

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

**IA No. 12 of 2018 &
IA. No 14 of 2018 in
Petition No. 54 of 2017
Date of Hearing:30.01.2019
Date of Order: 07.02.2019**

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 GVK Power: Sh. Janmali M, Advocate
Sh. Bhawani Shankar, VP
Sh. Oliver Tyagi GM
Sh. T. Sreeniwas Reddy, DGM
Sh. M. Sodekar, AGM

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

ORDER

Vide Order dated 04.09.2018, the Commission directed both PSPCL and GVK to appoint respective auditors of their organizations to jointly certify the actual capital cost of the project in terms of the definition of Capital Cost in the Amended

and Restated PPA dated 26.05.2009 and submit the same by 19.09.2018 but in any case not later than 28.09.2018. GVK filed I.A No. 12 of 2018 seeking clarification of the Order dated 04.09.2018 and after hearing both the parties, vide Order dated 02.11.2018 the last para in the Interim Order dated 04.09.2018 was amended to be read as under:-

“Accordingly, the Commission directs both PSPCL and GVK to appoint auditors jointly to certify the actual capital cost of the project in terms of the above definition and submit the capital cost as certified by the auditors appointed jointly. In addition, the audited capital cost expenses should be matched with the different heads under which the expenditure in the capital cost has been approved in principle by the Commission & Hon’ble APTEL and provided in Schedule 11 of the PPA while auditing the expenditure (with break-ups).”

It has been further observed in the Order dated 02.11.2018 as under:

“During hearing, counsel for GVK and PSPCL agreed to appoint the auditors from the empanelled list of auditors of CAG to jointly certify the actual capital cost of the project. It was agreed between GVK and PSPCL during hearing that PSPCL shall supply the list of five auditors from the aforesaid empanelment list and GVK shall select one from the list.”

PSPCL filed I.A No. 14 of 2018 submitting that in Order to ensure transparency and to obviate any apprehension of bias by either of the parties it would be appropriate that the auditors required for the certification of the capital cost of the petitioner’s power plant be appointed by the Commission itself from the empanelled list of auditors of the CAG further requesting to modify the Order dated 02.11.2018 to this extent.

After hearing the parties it is clear that the amended and restated PPA dated 26.05.2009 executed between the parties stipulates as under:

“Capital Cost means

actual capital cost of the Project on a relevant date which shall not be later than the Commercial Operation Date of the Power Station, as certified by the auditors appointed jointly by the Seller and Procurer and as approved by PSERC.

Provided that Capital Cost shall always exclude cost overruns arising due to a Seller Event of Default, or costs due to events for which compensation has been received by the Seller from the Procurer or Insurers or third parties;

Provided further that the Capital cost in relation to a Unit shall be the Capital Cost allocated in proportion to the Contracted Capacity of the said Unit.”

Thus as per the PPA signed between the two parties the actual Capital Cost of the project is to be certified by the auditors appointed jointly by the seller and the procurer. This has been brought to the notice of the parties by this Commission on 04.09.2018. Both parties appear to be adopting dilatory tactics to avoid complying with the agreed terms of the PPA and the Orders of the Commission. It is for the parties to appoint the auditors and it is for GVK to submit the accounts so audited to the Commission for approval. The application by PSPCL to place the onus on the Commission to appoint auditors is without merit. In the interest of transparency and to rule out bias, the Commission already suggested that the PSPCL can give a list of 5 auditors from the CAG's approved list and GVK could select one. PSPCL appears to be hesitant to do so. Be that as it may, this Commission finds no merit in the IA and directs that the capital cost of the project up to the date of COD as certified by the auditors appointed jointly by GVK & PSPCL, be submitted within a month. The IA No. 14 of 2018 is without any merit and stands dismissed accordingly.

In case of any further delay in submission of the information as directed by the Commission, the Commission may be constrained to take punitive action.

The petition shall be taken up for hearing on 10.04.2019 at 11.00 A.M

Sd/-
(Anjali Chandra)
Member

Sd/-
(S.S. Sarna)
Member

Sd/-
(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 07.02.2019

