

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

**IA No. 01 of 2018 in
Petition No. 54 of 2017
Date of Hearing: 26.03.2018
Date of Order: 28.03.2018**

In the matter of : Petition for determination of Tariff under Sections 62 and 86 of the Electricity Act, 2003 read with (a) Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005; (b) the Central Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2014; and (c) Amended and Restated Power Purchase Agreement dated 26.05.2009 executed between Petitioner (Goindwal Sahib) Limited and Punjab State Power Corporation Limited (formerly known as Punjab State Electricity Board) (Capacity 540 MW).

AND

In the matter of: GVK Power (Goindwal Sahib) Limited, Paigah House, 156-159, Sardar Patel Road, Secunderabad-540003.

... Petitioner

Versus

Punjab State Power Corporation Limited, The Mall, Patiala.

...Respondent

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

For Petitioner: Sh. Amit Kapur, Advocate
Sh. T.V. Bhaskar, Advocate
Sh. M. Janmali, Advocate
Sh. Vishrov Mukherjee, Advocate
Sh. PVP Reddy, Director
Sh. Oliver Tyagi, GM
Sh. Swamy, DGM
Sh. Mannava Sodekar, DGM
Sh. K.N. Bhawani Shanker, VP-Finance
Sh. U. Sataynarayan Sr. Mgr.

For PSPCL: Ms. Suparna Srivastava, Advocate
Sh. Tushar Mathur, Advocate
Sh. Daljit Singh, ASE/IPC-I
Sh. V.P.S. Kailay, ASE/TR-5

ORDER

GVK Power (Goindwal Sahib) Ltd. (GVK) has filed the present petition for determination of Tariff for the Tariff Year 2016-17, further praying to approve the provisional tariff of the power plant pending determination of Tariff. The petition was admitted vide order dated 13.10.2017, wherein both the parties were directed to complete the pleadings and the petition was fixed for hearing / arguments on 29.11. 2017. PSPCL vide letter dated 02.11.2017 informed that its advocate needs more time to prepare the reply to the petition. Acceding to PSPCL's request, the petition was fixed for hearing / arguments on 13.12.2017 instead of 29.11.2017. GVK requested vide letter dated 15.11.2017 for extension of time for curing the defects / deficiencies observed by the Commission in the petition. Acceding to the request of GVK, the commission allowed GVK to submit the rectified petition by 29.12.2017 and fixed the next date for hearing / arguments on 31.01.2018. The public holiday being declared on 31.01.2018, next date was fixed for hearing / arguments on 07.02.2018.

In the meantime certain deficiencies were observed by the Commission and vide letter no. PSERC/ Reg./ 1280 dated 27.10.2017, the petitioner was directed to submit the compliance report. Pursuant to the said letter dated 27.10.2017, the petitioner had filed an application on 15.11.21017 for amendment of the petition alongwith the compliance report dated 29.12.2017.

On 07.02.2018, the petition was heard wherein it was recorded that the Ld. Counsel for the petitioner has mistakenly submitted the un-amended petition and requested to submit the amended petition within two days. He was allowed to do so and was also asked to submit some additional documents mentioned in the interim order dated 13.02.2018. The petition has been fixed for hearing / arguments on 25.04.2018.

The petitioner filed IA No. 01 of 2018 dated 12.02.2018 in petition no. 54 of 2017 submitting that the project is under financial stress on account of under recovery and it is imperative to have the tariff determined for the Project at the earliest. The IA was heard on 07.03.2018 seeking urgent listing of petition no. 54 of 2017. During the hearing, the petitioner submitted the RBI Guidelines which were the reason for the request for early hearing. The same was acceded to and the

petition was fixed for hearing / arguments on 23.03.2018. PSPCL was directed to file a reply to the amended petition alongwith its calculation sheet regarding provisional tariff as prayed for by the petitioner pending determination of tariff.

On 23.03.2018 the petitioner was asked why the petition for tariff had not been filed with PSERC as soon as COD had been achieved. It was also enquired as to why PSPCL had been approached for a provisional tariff. No reasonable reply to these two queries of the Commission was received beyond a statement that the COD issue was sub judice. PSPCL in its turn was asked why it exceeded its authority in giving a provisional tariff to GVK. It was stated that the calculation had been made to arrive at the cost of infirm power alone. Perusal of the relevant papers indicated that while the cost of infirm power was calculated, so were the fixed charges. These fixed charges have been used by GVK for billing PSPCL since April, 2016 without demur or an attempt to file petition in the PSERC for fixation of tariff. PSPCL made payments to GVK on this basis. Both parties have displayed total contempt for the provisions of the Act and the Regulations. Both parties shall explain on affidavit the circumstances under which this has been done.

GVK has come to the proper forum (PSERC) for tariff determination for FY 2016-17 in October, 2017 and it is only in February, 2018 that any urgency has been displayed and that too only because of the revised RBI Guidelines.

On 23.03.2018, the Ld. Counsel for the petitioner made submissions for grant of provisional tariff based on 95 % of the projected Capital Cost of Rs. 4441.79 crore submitted in the petition, subject to prudence check to be carried out for determination of tariff, since the same is likely to take some time. The Ld. Counsel of PSPCL contested the same and quoted various judgments cautioning against provisional tariff orders. PSPCL also quoted the CERC Regulations explanatory notes. The petitioner in turn cited various recent orders of the CERC allowing provisional tariff. The Commission directed the petitioner to file an affidavit and furnish a consolidated statement of various components of project Capital Cost incurred up to the date of COD, alongwith details of the loan(s) taken for the project up to the COD and the draw down schedule / actual draw down for the same from the banks / financial institutions. Similar information in respect of promoter's equity was also directed to be furnished. The petitioner was directed to file an affidavit, submitting as to how the project would become Non Performing Asset (NPA) in

case the provisional tariff based on the project Capital Cost submitted in the petition is not allowed by the Commission. The petition was adjourned to 26.03.2018 for further hearing.

On 26.03.2018, in compliance of the order dated 23.03.2018, Ld. Counsel for the petitioner submitted an affidavit intimating the details of components of Capital Cost incurred as on COD of the project i.e. 16.04.2016, debt to the lenders as on the date of COD and certificates by chartered accountant certifying the total project cost as Rs. 4441.79 crore as on COD. GVK submitted that PSPCL is paying capacity charges at the rate of Rs. 1.926 per kWh by taking into consideration Capital Cost amounting to Rs. 2963.81 crore whereas the actual cost upto COD was Rs. 4441.79 crore inclusive of Rs. 1474.84 crore of IDC. GVK further submitted that PSPCL has been arbitrarily making payments and deductions from the monthly bills raised by GVK which includes deductions towards penalty for the Contract Year 2016-17, deductions on account of surface transportation charges, disallowing the landed cost of coal & auxiliary consumption and other deductions such as transit loss of coal, water charges, compensation as per IEGC etc. to the tune of Rs. 15.25 crore. GVK submitted that in the Contract Year 2017-18 (June, 2017 to January, 2018) PSPCL has paid a sum of Rs. 541.90 crore against Rs. 797.83 crore billed by GVK for the supply of power. GVK further submitted that the reasons stated above compounded the existing shortfall due to a lower tariff and the resultant acute shortage of funds prevented GVK from servicing the debt which became NPA from August, 2017 onwards in terms of the applicable RBI norms. As on date, GVK is in default in all its loan accounts. GVK submitted that after the enactment of the Insolvency and Bankruptcy Code, 2016, the Reserve Bank of India issued Circular dated 12.02.2018 to tighten the existing guidelines relating to resolution of stressed assets viz. ;

- i) Earlier circulars of the RBI pertaining to Scheme for Sustainable Structuring of Stressed Assets ("S4A"), Strategic Restructuring Scheme ("SRS") and 5/25 Scheme ("5/25") have been withdrawn.
- ii) If the debt servicing is not met by GVK (borrower under the financé documents) by the due dates indicated, the lenders must put in place Board-approved policies for resolution of stressed assets as per Circular dated 12.02.2018 including timelines for resolution.

- iii) In the event of a default in borrower's account with any lender, all lenders singly or jointly shall initiate steps to cure the default. The resolution plan may involve any actions / plans / reorganization including but not limited to regularization of the account by payment of all over dues by the borrower, sale of exposures to other entities / investors, change in ownership, or restructuring.

GVK submitted that in terms of the Circular dated 12.02.2018, 20% of the sustainable debt as per the Resolution Plan will have to be paid within two years as advised by the lenders. GVK further submitted that the lenders are insisting that GVK must provide for a Resolution Plan alongwith the probable provisional tariff that may be fixed by the Commission.

GVK prayed to the Commission to grant provisional tariff at 95% of the completed Capital Cost i.e. Rs. 4441.79 crore enabling it to meet its debt servicing requirements and essential expenditure to operate the plant.

PSPCL submitted that it could not file the written reply to the petitioner's affidavit dated 23.03.2018 due to paucity of time. However, in response to the aforesaid affidavit submitted by GVK, PSPCL's counsel during hearing on 26.03.2018 submitted year wise detail of payments made by PSPCL against the monthly bills raised by the petitioner and contended that PSPCL has been making the payments in terms of the PPA. The Ld. Counsel of PSPCL further submitted that PSPCL has been deducting Rs. 11.337 crore per month as agreed to by GVK in its proposal dated 23.08.2017 and allowed by the Commission in its interim order dated 05.09.2017 in petition no. 45 of 2017, with regard to recovery of the penalty amount of Rs. 113.37 crore levied by PSPCL in terms of clause 1.2.5 of 'Schedule 6: Tariff ' of the PPA as penalty for the availability of the project below 75% during the first Contract Year ending 31.03.2017.

The Commission has taken on record all the documents filed by both the parties during the hearing.

The Commission notes that pursuant to its Order dated 01.02.2016 common to both petitions (33 of 2015 and 65 of 2013), the COD of the project was achieved on 16.04.2016. The Commission is of the view that the petitioner should have approached it within a reasonable time after the COD of the project on 16.04.2016

for determination of tariff / provisional tariff for the project under the relevant Regulations. Instead of filing the petition before the Commission for determination of tariff, the petitioner approached PSPCL which going beyond its jurisdiction, determined the fixed cost for the project as 1.926 per kWh. The petitioner filed the petition no. 54 of 2017 for determination of tariff for FY 2016-17 on 22.09.2017 in the Commission citing Regulations which were not relevant. Thereafter, the petitioner filed the amended petition on 08.02.2018 i.e. almost two years after the COD of the project. This shows the irresponsible attitude of the petitioner.

The Commission is yet to carry out a prudence check on the Completed Capital Cost indicated by the petitioner. The IDC cost itself is purported to have risen to 30% of the cost of the project against the earlier approved IDC of approximately 12%. However, noting the submissions of the petitioner regarding the stringent stipulations under the new RBI Guidelines, their financial hardship and the views of PSPCL, the Commission finds it appropriate to allow the provisional tariff of the project with capacity charges as Rs. 2.20 per kWh and the energy charges based upon the Order dated 01.02.2016 common to petition no. 33 of 2015 and 65 of 2013. This is without prejudice to the final determination of tariff for FY 2016-17 by the Commission on merits after prudence check in petition no. 54 of 2017. The above provisional tariff shall be payable from the date of this order.

The petition shall be taken up for further hearing / arguments on the tariff to be determined for FY 2016-17 on 25.04.2018 at 11:00 A.M.

Sd/-
(Anjali Chandra)
Member

Sd/-
(S.S. Sarna)
Member

Sd/-
(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 28.03.2018