PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

SITE NO. 3, BLOCK B, SECTOR 18-A, MADHYA MARG, CHANDIGARH

Petition No. 16 of 2023

Date of Order: 20.09.2023

Application for approval of Capital Investment Plan and Business Plan for 2X270 MW Goindwal Sahib Thermal Power Plant at Goindwal Sahib, Punjab for the control period FY 2023-24 to 2025-26 in terms of Regulation 9 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Generation, Transmission, Wheeling and Retail Supply Tariff) Regulations, 2022.

AND

In the matter of: GVK Power (Goindwal Sahib) Limited, Plot No. 10 Paigah House, Sardar Patel Road, Secunderabad – 500003.

…..Petitioner

Versus

Punjab State Power Corporation Limited, The Mall, PSEB Head Office, Patiala (Punjab) -147001

….Respondent

Commission: Sh. Viswajeet Khanna, Chairperson

Sh. Paramjeet Singh, Member

GVK: Sh. Janmali Manikala, Advocate

PSPCL: Sh. J.K Jindal,Sr.Xen

Sh. Hardeep Singh, Sr.Xen/ Biomass

ORDER

1. INTRODUCTION

1.1 The Petitioner GVK is operating a 2x270MW (540 MW) coal based thermal power station at Goindwal Sahib Punjab and supplying entire power generated from the Project to PSPCL under the Amended and Restated Power Purchase Agreement, dated 26.05.2009 (**PPA**). The present petition has been filed for approval of its Business Plan including Capital Investment Plan (CIP) for the Control Period of FY 2023-24 to 2025-26, with the prayer to:

a) *Condone the delay in filing the present Petition.*

b) *Admit the present Petition and grant approval for the Business Plan and Capital Investment Plan for the Control Period from FY 2023-24 to FY 2025-26 as detailed out by the Petitioner.*

c) *Grant approval of the additional expenditure of Rs. 243 Crore to be incurred by the Petitioner in FY 2025-26 for installing and operating FGD System in compliance of statutory mandate i.e., MoEFCC Notification dated 07.12.2015.*

d) *Pass any other order as the Commission may deem fit and appropriate.*

1.2 The Petitioner sought to condone the delay in filing of the petition with the plea that the MYT Regulations' 2022 were notified only on 27.10.2022. Further, the Business Plan and the CIP could not be filed within the timeline specified in the Regulations on account of on-going Corporate Insolvency Resolution Proceedings (**CIRP**) against the Petitioner by Hon'ble NCLT. After hearing the Ld. Counsel for the Petitioner on 17.05.2023, the petition was admitted vide Order dated 22.05.2023. GVK was directed to issue a public notice inviting objections/suggestions from the general public/stakeholders as required under Regulation 67 of the PSERC (Conduct of Business) Regulations 2005.

1.3 The notice was issued to PSPCL to file its reply to the petition and GVK to file rejoinder, if any, and the petition was fixed for hearing as well as public hearing. In compliance to thereof, PSPCL filed its reply vide memo No. 6319 dated 27.06.2023 and GVK filed a rejoinder thereto dated 11.07.2023.

1.4 The public notice inviting objections/suggestions from the general public/stakeholders was published in The Times of India (English), Ajit (Punjabi) & Ajit Samachar (Hindi) on 25.08.2023. However, no objection was received from public. PSPCL also filed its written submissions on 25.08.2023.

1.5 The petition was taken up for hearing as well as public hearing on 13.09.2023; nobody except PSPCL appeared in the public hearing. After hearing the parties, the Order was reserved.

2. Observations and Decision of the Commission

The Commission has examined the submissions and arguments made by the Petitioner and PSPCL. The present Petition is for approval of Business Plan (including CIP) for the Control period 2023-24 to 2025-26 under Regulation 9 of the PSERC MYT Regulations, 2022. Parties have also tried to raise the issue of interim-tariff for FY 2023-24, which the Commission does not consider or decide upon here as the 'determination of tariff' doesn't fall under Regulation 9 invoked in this petition. The determination of tariff for the project is already under process in another Petition No. 17 of 2023 filed by the Petitioner.

The analysis and decision of the Commission in the matter of Business Plan (including CIP) for the Petitioner's project is as under:

2.1 Business Plan

2.1.1 **GVK's Submissions**

Regulation 9.3 of the PSERC MYT Regulations, 2022 relating to the key requirements to the Business Plan, is reproduced below: -

"9.3 The Business Plan for Generation Business shall contain among other things the following:

(a) Capacity addition / reduction;

(b) Availability forecasts;

(c) Future performance targets;

(d) Proposed efficiency improvement measures;

(e) R&M of existing generation units/projects and any other new measures to be initiated for the Generation Business, e.g.; automation, IT initiatives etc.;

(f) Capital Investment Plan based on the above;

(g) Man Power Plan."

Accordingly, the Petitioner's Business Plan for the Control Period form FY 2023-24 to FY 2025-26 is submitted as follows:

a) **Capacity Addition/ Reduction**

No capacity addition or deletion has been envisaged during the Control Period.

b) **Availability Forecast**

The Petitioner has estimated an Availability Factor of 85% for the Control Period.

c) **Future Performance Targets**

Regulation 34 of the PSERC MYT Regulations, 2022 specifies that the norms regarding the Availability, Station

Heat Rate (**SHR**), Auxiliary Energy Consumption shall be as per the norms provided by the CERC or as determined by the Commission. Since, this the Commission has not laid down any specific operational norms qua FGD installation, the Petitioner has considered the norms regarding SHR, Auxiliary Energy consumption, secondary oil consumption as per CERC Regulations:

Table 1: Plant Operational Norms

Sr. No.	Parameter	Unit	FY 2023-24	FY 2024-25	FY 2025-26
1.	Station Heat Rate	Kcal/kWh	2332	2332	2332
2.	Auxiliary Consumption	%	9%	9%	9%
3.	Specific Consumption of Secondary Fuel	ml/kWh	0.5	0.5	0.5

d) **Generation Forecast and Performance Targets**

The Petitioner has assumed a PLF of 62% for the Control Period. It is further submitted that:

(i) Article 14.1(iv) of the Amended and Restated PPA requires the Petitioner to achieve minimum Average Availability of 65% for a period of 12 consecutive months or for a non-consecutive period of 12 months within any continuous aggregate period of 36 months. This obligation was premised on 100% supply of coal from the Tokisud Captive Coal Block allocated to the Petitioner before entering into the PPA. Further, Article 12.7(a) of the PPA provides that no party shall be in breach of its obligations to that extent that its performance was prevented / hindered on account of Force Majeure. In view of the above, since the cancellation of the Tokisud Captive Coal Block has been held to be an event of Force Majeure, the Petitioner is excused from its obligation of achieving average availability of 65% under Article 14.1(iv) of the PPA.

(ii) The allocation of the Tokisud Captive Coal Block to the petitioner was cancelled by the Hon'ble Supreme Court vide Judgment dated 24.08.2014 in ***Manohar Lal Sharma v. the Principal Secretary & Ors.,*** (2014) 9 SCC 516 and the subsequent Order dated 24.09.2014 reported as (2014) 9 SCC 614 (collectively referred to as "**Coal Judgments**"). Consequently, the Petitioner has been constrained to procure coal from alternate sources to meet the requirements of the Project.

(iii) After cancellation of the Tokisud Captive Coal Block, the Government of India notified the SHAKTI Scheme on 22.05.2017 to introduce a new coal allocation policy to address the shortage of coal issue. It bears mention that the coal procured by the Petitioner, with PSPCL's concurrence, under SHAKTI Scheme is adequate only for achieving plant availability of 62% on normative basis. The Petitioner has made several attempts to procure coal from alternate sources, including imported coal and / or under SHAKTI Scheme. However, PSPCL has consistently refused to grant its concurrence for such procurement and has prevented the Petitioner from procurement of requisite quantity of coal to meet its obligations under the PPA.

(iv) Accordingly, the Petitioner is excused from performance for the difference between 65% availability and the actual availability based on coal supplied under the SHAKTI Scheme allocation. Pertinently, this issue of PSPCL preventing the Petitioner from procuring coal from alternate sources, including imported coal is sub-judice before Hon'ble Tribunal in Appeal No. 218 of 2018 and Appeal No. 338 of 2019, respectively.

(v) In view of above, the Petitioner estimates the following generation target for the Control Perion FY 2023-24 to FY 2025-26:

Table 2: Projections of Generation

Sr. No.	Particulars	Unit	FY 2020-21	FY 2021-22	FY 2022-23
1	Plant Load Factor	%	62%	62%	62%
2	Gross Generation	MU	2933	2933	2933
3	Auxiliary Consumption	%	9%	9%	9%
4	Net Generation	MU	2669	2669	2669

e) **Efficiency Improvement Measures**

The Petitioner proposes to install FGD system during the last year of the Control Period for reducing the emissions and to comply with the revised emission norms as defined in MOEFCC Notification dated 17.05.2015.

f) **R&M of Existing generation units and other new measures**

No major R&M of existing generation units is envisaged during the Control Period.

g) **Manpower Plan**

The Petitioner does not envisage any manpower addition during the Control Period and hence, the current manpower has been considered for the entire Control Period.

2.1.2 **PSPCL's Reply/ Submissions:**

a) The Petitioner has submitted that there is no capacity addition or deletion which has been envisaged under the subject Control Period. Further, the Petitioner has predicted 85% availability forecast for the control period.

b) However, the Petitioner has assumed only a 62% PLF for the subject Control Period. In this regard it is submitted that:

(i) At the time of approving COD for the Petitioner's project, this Commission under its Order dated 1.2.2016 had directed the Petitioner to make efforts for arranging long term sources of coal for the entire term of the PPA. As part of the said efforts, the Petitioner had participated in the e-auction under the SHAKTI Scheme and had secured coal availability to operate its plant at 62% PLF. This coal allocation under the SHAKTI Scheme was also duly recorded under an amendment made to the Restated PPA pursuant to Order dated 27.5.2019 passed by the Commission in Petition No.1/2018.

(ii) That since the option of SHAKTI Scheme had been exhausted by Petitioner at that time; the Commission had directed the Petitioner to explore other options for meeting the requirement of balance coal on a long-term basis. Further, under the Amended and Restated PPA, the responsibility of arranging coal for running the plant is entirely that of the Petitioner. In its Order dated 1.2.2016 passed in Petitions 65/2013 & 33/2015, the Commission has directed the Petitioner to keep the Respondent 'informed' of the efforts made by it in arranging for coal on long-term basis. As such, the Respondent is not required to give any 'consent' or 'concurrence' to the Petitioner for participating in any of the upcoming e-auction under SHAKTI Scheme. That being so, the contention of the Petitioner that the Respondent has consistently refused to grant its concurrence for such procurement and has prevented the Petitioner from procuring the requisite coal, is misconceived and misleading.

(iii) The Respondent vide its letter dated 10.10.2022 has rightly requested the Petitioner to make all efforts to arrange long-term coal linkage for the project's total capacity from other available/alternate options apart from SHAKTI as directed by the Commission in Order dated 27.05.2019 in Petition No. 01 of 2018.

(iv) Also, upon examination it was observed by the Respondent that the coal being procured by the Petitioner under the SHAKTI scheme had resulted in a an increase in the variable cost of power and any further allocation under the scheme was also likely to be at higher cost leading to further increase in variable cost. As such, vide its letter dated 10.10.2022, the Respondent declined the request of the Petitioner and requested it make efforts to arrange for long term coal linkage for the entire projects capacity.

c) That the installation of FGD is a mandatory condition imposed by the MoEF&CC for compliance of the prescribed environmental standards; the same cannot be regarded as an 'Efficiency Improvement Measure'. It does not add to any improvement to the capacity or efficacy of the power plant and cannot be regarded as an 'Efficiency Improvement Measure' as has been wrongly submitted by the Petitioner.

d) That insofar as other operational norms being station heat rate, auxiliary consumption and specific consumption of secondary fuel etc. are concerned, it is reiterated that as per Regulation 34 of the PSERC Tariff Regulations, 2022, this Commission has prescribed the norms for performance parameters (such as availability, load factor, station heat rate, specific oil consumption, auxiliary consumption, etc.) to be as per the CERC norms or as may be determined by the Commission. As such, the Petitioner is entitled to the norms for operation as prescribed by CERC under Regulation 49 of the CERC Tariff Regulations, 2019.

2.1.3 **Commission's Analysis**

The Commission observes that:

a) The Petitioner has not proposed any change in its 'Man Power Plan' nor any 'Capacity addition/reduction' or any 'R&M of existing generation units/projects and any other new measures to be initiated for the Generation Business, e.g.; automation, IT initiatives etc.'

b) Further, it has projected the normative performance parameters e.g. Availability, Station Heat Rate (SHR), Auxiliary Energy Consumption, Secondary Oil Consumption as per CERC norms as specified in the PSERC Regulations, without any 'efficiency improvement measures'. The installation of the FGD as cited by the Petitioner is to control the pollutants, it does not add to any improvement in efficiency of the power plant.

c) The Petitioner under the 'Future performance targets' has projected the generation from the plant corresponding to PLF of 62% against the actual/trued-up generation corresponding to the PLF of 27.12% and 39.78% in FY 2020-21 and FY 2021-22 respectively. The Commission observes that the reason of lower PLF is the present scenario, wherein the State is surplus in power during the major part of the Year and PSPCL requires scheduling of power from these units only during the peak demand.

d) The Petitioner has also tried to raise the issue of its dispute with PSPCL regarding the procurement of coal, which is already a subject matter in various petitions/ appeals filed by the parties before the Commission/Hon'ble APTEL. Moreover, approval of the 'Business Plan' and subsequent tariff determination is a time bound exercise, the dispute, if any, between the parties is required to be raised separately under the specific provision specified for adjudication of the dispute(s) under Section 86 (1) (f) of the Electricity Act, 2003.

2.2 CAPITAL INVESTMENT PLAN

2.2.1 **GVK's Submissions**

a) The Petitioner is proposing to install the Flue Gas Desulphurization (**FGD**) System in compliance of the

Ministry of Environment, Forest & Climate Change (**MoEFCC**) Notification dated 01.12.2015.

b) The Commission, vide Order dated 04.01.2021 in Petition No. 34 of 2020 filed by the Petitioner for approval for CIP for the Control Period FY 2020-21 to 2022-23, has approved a capital expenditure of Rs. 243 Crore for the year FY 2022-23 against the total estimated cost of Rs. 540 Crore. However due to the unavoidable circumstances arising out of COVID-19 pandemic as well as the financial difficulties culminating in the ongoing CIRP proceedings against the Petitioner, the Petitioner could not take up the said work in FY 2022-23.

c) The Petitioner is now proposing the investment of the approved amount on provisional basis in the last year of the current Control Period i.e., FY 2025-26. The phasing of the proposed Additional Capital expenditure to be incurred by GVK is detailed below:-

Table 3: Proposed Additional Capital expenditure (Rs. Crore)

Sr. No.	Particulars	FY 2023-24	FY 2024-25	FY 2025-26
1	Plant and equipment	0	0	243
	Total cost of FGD	**0**	**0**	**540**

d) The proposed Capital Investment during the Control Period FY 2023-24 to FY 2025-26 shall be funded at a normative debt equity ratio of 70:30.

2.2.2 **PSPCL's Reply/ Submission:**

a) The Petitioner had previously filed Petition No. 34 of 2020 for approval of its CIP for the Control Period FY 2020-21 to FY 2022-23 seeking to allow a capital cost of Rs. 540 Cr. to be incurred in FY 2022-23 for the installation of FGD in compliance with the MoEF&CC Notification dated 7.12.2015. However, the Commission vide Order dated 4.1.2021 has only allowed Rs.243 Crore as provisional expenditure to be incurred in FY 2022-23 on the basis of cost recommended by CEA (i.e. Rs. 0.45 Cr/MW).

b) It is reasonable to assume that owing to passage of time, such installation in FY 2025-26 is likely to be more expensive than its installation in FY 2022-23. Since the Petitioner has chosen not to install the FGD system in FY 2022-23 as proposed by itself, any increase in the cost of installation of FGD in FY 2025-26 instead of 2022-23 would therefore solely be attributable to the Petitioner and such increase in cost cannot be allowed to be passed onto the consumers of the Respondent.

c) It is therefore prayed that the capital expenditure to be incurred by the Petitioner for installation of FGD system is liable to be restricted to Rs. 243 Crore and any increase in cost due to passage of time ought not to be allowed to be passed onto the Respondent and its consumers.

2.2.3 **Commission's Analysis**

a) The Commission vide its Order dated 04.01.2021 in Petition No. 34 of 2020 filed by the petitioner for approval of its Business Plan including CIP for the control period FY 2020-21 to 2022-23 had provisionally allowed a capital investment of Rs. 243 Crore for the installation of FGD at its plant in FY 2022-23, with the observation that:

"The Commission further notes that CEA vide its recommendations issued to GVK for the installation of FGD mentioned the estimated cost for Wet limestone base FGD as Rs. 0.45 Crore/MW which does

not include opportunity cost (associated with generation loss due to interconnection of chimneys with absorber) and taxes/duties. Further, CEA vide its report mentioned that GVK has shown the piling foundation requirement for FGD facilities structure, resulting in additional CAPEX beside the indicative base cost and advised GVK to approach the Regulator at appropriate stage for any piling related additional cost implications.

....

The actual cost of retrofitting of FGD needs to be discovered through open competitive bidding in consultation with PSPCL and as per the directions/advice given by the CEA. ......"

b) The Commission is of the view that Covid-19 pandemic cannot be considered a reason for non-initiation of the FGD installation work in FY 2022-23. Also the ongoing CIRP process is due to issues internal to the Petitioner. Therefore, the Commission allows the deferment of FGD installation work from FY 2022-23 to FY 2025-26 at the same cost (i.e. the provisional additional capital expenditure of Rs. 243 Crore as approved earlier in Petition No. 34 of 2020).

c) Further, in order to ensure transparency, competitiveness and also to avoid unnecessary litigation between the parties, the Petitioner shall select the technology, procure and install the same through a transparent and competitive bidding process, in consultation with the sole procurer of power i.e. PSPCL, who may also participate in the procurement process undertaken by the Petitioner. Both parties shall extend full cooperation in this regard to each other. Further, in order to escape/avoid the element of opportunity cost (associated with generation loss due to interconnection of chimneys with absorber), the said work needs to be executed during the lean demand period.

d) In view of the above, the Commission allows provisional additional capital expenditure for the Petitioner's project for the 3rd MYT Control Period as under:

Table 4: Approved provisional Additional Capital Expenditure

(Rs. Crore)

Sr. No.	Particulars	FY 2023-24	FY 2024-25	FY 2025-26
1	Installation of FGD	0	0	243

The petition is disposed of in terms of above.

Sd/- Sd/-

(Paramjeet Singh) (Viswajeet Khanna)
Member Chairperson

Chandigarh
Dated: **20.09.2023**