed to appreciate that the Service Connection charges are an alternative means of calculations of the total charges payable to the licensee and are not related to the actual cost incurred for the line and other infrastructure to be erected by the licensee.
- 8.11 that only provision is that in case the actual cost is less, the Generator is in any case, required to pay the Service Connection charges as per the Supply Code Regulations.
- 8.12 that in the circumstances, the conclusion arrived at by the State Commission that service connection charges are not to be paid by the Generator is incorrect, contrary to the provisions of Supply Code Regulations and is liable to be set-aside.
9. **Per contra, the following submissions have been made by M/s. Talwandi Sabo Power Limited (TSPL), the Generator.**
- 9.1 that TSPL is being fed start-up power from the 400 KV sub station Bhalwan (Dhuri) under Punjab State Transmission Corporation Ltd (PSTCL). There is no extra expenditure incurred by PSPCL for constructing a service line to provide start-up power to the TSPL. The aforesaid network is already included by PSTCL in its ARR. Further, the 400 KV Talwandi Sabo-Dhuri Line & 400 KV S/S at Bhalwan (Dhuri) required for back-up power by TSPL has already been included by PSTCL in its ARR. Therefore, levy of any

Service Connection Charges upon TSPL, allegedly charged by the licensee depending upon cost incurred by it for laying service line to the consumer, are completely arbitrary and unjust.

9.2 that the reliance placed upon the first proviso to Regulation 9.1.1 (c) of the Supply Code by PSPCL, is incorrect. Regulation 9.1 of the Supply Code provides as follows:

“9. Power to Recover Expenditure

*9.1 Subject to the provisions of the Act and these Regulations and subject further to such directions, orders or guidelines which the Commission may issue, every licensee is entitled to recover from an Applicant requiring supply of electricity or additional load/demand, any expenses that the **Licensee may incur** in providing the facility. The expenditure recoverable by the Licensee will be computed as detailed in Regulations 9.1.1, 9.1.2 and 9.1.3.*

9.1.1 For New Connections

(i) Domestic, Non-Residential, Industrial and Bulk Supply categories:

.....

*(c) The applicant seeking supply at voltage of 33000 volts and above, will be liable to pay the **expenditure incurred** for providing the service line and proportionate cost of back-up/common line (33000 volts or above) up to the feeding substation including bay, if any.*

Provided that charges payable will not be less than those computed on per KW/KVA basis”.

9.3 that the aforesaid provision has to be read in consonance with the Electricity Act, 2003 and the proviso to the Regulations cannot be interpreted in a manner so as to nullify a provision of the Act.

Electricity Act, 2003 clearly provides that the distribution licensee can recover only those expenses which have been **reasonably incurred** in providing electric line or plant for release of such connection. In the present case, admittedly, no expenditure has been incurred by the distribution licensee, which will qualify for recovery as per the Regulations framed by the Commission. Further Regulation 9.1 also provides that *every Licensee is entitled to recover from an applicant requiring supply of electricity or additional load/demand, any expenses that the Licensee may incur in providing the facility*. No service line has been provided by PSPCL and also no backup/common line for which proportionate cost is to be recovered has been constructed. Thus, the proviso to Sub-Regulation 9.1.1(c) shall come in to force only in case some expenditure has been incurred by the licensee which will then be subject to minimum of charges calculated on kW/kVA basis. The distribution licensee is a revenue neutral entity, there is no liability on its part to levy service connection charges when there is no such additional/ actual charge incurred for providing service/ connection.

- 9.4 that the Commission correctly considered the aforesaid factual and legal position (the principles established by this Hon'ble Tribunal in Appeal No. 166 of 2010 and Section 45 and 46 of the Electricity Act, 2003) and decided this issue in favour of TSPL.
- 9.5 that it is pertinent to mention herein that despite the passing of the impugned order, the PSPCL is illegally and unjustly denying refund of Service Connection Charges to TSPL.

10. **Our Consideration and Conclusion on Issue No.1:** Before going through the merits of the issue, let us discuss the relevant Articles and Schedules of the PPA entered between PSPCL (Procurer) and TSPL (Seller) which is reproduced below:

“4. ARTICLE 4: DEVELOPMENT OF THE PROJECT

“4.1 The Seller’s Obligation to build, own and operate the Project:

4.1.1 Subject to the terms and conditions of this Agreement the Seller undertakes to be responsible at Seller’s own cost and risk for:

(a) obtaining (other than initial consents) and maintaining in full force and effect all consents required by it pursuant to this Agreement and Indian Law.

(b) executing the project in a timely manner so as to enable each of the units and the Power Station as a whole to be commissioned no later than its Scheduled Commercial Operation Date and such that as much of the contracted capacity as can be made available through the use of Prudent Utility Practices will be made available reliably to meet the Procurer’s Scheduling and dispatch requirements throughout the terms of this Agreement but under no event earlier than 36 months from NTP.

Note: *Hon’ble PSERC has in its orders dated April, 17, 2008 and April 23, 2008 passed in Petition No.7 of 2008 allowed early commissioning incentive thereby permitting him to commission the unit prior to the scheduled COD of 48 months. However, “under no event earlier than 42 months from NTP” restricts the seller to commission the unit earlier. To remove this anomaly and bring the provisions of the PPA in accordance with the aforesaid orders of the Commission, the provision of 42 months is changed as “under no event earlier than 36 months from NTP”. Accordingly, the date of synchronization as mentioned in the PPA may be advanced. However, changes incorporated is subject to the approval of*

PSERC. Further the Effective Date, as mentioned in the PPA shall remain unaltered.

(c) owning the project throughout the term of this Agreement free and clear of encumbrances, except those expressly permitted by Article 16:

(d) procure the requirements of electricity at the Project (including construction, commission and start-up power) and to meet in a timely manner all formalities for getting such a supply of electricity.

(e) provide on a timely basis relevant information on Power Station specifications which may be required for interconnecting system with the transmission system;

(f) fulfilling all other obligations undertaken by him under this Agreement.

4.2 Procurer's Obligation

Subject to the terms and conditions of this Agreement, the Procurer:

(a) shall be responsible for procuring the Interconnection and Transmission Facilities to enable the Power Station to be connected to the Grid System not later than the Scheduled Connection Date;

(b) Shall ensured that the seller is provided an electrical connection for reasonable construction, commissioning and start up power at the project as reasonably requisitioned by the seller by written intimation to the procurer, on the then prevalent terms and conditions as applicable to such consumers.

(c) shall be responsible for payment of the Transmission Charges and RLDC and SLDC charges.

(d) shall make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station subject to the availability of transmission lines and

(e) fulfilling obligations undertaken by them under this Agreement.

10.1 Schedule 8 of the PPA deals with interconnection point and facilities for evacuation of the electricity and the relevant part of the same is reproduced hereunder:

“Schedule 8: Details of Interconnection Point and Facilities

The Interconnection point or delivery point shall be point from where the power from the Power Station Switch Yard Bus is being injected into the transmission network.

The seller shall be required to provide the following facilities in the Power Station Switch Yard.

10.1.1.1 Power will be evacuated by the Procurer through two double circuit (four circuits) 400 KV transmission lines.

10.1.1.2 Interconnection point between the procurer and the Seller shall be power station switchyard Gantry Structure for outgoing circuit, where the down corner 400 KV transmission conductors from first tower of the procurer will be connected.

10.1.1.3 The 400 KV transmission conductor connecting from First tower to power station switchyard gantry Structure for outgoing circuit will be in scope of the procurer.

10.1.1.4 The 400 KV Switch yard equipment including without limitation, relays and switching equipment, protective devices, safety equipment, Power line carrier communication and Remote Terminal units etc., for the outgoing circuits up to an including Power Station Switchyard Gantry Structure for out going circuit will be in the scope of the Seller.”

- 10.2 In view of the Article 4.2 (a) and Schedule 8 of the PPA, the Punjab State Transmission Corporation Limited had constructed 400 kv transmission line for evacuation of the electricity from the interconnection point or delivery point from where the power from the power station switch yard is being injected into the transmission network.
- 10.3 The seller shall be required to provide facilities in the power switch yard.
- 10.4 Power will be evacuated by the Procurer through two double circuit (four circuits) 400 KV transmission lines.
- 10.5 Interconnection point between the Procurer and the Seller shall be power station switchyard Gantry Structure for outgoing circuit, where the down corner 400 KV transmission conductors from first tower of the procurer will be connected.
- 10.6 The 400 KV transmission conductors connecting from First tower to power station switchyard gantry Structure for outgoing circuit will be in scope of the procurer.
- 10.7 The 400 KV Switch yard equipment including without limitation, relays and switching equipment, protective devices, safety equipment, Power line carrier communication and Remote Terminal units etc., for the outgoing circuits up to an including Power Station Switchyard Gantry Structure for outgoing circuit will be in the scope of the "Seller."

- 10.8 Further, it was specifically mentioned that the start-up power for the unit will be drawn from the 400 KV system through Station auxiliary transformer and it was nowhere mentioned that the Power Generator is liable to pay for the service connection charges for the evacuation line.
- 10.9 Further, at the time of bidding process it was not mentioned that the bidders had to pay Service Connection Charges and Generator was not expected to load the Service Connection Charges.
- 10.10 The PSPCL relied upon Section 9.1 of the Punjab State Regulatory Commission (Supply Code and Related Matters) Regulations, 2007. The relevant Section 9.1.1 (c) is quoted as below:
- “the applicant seeking supply for new connection at voltage of 33000 volts and above, will be liable to pay the expenditure incurred for providing the service line and proportionate cost of back-up/common line (33000 volts or above) up to the feeding substation including bay, if any.*
- Provided that charges payable will not be less than those computed on per kW/kVA basis”.*
- 10.11 In Article 4.1.1 (d) of the PPA (Clause 9.1 of the Supply Code), it has been mentioned that the Seller undertakes to be responsible at Seller’s own cost and risk to procure the requirements of electricity at the Project (including construction, commissioning and start-up power) and to meet in a timely manner all formalities for getting such a supply of electricity.

10.12 Further, Clause 9 of the Supply Code has to be read along with Section 46 of the Electricity Act 2003 and the same is reproduced hereunder:

“46. Power to recover Expenditure:

The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving that supply”

10.13 The bare perusal of this Section would show that the distribution licensee is competent to charge from a person requiring a supply of electricity any reasonable expenses incurred in providing any electric line or electrical plant used for the purpose of giving that supply. So, there are two things which are necessary for recovering expenses. First is that, there has to be some electric line or electrical plant provided by the distribution licensee and second that some amount has to be incurred upon that. In the present case, the Appellant did not provide any electric line or electrical plant for the purpose of supplying start-up power and no amount was spent on creation of any electric line or electrical plant for supplying start up power. It is further submitted that the aforesaid 400 kV transmission line (interconnection facility) through which PSPCL is providing the commissioning and Start-up power is the same infrastructure (interconnection facilities) which in any case, was an obligation of PSPCL for evacuation of power from the project under the PPA. Also, as per the PPA, the Appellant is liable to pay for power and energy consumed for

start up power and it is paying the same. The supply code Regulations are applicable only when a new line is created by the Appellant and not otherwise. The State Commission held that the Section 46 of the Electricity Act, 2003 and Regulation 9 of the Supply Code had to be read in tandem and not in isolation.

- 10.14 The 400 kV line used for catering start up power is a transmission line of transmission licensee (PSTCL) to be used for evacuation of power from the generating plant and cannot be termed as a service line of the Distribution Licensee. Further, the Distribution Licensee has not given any proof of incurring any expenditure for giving start up power as per PPA. The cost of 400 kV system laid by PSTCL for evacuation/dispersal of power from TSPL has been claimed by PSTCL in the ARR's.
- 10.15 Regarding use of start up power for testing of generator and its auxiliaries, the matter has already been settled by this Tribunal in its Judgment dated 15.03.2011 in Appeal No. 176 of 2010. This Tribunal has held that start-up power can be utilized for initial commissioning of a generator and its auxiliaries. So there is no distinction between commissioning and start-up power. Start up power can be used for initial testing and commissioning of generator and its auxiliaries as well as during forced/planned shutdown.
- 10.16 We, therefore, feel that the TSPL & Nabha Power need not be required to pay any Service Connection Charges for the extension of start-up power.

10.17 Hence, the PSPL should be directed to refund the service connection charges recovered from TSPL. Thus, the plea of the PSPCL is liable to be rejected and this issue is decided in favour of the Appellants.

11. **Issue No.2: Whether the State Commission has erred in allowing various charges such as Energy Charges, Demand Charges, Power Factor Surcharge Incentive, Voltage Surcharges etc., as provided in Schedule of Tariff for Large Industrial Consumers for Start-Up Power supplied to TSPL by PSPCL?**

The following submissions were made by the TSPL regarding payment of Demand Charges, Power Factor Rebate/Penalty & Voltage Rebate etc., apart from Energy Charges for the Start-Up Power received from PSPCL:

that the TSPL is aggrieved by the Impugned Order dated 8.1.2014 that it has not been permitted to netting (i.e. setting, setting the consumption towards start up power in energy terms against the power which will be exported to the Grid post synchronisation) and has been held to pay various charges such as energy charges, further surcharge/incentive, voltage rebate etc., for the start up received from PSPCL.

that the PSPCL is permitting the State Generating Companies to settle consumption towards start up power in energy terms against the export of power to the Grid and claims that the same principle is to be applied to the Appellant also.

that the State Commission, while passing the Impugned Order, placed reliance upon Article 11.9 of the PPA signed between the parties and held that TSPL is liable to pay various charges such as energy charges, demand charges, power factor surcharge/incentive, voltage surcharge/rebate etc., as provided in Schedule of Tariff for Large Industrial Power Supply (General) (SI of Schedules of Tariff) till a separate schedule for Start-Up Power is approved by the Commission.

That a Generator receiving Start-Up power cannot be classified as a large supply industrial consumer as the Commission guided by the principles enshrined in Section 61 of the Electricity Act, 2003 is required to determine a cost reflective tariff. In the present case, the tariff being charged by the PSPCL is certainly not cost reflective as supply of start-up power is limited both in quantum and duration unlike a large supply industrial consumer running a general industry. As the quantum of demand for start-up power is very small and of short duration and occurs less frequently, demand charges, PLEC, Power Factor Surcharge and Energy Charges as applicable to a large supply industrial consumer cannot be made applicable to the TSPL. Also industrial tariff will have inherent inefficiencies such as elements of cross subsidy etc. A generator not being a consumer simpliciter cannot be subjected to such surcharges.

that the reliance placed by PSPCL upon Article 4.1.1 (d), 4.2 and 11.9 of the Power Purchase Agreement executed between the parties on 01.09.2008 for treating the generator availing start-up

power as a large supply industrial consumer running a general industry, is entirely misplaced. Article 4.1.1(d) and 4.2(b) relate to obligations of the Seller and the procurer at the development stages of the project and in no manner deal with the tariff applicable for start-up power. Article 11.9 states that the distribution licensee is entitled to charge the Seller of Electricity “*prevalent rates payable by such industrial consumers*”. The question that requires examination is whether there is at all a prevalent rate for **such industrial consumers**, which effectively means the Seller category. The Seller’s case is that the Seller is not a consumer *simpliciter* but a generator. As there is no Seller category of consumers availing power at 400kV in the State of Punjab, as is clear from the tariff order and the Supply Code, the principle of netting off being applied by the distribution licensee for its own generating stations will have to be made applicable to the TSPL as well. Article 11.9, which article is an enabling article, creates an obligation on the Commission/Distribution Licensee to create a tariff category that is consistent with the nature of industrial activity undertaken by the Seller. In the absence of a separate tariff category for start-up power and in view of the judgment passed by this Hon’ble Tribunal in Appeal No. 166 of 2010, Article 11.9 can be only interpreted to mean that the principle of netting off has to be made applicable to TSPL’s power plant as well.

that the Commission has erroneously made TSPL liable for power factor surcharge/incentive for availing start-up power from the Respondent licensee. It is submitted that TSPL availing Start-Up Power cannot maintain a High Power Factor as in a power plant

typically various equipment/loads are primarily motive loads and mainly consist of induction motors. The Power Factor of induction motors varies with load, typically from around 0.85 or 0.90 at full load to as low as 0.35 at no-load, due to reactive/inductive power requirement and inherent properties of Stator and Rotor leakage and magnetizing reactance:

Loading of HT Motor	Average Power Factor
100%	0.89 to 0.90
75%	0.85
50%	0.8
25%	0.65-0.7
No Load trials	0.35 to 0.45

Loading of LT Motor	Average Power Factor <30KW Motor	Average Power Factor 30 to 100 KW Motor	Average Power Factor 100 to 200 KW Motor
100%	0.85	0.85	0.88
75%	0.8	0.82	0.87
50%	0.68	0.76	0.8
25%	0.55	0.65	0.70
No Load Trials	0.35	0.35	0.35 to 0.4

There are various phases involved in the commissioning of a power plant ranging from pre-commissioning checking to individual equipment trials, subsystem trials, various system trials final integrated commissioning trials, synchronization, coal system commissioning, slowly building up to full load, full load trials for specific duration and then final commissioning. In these phases of commissioning, the equipment runs mostly in no load or very small/part load condition only. This generally leads to very low

power factor in general till the final plant full load trial/commissioning. Accordingly, no power factor surcharge should be made applicable to TSPL for drawing start-up power for its power plant.

that this Tribunal may be pleased to allow Appeal No.164 of 2014 and dismiss Appeal No.76 of 2014.

12. **Per contra, the following submissions were made by the Respondent PSPCL on this issue:**

that Talwandi Sabo Power Limited (TSPL) (Appellant in Appeal No. 164 of 2014) has raised the issue that the State Commission by the Impugned Order has erroneously refused to create a separate Start-Up category and has postponed the decision to the subsequent tariff order.

that Clause 4.1.1 (d) which deals with the Seller/Appellant's Obligations and Clause 11.9 of the PPA which deals with payment of Start-Up Power is extracted below:

*“Clause 4.1 **The Seller's obligation** to build, own and operate the project:*

4.1.1 (d) subject to the terms and conditions of the Agreement, the Seller undertakes to be responsible at Seller's own cost and risk for:

.....

(d) Procure the requirements of electricity at the Project (including construction, commissioning and Start-up Power and to meet in a timely manner all formalities for getting such a supply of electricity.

.....

Clause 11.9 Payment for Start-up Power

The Seller shall be liable to pay, for the power and energy consumed for start-up of the project and commissioning to the Distribution Licensee(s) in whose area, the project is located or such other entity from whom such power/energy is sourced at the then prevalent rates payable by such industrial consumers.

In terms of the above, the Appellant is to be treated as an Industrial Consumer for the purposes of start-up and commissioning power consumed by the Appellant and is required to pay the relevant charges for release of connection as is applicable to an industrial consumer. As Clause 4.4.1 (d) and 11.9 of the PPA in clear terms provide for the Appellant to be treated as an Industrial Consumer for the purposes of Start-Up and commissioning power, it is clear that the Start-Up Power availed by the Appellant has to be at the prevalent rates payable by such industrial consumers. Accordingly, all associated charges as applicable to an industrial consumer namely energy charges, demand charges, power factor surcharge/incentive, voltage surcharge/rebate etc., as provided in the Schedule of Tariff for Large Industrial Power Supply (General) need to be charged to the Appellant.

that as at present, there is also no separate schedule in the tariff order of the State Commission for Start-Up Power. In the circumstances, since there is no separate Clause as per General Conditions of Tariff and Schedule of Tariff to consider generators as

a different entity, the Generators are treated at par with Industrial Consumer which is also incorporated in the PPA entered into between the parties.

that the PPA in the present case was entered into pursuant to a competitive bidding process undertaken in terms of Section 63 of the Electricity Act, 2003 based on the competitive bidding guidelines and documents notified by the Central Government in exercise of its statutory powers. The PPA being a statutory document, being a part of the competitive bidding documents and also approved by the State Commission, the same ought to have been enforced and cannot be deviated from. To that extent, the State Commission has correctly enforced the provisions of Clause 4.1.1 (d) and 11.9 of the PPA.

that in view of such clear provisions of the PPA, the consumption of power by the Appellant cannot be given a special status and has to be treated in accordance with the Schedule of Tariff applicable in the State of Punjab. If the State Commission had allowed netting off of power as prayed for by the Appellant, such measures would be contrary to the provisions of the PPA especially since there is no separate category created by the State Commission for start-up power under the tariff orders.

that the issues with regard to tariff design, consumer categorisation, the categorisation including new categories to be created by the State Commission if any, have to be necessarily considered in the Petition under Section 64 of the Electricity Act, 2003 for

determination of tariff, and following the procedures provided therein.

That in the circumstances, the State Commission has rightly held that the issue with regard to categorisation of Start-Up Power can be looked into only in the next tariff order. In the subsequent tariff order, the State Commission has to determine the Start-Up Power category. Whether the same is applicable to the Generator in view of the provision of the PPA may however, arise in appropriate proceedings.

that in the case of TSPL, the tariff is a quoted tariff under Section 63 of the Electricity Act, 2003 with the specific condition that the Start-Up power will be paid for at the prevailing industrial consumers' category tariff. The same is binding on TSPL. It is not open to TSPL, having participated in the bid on the specific condition of paying the industrial tariff to claim that the same is not payable.

that the State Commission has in the Impugned Order referred to the decision of the Tribunal in Appeal No.166 of 2010 to observe that the Generating Company may not be a consumer. The decision of the Tribunal was with regard to the operation of Section 43 of the Electricity Act, 2003 which only deals with Obligation to supply by the licensee. The definition of the term consumer in Section 2(43) has not been tested or arose in the said judgment. In any event, the said issue is not relevant as has also been held by the State Commission that the rights and obligations of the parties had to be considered in terms of the PPA entered into between the

parties. In the circumstances, the issue of TSPL being the consumer or not in the present case does not arise.

13. Our Discussion and Conclusion on Issue No.2

13.1 The relevant Article of the PPA pertaining to the payment of Start-Up Power is reproduced below:

“11.9 Payment for Start-up Power

The Seller shall be liable to pay, for the power and energy consumed for start up of the Project and commissioning to the distribution Licensee(s) in whose area, the project is located or such other entity from whom such power/energy is sourced, at the then prevalent rates payable for such industrial consumers.”

13.2 As per article 11.9 of the Power Purchase Agreement signed between the parties, the seller (petitioner) shall be liable to pay for the power and energy consumed for start up of the project and commissioning to the Distribution Licensee at the then prevalent rates payable by such Industrial consumers. The interpretation of the Counsel for the Seller Petitioner that ‘such’ means such ‘generating company’ is not sustainable since ‘such’ is followed by words ‘industrial consumers’. Thus, in view of the agreement between the parties, settling of the consumption towards start up power in energy terms against the power which will be exported to the grid post synchronization, cannot be permitted and the Seller is liable to pay various charges such as energy charges, demand charges, power factor surcharge/incentive, voltage surcharge/rebate etc. as provided in Schedule of Tariff for Large Industrial Power Supply (General) (SI of Schedules of Tariff) till a

separate schedule for Start up power is approved by the Commission.

- 13.3 Further the Appellant/Developer has agreed in the PPA to be treated at par with industrial consumer and agreed that the charges as are applicable to the industrial consumer shall be borne by the Developer so the claim that the Seller(Developer) be charged only as in case of State run power plants are made to pay is unsustainable. The contract being a valid and binding contract and the fact that Seller has not disputed any of the terms of the contract establishes that the contract is legal and binding. The charges are as per Supply Code Conditions and can be recovered by the Respondent having been provided in the PPA.
- 13.4 Further, the Appellant/Seller claimed that the Commission had erroneously made liable for power factor surcharge/incentive for start up power and also stated that the power factor varies with the percentage loading of the motor and showed a chart that the power factor varies from 0.35 to 0.88 from no load to 100% load. Further, the Appellant has stated that due to limited duration of requirement of start-up power, it may not be prudent to adopt various power factor improvement systems and also this will require additional capital investments.
- 13.5 It is pertinent to mention here that the low power factor affects the transmission system of the Respondent. The effect of power factor is explained below:

(a) **Power Factor**: Power factor in an electrical power system is defined as the rate of real power to the apparent power on the circuit and is a dimensionless number in the closed interval of -1 to 1.

(b) In an electrical power system a load with a low power factor draws more current than a load with higher power factor for the same amount of useful power transfer. The higher current increases the energy losses in the distribution system and requires larger wires and other equipments.

(c) Because of the cost of the larger equipments, wastage of energy, electrical utilities/distribution companies will suggest their consumers to maintain power factor at a specified level and will impose surcharge / penalty on those consumers who fail to maintain the power factor.

(d) The following illustration will explain the effect of power factor:

ILLUSTRATION-1:

$$\text{Power (P)} = \sqrt{3} \, vI \cos \Phi$$

Where V is the supply voltage, I is the load current and $\cos \Phi$ is power factor;

Let the power drawn by a consumer is 18000 KWs and supply voltage is 400 KV and power Factor i.e. 0.35

$$\text{Then the loaded current } I = \frac{P}{\sqrt{3} \, vI \cos \Phi}$$

$$= \frac{18000 \times 10^3}{\sqrt{3} \times 400 \times 10^3 \times 0.35} = 74 \text{ Amp}$$

$$\text{When the PF is 0.5 then load current} = \frac{18000 \text{ KW}}{\sqrt{3} \times 400 \text{ KV} \times 0.5} = 52 \text{ Amp}$$

$$\text{When the PF is 0.88 then load current} = \frac{18000 \text{ KW}}{\sqrt{3} \times 400 \text{ KV} \times 0.88} = 29.5 \text{ AMP Amp}$$

13.6 This clearly shows that when the power factor is low, the load current drawn by a consumer is more and if the power factor is improved then the load current will be reduced.

13.7 The following are the effect of low power factor on the system and on equipment:

(a) When the power factor is low, the consumer will draw more current compared to the specified level of current of the consumer's load. Hence, the higher load current has to come from the source through sub-station transformers and transmission lines. Thereby the equipment will be overloaded and hence, there is possibility of the failure of equipment.

(b) The technical losses (I^2R) of the transmission system will increase if the power factor is low as the consumer load draws higher current.

13.8 **Voltage Rebate**: The Voltage rebate if any, will be applicable as per the Tariff Order.

13.9 In view of the agreement between the parties, setting of the consumption towards start-up power in energy terms against the

power which will be exported to the post synchronization, cannot be permitted as the Generator/Seller is liable to pay various charges such as energy charges, demand charges, power factor surcharge/penalty voltage surcharge/rebate etc., as provided in Schedule of Tariff for Large Industrial Power Supply Consumer till a separate schedule for Start-Up power is approved by the Commission. Accordingly, this issue is decided against the Appellant/Power Developer and in favour of the Respondent, PSPCL/Distribution Licensee.

14. **Summary of Our Findings**

(a) The Punjab State Electricity Board entered with Power Purchase Agreement on 01.09.2008 with Talwandi Sabo Power Limited on long term basis (25 years) for the procurement of power. Accordingly, Talwandi Sabo Power Ltd established a power plant of capacity 1980 (3 x 660) MW at Mansa, Punjab as a Special Purpose Vehicle. As per the agreement the total power generation has to be supplied to the procurer Punjab State Power Corporation Ltd. (PSPCL).

(b) As per the PPA, the Seller's Obligation is to build, own and operate the project and procurer's obligation is to provide infrastructure for evacuation of power from the Generating Station to the Grid-sub-Station. Further, the procurer has to provide an electrical connection for reasonable construction, commissioning for start-up power at the project.

(c) The dispute between the Talwandi Sabo Power Ltd and the Punjab State Power Corporation Ltd is regarding service line charges and payment of various charges such as energy charges, demand charges, power factor surcharge/rebate and voltage etc for the power supplied by Punjab State Power Corporation Ltd to Talwandi Sabo power Ltd for Start Up Power.

Issue No.1:

The First Issue is regarding payment of service connection charges claimed by the distribution licensee for extension of supply to the Appellant for start up power. As per the condition of the PPA, the procurer has to create infrastructure for evacuation of power from the Generating Station to Grid Sub Station. Accordingly, the Punjab State Transmission Corporation Ltd constructed 400 KV line for evacuation of power. The feasibility clearance committee suggested that the evacuation line can be utilized for start up power supply by back charging. Accordingly, the Punjab State Power Corporation Ltd supplied start up power by utilising the 400 KV evacuation line.

As per Section 9.11 (c) of the Supply Code Regulations, the consumer is liable to pay the expenditure incurred by the Distribution Company towards supply of power. In the present case, the procurer Punjab State Power Corporation Ltd had not erected any separate 66 KV/33

KV line for extension of supply and thereby it did not incur any expenditure on the service line. Further, the line through which the start up power is being extended, is constructed by Punjab State Transmission Corporation Ltd and the expenditure incurred by Punjab State Transmission Corporation Ltd was shown in their ARR.

Further, Sub Regulation 9.1.1 (c) shall come into force only in case some expenditure has been incurred by the licensee which will then be subject to minimum charges calculated in KW/KVA basis. It is pertinent to mention here that the distribution licensee has not produced any proof of incurring expenditure towards construction of service line for giving start-up power.

In view of the above, the Appellant/Power Developer is not liable for payment of service line charges as per Article 11.9 of the PPA and Sub Regulations 9.1.1 (c) of the Supply Code Regulations.

The claim of the distribution company (PSPCL) in the Appeal Nos. 75 & 76 of 2014 is disallowed.

Issue No.2: Whether the State Commission has erred in allowing various charges such as energy charges, demand charges, power factor surcharge incentive, voltage surcharge etc., as provided in Schedule of Tariff for Large Industrial Consumers for Start-Up Power supplied to TSPL by PSPCL?

As per Article 11.9 of the PPA, the Seller shall be liable to pay for the power and energy consumed for start up power of the project at the then prevalent rates payable by such industrial consumers. The PPA is a statutory agreement between the parties and the same is a binding contract and the fact that the Appellant Talwandi Sabo Power Ltd has not disputed any of the terms of the PPA hence the Appellant is liable to pay various charges specified in the Tariff Schedule of large industrial consumers approved by the Commission.

Further, there is no separate tariff schedule approved by the Commission for start up power and hence the Talwandi Sabo Power Limited (a Power Developer) is liable to pay all the charges specified in the Tariff Schedule for Industrial consumers.

Thus, the State Commission has not erred in disallowing the service connection charges claimed by the Punjab State Power Corporation Limited (PSPCL)/Distribution Licensee) for providing start-up power to the Generating Company namely TSPI and NPL.

15. In view of the findings recorded above, the PSPCL/Distribution Licensee is directed to refund the service connection charges recovered from the power Generating Company namely TSPL.
16. We further hold that the State Commission has not erred in allowing various charges such as energy charges, demand charges, power factor surcharge incentive, voltage surcharges etc as provided in

Schedule of Tariff for the Larger Industrial Consumers for Start up power supplied to the PSPCL/Distribution licensee.

17. We hereby uphold the findings recorded by the learned Counsel for the State Commission in the Impugned order dated 8.1.2014 as there is no illegality or perversity in the said Impugned Order.
18. Consequently, the Appeal No.75 of 2014 and 76 of 2014 are hereby dismissed as the said Appeals do not have any merits. Appeal No.164 of 2014 filed by the TSPL, Generating Company is hereby partly allowed.

There is no order as to cost.

Pronounced in the Open Court on this **10th day of April, 2015.**

(T Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

Dated : **10th April, 2015**

 **REPORTABLE / ~~NON-REPORTABLE~~**