



PUNJAB STATE POWER CORPORATION LIMITED

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Corporate Identity Number: U40109PB2010SGC033813 Website:www.pspcl.in

To

Registrar,
Punjab State Electricity Regulatory Commission,
Chandigarh.

Memo. No. 5415 TR-5/952 Dated 27/5/2020

Subject: Petition No. 32 of 2019 filed by filed by GVK Power Ltd. for true up for FY 2016-17 under sections 62 and 86 of the Electricity Act, 2003 read with (a) Punjab State Electricity Regulatory Commission (Terms and Conditions of Determination of Tariff) Regulations, 2005 (b) The Central Electricity Regulatory Commission (Terms and Conditions of Determination of Tariff) Regulations, 2014, and (c) Amended and Restated Power Purchase Agreement dated 26.05.2009 executed between petitioner (Goindwal Sahib) Ltd. and Punjab State Power Corporation Ltd. (formally known as Punjab State Electricity Board)

Enclosed please find herewith 7 No. sets of the reply on behalf of PSPCL with requisite Affidavit in the subject cited petition for kind consideration of the Hon'ble Commission.

DA/As above


Chief Engineer/ARR&TR
PSPCL, Patiala

CC:-

GVK Power (Goindwal Sahib) Ltd.,
Paigah House, 156-159, Sardar Patel Road,
Secundrabad Telangana-540003.

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**BEFORE THE PUNJAB STATE ELECTRICITY REGULATORY
COMMISSION, CHANDIGARH**

PETITION NO.32 OF 2019

IN THE MATTER OF:

GVK Power (Goindwal Sahib) Limited

... Petitioner

Versus

Punjab State Power Corporation Ltd.

... Respondent

REPLY ON BEHALF OF THE RESPONDENT

MOST RESPECTFULLY SHOWETH:

1. That the present Petition has been filed by the Petitioner seeking true-up of tariff for the Financial Year 2016-2017 for its 2x270 MW thermal power project situated at Goindwal Sahib, District Tarn Taran, Punjab under Section 62 and 86 of the Electricity Act, 2003 read with relevant provisions of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Generation, Transmission, Wheeling and Retail Supply Tariff) Regulations, 2005 [hereinafter, the "PSERC Tariff Regulations"] and the Central Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2014 [hereinafter, the "CERC Tariff Regulations"].
2. That in response to the notice issued by this Hon'ble Commission in the above Petition, it is respectfully submitted at the outset that in view of the law laid down by the Hon'ble Appellate Tribunal in its Judgement dated 1.3.2013 passed in Appeal No.131/ 2011: Haryana Power Generation Corporation Ltd (HPGCL) Vs. Haryana Electricity Regulatory Commission, the applicable Regulations for the purpose of adjudication of the present Petition would be the PSERC Tariff Regulations, 2005. Therefore, any reliance of the Petitioner on the CERC Tariff Regulations, except as provided in the PSERC Regulations, is misplaced and irrelevant for the purpose of adjudication of the present Petition. Further, during the adjudication of Petition No.68/2017 filed by the Petitioner, it has

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been decided by this Hon'ble Commission vide Order dated 6.3.2019 with the concurrence of both the parties that notwithstanding any provision in the PPA, the parties would be governed by the Regulations framed by this Hon'ble Commission only and the Regulations framed by the Central Commission would be applicable only in cases where the PSERC Regulations are silent or otherwise expressly provide for the same to be applicable.

3. That it is further submitted that the Petitioner had filed a Petition [being Petition No.54/2017] before this Hon'ble Commission seeking approval of the capital cost of its generation project and for determination of tariff for the Financial Year 2016-2017. The Unit-I and Unit-II of the generation project had been commissioned on 6.4.2016 and 16.4.2016 respectively; however, the Appellant ultimately filed the above said Petition in November, 2017 i.e. 19 months after commissioning of its project. Thus, at the time of filing of the said Petition, the Financial Year 2016-2017 had long been over. Be that as it may, during the course of adjudication of the above Petition, various financial information was sought for by this Hon'ble Commission from the Petitioner which were supplied by it through various Affidavits. In this manner, all actual relevant financial data pertaining to Financial Year 2016-2017 including the audited accounts were furnished by the Petitioner to the Commission. Needless to say, this financial data was based upon actual expenditure incurred by the Petitioner till the project COD and thereafter till the end of the Financial Year 2016-2017. Based on the above said data submitted by the Petitioner, this Hon'ble Commission vide its Order dated 17.1.2020 passed in Petition No.54/2017, approved the capital cost of the Petitioner's project at Rs.3058.37 crores and determined the Annual Fixed Charges (AFC) for the Financial Year 2016-2017 at Rs.545.42 crores.
4. That while passing the above said Order dated 17.1.2020, this Hon'ble Commission held as under:

"26.1 Capacity charges

The Commission has determined capital cost of GVK as Rs. 3058.37 crore in this order. The components of the capacity charges based on capital cost approved by the Commission and Annual Audited Accounts for FY 2016-17 of GVK for the period 17.4.2016 to 31.03.2017 are determined as per PSERC (Terms and Conditions for determination of Tariff), Regulation 2005 in the ensuing paragraphs. It would be pertinent to note that in the Annual Audited Accounts for FY 2016-17, GVK has not bifurcated the majority of the expenses between the periods 1.4.16 to 16.4.2016 and 17.4.2016 to 31.3.2017. Therefore, the expenses for FY 2016-17 have been considered on prorata basis for the period 17.4.2016 to 31.3.2017."

Thus, this Hon'ble Commission categorically recorded that the component of capacity charges had been determined based on the approved capital cost and the annual audited accounts of the Petitioner for the Financial Year 2016-2017 for the period 17.4.2016 (project COD) till 31.3.2017. As regards the energy charges, this Hon'ble Commission held as under:

"26.2 Energy Charges

The energy charges for FY 2016-17 are payable by PSPCL to GVK in terms of the PPA Order dated 01.02.2016 common to petition no. 65 of 2013 & 33 of 2015 and Order dated 06.03.2019 in petition no. 68 of 2017."

In the context of the above, it is respectfully submitted that as per Regulation 9 of the PSERC Tariff Regulations, true up of tariff is undertaken when tariff for a generation project for a given Financial Year is determined ahead of the closure of the said Financial Year based on the prudent projections made by generating entity so as to adjust the tariff already determined in line with the actual expenditure incurred in the said Financial Year. However, in the present case, the annual audited accounts of the Petitioner's project for the Financial Year 2016-2017 with records of the actual capital expenditure incurred by the Petitioner for that Year were already placed before this

Hon'ble Commission in Petition No.54/2017, based on which the capacity charges for Financial Year 2016-17 had been determined. As such, there is no question of any 'true-up' of the capacity charges payable to the Petitioner as the same have been determined on the annual audited accounts of the Petitioner with actual expenditure incurred till 31.3.2017. It is pertinent to mention here that the Hon'ble Appellate Tribunal in its judgment dated 4.12.2007 in Appeal No.100/2007: Karnataka Power Transmission Corporation Ltd. Vs. Karnataka Electricity Regulatory Commission & Ors. has held as under:

"28..... Truing up can be taken up in two stages: Once when the provisional financial results for the year are compiled and subsequently after the audited accounts are available. The impact of truing up exercises must be reflected in the tariff calculations for the following year. As an example; truing up for the year 2006-07 has to be completed during 2007-08 and the impact thereof has to be taken into account for tariff calculations for the year 2007-08 or/and 2008-09 depending upon the time when truing up is taken up. If any surplus revenue has been realized during the year 2006-07, it must be adjusted as available amount in the Annual Revenue Requirement for the year 2007-08 or/and 2008-09. It is not desirable to delay the truing up exercise for several years and then spring a surprise for the licensee and the consumers by giving effect to the truing up for the past several years. Having said that, truing up, per se, cannot be faulted, and, therefore, we do not want to interfere with the decision of the Commission in this regard to clean up accounts, though belatedly, of the past. It is made clear that truing up stage is not an opportunity for the Commission to rethink de novo on the basic principles, premises and issues involved in the initial projections of revenue requirements of the licensee."

Thus, it is manifest that the scope of a true-up proceeding is limited to adjustments made in the provisional financial results vis-à-vis the audited financial results and it is

not open to change the methodology or principle already decided by the Commission in previous Orders. Insofar as the energy charges payable to the Petitioner are concerned, the same may be true-up in accordance with the applicable Regulations of this Hon'ble Commission. Therefore, the Respondent is restricting its Reply to the proposal for true-up of energy charges and other components of tariff as submitted by the Petitioner in the present Petition. The Respondent craves leave of this Hon'ble Commission to reserve its right to reply to its proposal for true-up of its capacity charges should the need so arise during the course of proceedings of the present Petition or as may be directed by this Hon'ble Commission.

5. That the Respondent respectfully submits that vide its Order dated 1.2.2016 passed in Petition No.33/2015, this Hon'ble Commission had determined the fuel cost for the Petitioner's project as under:

"..... Accordingly, the Commission holds that the petitioner shall be paid, the weighted average cost of coal received by the thermal power plants of PSPCL from Coal India Ltd. and its subsidiaries in the particular month, alongwith the actual transportation charges paid by the petitioner to the Indian railways for transporting the coal to the Project from the port / mine in case of imported / domestic coal as the case may be or the actual cost of coal procured by the petitioner, whichever is less. PSPCL may, if it so desires, participate in their interim coal procurement process undertaken by the petitioner who shall extend full cooperation in this regard to PSPCL. The Commission holds that this arrangement is purely temporary and the petitioner will arrange the long term linkage of coal at the earliest or successfully bid for a mine in the bidding to be conducted by Govt. of India in near future and keep PSPCL abreast of the latest developments in this regard from time to time. The Commission further holds that the above decision will not in any way affect or prejudice the arbitration proceedings and / or decision in the arbitration proceedings."

B.S.

In the meanwhile, on 22.5.2017, the Ministry of Coal notified new Guidelines for allocation of coal linkages for the power sector titled SHAKTI [Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India] (hereinafter, the "SHAKTI Scheme") in terms whereof, the Petitioner was allotted the following coal linkages for 1.7063 MTPA capacity:

| Source | Description | Lol | Allocation (Tonnes) | Levelised Discount (Paise/ kWh) |
|----------|--------------------|------------|---------------------|---------------------------------|
| Source 1 | G11-CCL | 21.12.2017 | 1700000 | 2.00 |
| Source 2 | G6 Korea Rewa-SECL | 21.12.2017 | 6300 | 1.00 |
| | TOTAL | | 1706300 | |

In a Petition filed by the Petitioner [being Petition No.1/2018] before this Hon'ble Commission, the amendments in the Amended and Restated PPA dated 26.5.2009 for incorporating the above allocation made under the SHAKTI Scheme were approved vide Order dated 27.5.2019 of this Hon'ble Commission.

6. That to incorporate the discount available in the tariff for the coal allocation under the SHAKTI Scheme, the Respondent and the Petitioner entered into a Supplementary Agreement dated 1.2.2018 which, inter-alia, provided as under:

"1. The seller shall provide the Year – on year Discount from the tariff in the monthly bills as described in aforesaid paragraph 'G' of this agreement.

4. This agreement is limited to procurement of coal under Shakti 2017 and is without prejudice to the rights and contentions of GVK and PSPCL in pending proceedings. The parties expressly reserve their rights in this regard.

5. The execution of this Agreement is only for capturing the discount available to PSPCL in the tariff for allocation of the coal linkage to GVK and shall in no manner be construed as recognition or acceptance by PSPCL of any higher fixed charges or higher energy

charges than as applicable and payable to GVK under the provisions of the PPA and the relevant Orders of the Hon'ble PSERC."

The Supplementary Agreement specifically recorded that the allocation of coal under the SHAKTI Scheme would not by itself entitle the Petitioner to claim any higher charges from the Respondent. The purpose of the Agreement was to pass on the discount in the tariff to the Respondent under the SHAKTI Scheme and for no other purpose.

7. That thereafter, the Petitioner started raising issues regarding alleged incorrect application of the Order dated 1.2.2016 in Petition No.33/2015 by the Respondent leading to alleged illegal and arbitrary withholding of legitimate costs incurred by the Petitioner relating to coal. Accordingly, on 27.12.2017, the Petitioner filed Petition No.68/2017 before this Hon'ble Commission, seeking the following reliefs:

"(a) Direct PSPCL to make payments of amounts wrongfully withheld from payments made towards the Infirm Bills and Monthly Bills for January, 2016 to April, 2016, July, 2016 to August, 2016 and June, 2017 to October, 2017 along with late payment interest and carrying cost;

(b) Restrain PSPCL from making further deductions from ongoing monthly tariff bills raised for supply of power; and

(c) Direct the Respondent to make interim payments of the amounts withheld from the Infirm Bills and Monthly Bills for January, 2016 to April, 2016, July, 2016 to August, 2016 and June, 2017 to October, 2017 along with the interest and Late Payment Surcharge."

The above said Petition was disposed off by this Hon'ble Commission vide its Order dated 6.3.2019 wherein, this Hon'ble Commission, inter-alia, held as under as regards the fuel cost payable to the Petitioner:

- (i) after adjudication of Petition No.54/2017, the Plant Availability Factor (PAF) for the Petitioner's project was to be worked out as per the formulae prescribed under Regulation 38 of the PSERC (Terms and Conditions for Determination of Generation,

Transmission, Wheeling and Retail Supply Tariff) Regulations, 2014 [hereinafter, the "PSERC Tariff Regulations, 2014"];

- (ii) the cost of coal payable to the Petitioner was to be the weighted average cost of coal received by the Respondent's thermal power plants including the surface transportation cost (STC) from the mining point to the pick-up point within the mine (Internal STC) ;
- (iii) in case of any surface transportation cost incurred by the Petitioner beyond the pick-up point within the mine (external STC), the payment of the same was to be limited to the cost incurred to carry the coal to the nearest railway siding and was to be as per the rates prescribed by M/s Bharat Coking Coal Ltd.(BCCL) upto 20KM and the said charges were to be charges by the coal company with separate bills for cost of coal and STC;
- (iv) cost of coal procured under the SHAKTI Scheme was also to be the same as prescribed above;
- (v) the calculation of Gross Calorific Value (GCV) of the coal, the Weighted Average GCV (ARB) in Kcal/kg was to be calculated for both the Petitioner's plant and the thermal power plants of the Respondent as per Regulation 39.4 of the PSERC Tariff Regulations, 2014 and same were to be compared;
- (vi) the Petitioner was not to be paid any testing charges and was required to construct its own testing facility; and
- (vii) transit and handling charges for the coal were to be paid only if the Petitioner showed actual loss after proper checking and weighment at both the loading and project end and the bills included proof of actual loss and stated whether actual loss was being billed or the normative loss of 1.0% as per Regulation 40 of the PSERC Tariff Regulations, 2014.

The Petitioner has challenged the above said Order dated 6.3.2019 before the Hon'ble Appellate Tribunal in Appeal No.189/2019 on the findings with respect to calculation of capacity charges after inclusion of 9% normative auxiliary consumption, testing charges

of coal, IEGC compensation for backing down power and surface transportation charges. The Respondent has also filed an Appeal against the said Order before the Hon'ble Appellate Tribunal in Appeal No.192/2019 on the issues of calculation of GCV on ARB total moisture, rebate reversal rate and interest on rebate. Both the said Appeals are pending adjudication before the Hon'ble Appellate Tribunal. It is pertinent to mention here that other issues as decided by this Hon'ble Commission have remained unchallenged by either parties and thus the said Order to that extent has attained finality and is binding on both the parties. It is submitted that the proposal for true up of energy charges payable to the Petitioner is liable to viewed in the above background by this Hon'ble Commission.

8. That the Respondent craves leave of this Hon'ble Commission to reply to the individual components of the proposal for true-up of energy charge as submitted by the Petitioner as under:

8.1 The Petitioner has firstly submitted that as per Regulation 37 of the PSERC Tariff Regulations 2005, the CERC Tariff Regulations, 2014 would be applicable to the project of the Petitioner for determination of generation components. However, as has been set out hereinabove, this Hon'ble Commission in its Order dated 6.3.2019 passed in Petition No.68/2017 has, with the agreement of both the Petitioner and the Respondent, held that the PSERC Tariff Regulations, 2005 are to be applicable to the tariff determination for the Financial Year 2016-17. That being so, the Petitioner cannot be permitted to contend that the CERC Tariff Regulations, 2014 are to be applicable in the present case.

8.2 The Petitioner has also submitted that since cancellation of coal blocks by the Hon'ble Supreme Court vide its judgement dated 24.9.2014: M.L Sharma Vs. Union of India [(2014) 9 SCC 51] has been held to be an event of change in law and force majeure event by the Ld. Arbitral Tribunal in favour of the Petitioner in its Awards dated 10.4.2017, consequential benefit in the form of compensation should be allowed to the Petitioner

in terms of Article 12.7(b) read with Article 13.2 of the Amended and Restated PPA. Accordingly, relying upon the judgement dated 21.12.2017 passed by the Hon'ble Appellate Tribunal in Appeal No.193/2017: GMR Kamalanga Vs. Central Electricity Regulatory Commission & Ors., the Petitioner has prayed before this Hon'ble Commission to allow it to recover the entire cost of coal procured from sources other than captive coal mines being the landed cost of coal including grade slippage, transit loss, transportation charges from mine to the nearest railway siding. In response thereto, it is submitted that the said compensatory relief has already been sought by the Petitioner in another Petition [being Petition No.1/2018] wherein, this Hon'ble Commission has passed appropriate Orders as detailed herein below which have been accepted by the Petitioner.

- 8.3 That the Respondent submits that owing to deallocation of coal blocks by the Hon'ble Supreme Court vide its Judgement in *M.L Sharma*, the Petitioner had proposed interim arrangement of alternate fuel capable to run the plant at 85% PLF for 2-2½ years while stating to explore other alternate firm fuel options. Vide Order dated 1.2.2016 passed [in Petition No.65/2015 and 33/2015], this Hon'ble Commission allowed the Petitioner to declare COD of the project. The said Order was challenged by the Respondent before the Hon'ble Appellate Tribunal in Appeal Nos.68/2016 and 69/2016 to the extent it allowed the Petitioner to declare project COD without a firm fuel source for the entire contracted capacity and same is pending adjudication before the Hon'ble Appellate Tribunal. During this period, the Petitioner was unable to procure a firm source of fuel for the project. Vide its letter dated 30.5.2016, the Petitioner informed the Respondent that it was no longer procuring coal from the sources based on which it had demonstrated before this Hon'ble Commission that it was in the readiness to operate the plant for 2-2½ years in the interim as the same had become commercially not competitive. This meant that the entire basis on which the Petitioner had sought permission from this Hon'ble Commission to achieve COD of the Project had ceased to

exist. Meanwhile, the Petitioner was being paid variable charges as determined by this Hon'ble Commission in its above said Order dated 1.2.2016 as under:

"Commission holds that the petitioner shall be paid, the weighted average cost of coal received by the thermal power plants of PSPCL from Coal India Ltd. and its subsidiaries in the particular month, alongwith the actual transportation charges paid by the petitioner to the Indian railways for transporting the coal to Order in Petition No.65 of 2013 and Petition No.33 of 2015, the Project from the port/mine in case of imported/domestic coal as the case may be or the actual cost of coal procured by the petitioner, whichever is less."

Accordingly, when the Petitioner filed Petition No.54/2017 seeking approval of its capital cost and tariff for FY 2016-2017 and sought weighted average landed cost of coal from unapproved sources, the Respondent in its Reply dated 20.3.2018 submitted as under:

"38. That in the aforesaid circumstances, it is submitted that power generation and supply from the Petitioner's Project is taking place by use of fuel for which no regulatory approval has been obtained from this Hon'ble Commission. The same is in violation of Section 86(1)(b) of the 2003 Act which mandates power procurement cost of the distribution licensee to be regulated/ approved by this Hon'ble Commission in the interest of its consumers. As stated above, this issue has been placed on record before the Hon'ble Tribunal in the pending Appeals. As such, any tariff determination for purchase of power by the Respondent from the Petitioner's Project is subject to the adjudication by the Hon'ble Tribunal as to the use of fuel by the Petitioner from unapproved/unregulated sources."

8.4 That in the meanwhile, the Petitioner filed Petition No.68/2017 before this Hon'ble Commission alleging arbitrary deductions by the Respondent from its energy bills on various accounts. During the pendency of the said Petition, as submitted hereinabove, the Petitioner was allotted coal linkages for a capacity of 1.7063 MTPA under the SHAKTI

Scheme. The Petitioner then filed Petition No.1/2018, inter alia, praying for consequential relief pursuant to the Arbitral Award dated 10.4.2017, amendment of the PPA to incorporate suitable provisions for procurement of fuel and computation of fuel cost and approval of the Commission for Petitioner to procure coal, provisionally allocated to it under the Shakti Scheme. Consequent to the interim Orders passed by this Hon'ble Commission in the said Petition, the Respondent signed a Supplementary Agreement with the Petitioner on 1.2.2018 for long-term coal linkage allocated under SHAKTI Scheme. Clause 5 thereof expressly stated that the said Agreement was executed only to capture the discount available to the Respondent in the tariff for allocation of the coal linkage to the Petitioner and shall in no manner be construed as recognition or acceptance by the Respondent of any higher fixed charges or higher energy charges than as applicable and payable to the Petitioner under the provisions of the PPA and the relevant Orders of this Hon'ble Commission.

8.5 That vide an interim Order dated 11.6.2018 passed in Petition No.68/2017, this Hon'ble Commission held as under:

".....A supplementary agreement for long term coal linkage allocated under SHAKTI Scheme has been signed by GVK and PSPCL as per Commission's Order dated 30.01.2018 in Petition no. 01 of 2018. In respect of the coal received under the SHAKTI Scheme, the energy charges shall be payable as per the actual cost of coal received under the said scheme including the actual transportation charges paid to Indian Railways and surface transportation charges at the mine end, if not included in the original cost of coal. GVK shall give discount on the gross amount of the bill in terms of clause G of the "Supplementary Agreement for long term coal linkage allocated under SHAKTI Scheme 2017". This discount shall be computed with reference to Scheduled Generation from Linkage Coal supplied under SHAKTI Scheme."

The said interim Order was challenged by the Respondent before the Hon'ble Appellate Tribunal in Appeal No.187/2018. This Hon'ble Commission vide another interim Order dated 28.9.2018 decided to partially modify/amend the above said interim Order dated 11.6.2018 to the extent of deletion of above quoted para. Thereafter, the said interim Order of 28.9.2018 was challenged by the Petitioner before the Hon'ble Appellate Tribunal in Appeal No.286/2018. Petition No.68/2017 was finally decided by this Hon'ble Commission on 6.3.2019 and consequently, the above said Appeals filed by the parties against interim Orders passed therein were disposed off as infructuous by the Appellate Tribunal vide Order dated 17.7.2019. In the said final Order, the issues as regards payment of Surface Transpiration charges (STC), Transit Cost of coal etc. were put to rest as detailed hereinbelow.

- 8.6 That the issue as regards the landed cost of coal was decided vide final Order dated 27.5.2019 passed in Petition No.1/2018 wherein, this Hon'ble Commission held as under:

"... Considering the above, the Commission is of the opinion that the basic price of the coal and other charges/costs included in the coal bills of the coal company have to be compulsorily paid in full by the procurer of coal who incidentally has no control over it, be it PSPCL or GVK. Therefore, the Commission holds that in respect of the coal received under the SHAKTI Scheme, the coal cost for the purpose of calculating the monthly energy charges shall be the cost of coal as per the bill raised by the coal company including all the statutory charges/taxes/duties/cess, surface transportation (upto the delivery point located within the mine) etc. billed in the coal bill issued by the coal company to GVK. Further, the actual transportation charges paid to Indian Railways shall be considered for calculating the monthly energy charges. As regards the surface transportation charges (external), in case the railway siding is away from the delivery point of coal located within the mine [upto which the surface transportation charges

(internal) are included in the bill of the coal company], the Commission has already decided the same in its Order dated 06.03.2019 in petition no. 68 of 2017....

....

As such, the surface transportation charges (external), if applicable, shall be considered in the coal cost while calculating the monthly energy charges. Consequently, the Commission's Order dated 01.02.2016 shall stand modified for the coal supplied under SHAKTI 2017 scheme for the GVK project.

However, as regards the coal received by GVK from sources other than the coal received under SHAKTI scheme, the payment of energy charges shall continue to be made by PSPCL to GVK in terms of the Amended and Restated PPA and relevant Orders of the Commission in this regard i.e. Order dated 01.02.2016 common to petition no. 65 of 2013 & 33 of 2015 and Order dated 06.03.2019 in petition no. 68 of 2017."

Thus, this Hon'ble Commission categorically held as under:

- (i) in respect of the coal received under the SHAKTI Scheme, the coal cost for the purpose of calculating the monthly energy charges were to be the cost of coal as per the bill raised by the coal company including all the statutory charges/taxes/duties/cess, surface transportation;
- (ii) the Surface Transportation Charges and Transit Charges for the coal procured under SHAKTI Scheme were to be as decided under Order dated 6.3.2019 passed in Petition No.68/2017; and for coal procured from any other source apart from SHKATI Scheme the charges would be paid in accordance with the Order dated 1.2.2016 common to Petition Nos.65/ 2013 and 33/ 2015 and the Order dated 6.3.2019 passed in Petition No.68/2017.

Further, while deciding the issue of any requirements for amendments to the PPA requested by the Petitioner and the requirement of balance coal for the project, Hon'ble Commission held as under:

".....The long term coal linkage arranged under SHAKTI Scheme would be sufficient to operate the plant at a PLF of about 62% as per submissions made by GVK. The Commission observes that in its Order dated 01.02.2016 in petition no. 33 of 2015 wherein GVK made its submissions that it has arrangement of coal for 2 to 2.5 years and that it be allowed to declare COD of the project, the Commission expressed the view therein that the petitioner may declare the CoD of the Project, if it otherwise meets with and satisfies the terms & conditions of the PPA and qualifies in terms of the State Grid Code, Indian Electricity Grid Code and other statutory requirements. In the said Order GVK was directed by the Commission to arrange the long-term linkage of coal at the earliest or successfully bid for a mine in the bidding to be conducted by Govt. of India in the near future. A period of more than 3 years has elapsed since then. Apparently, GVK has not been making sincere efforts for long term arrangements of coal for the full capacity of the project. This is in clear derogation of the Commission's Order dated 01.02.2016. GVK is again directed to make all out efforts to arrange long term linkage of coal for the project for the term of the PPA.

.....

The Commission holds that the amendments in the PPA proposed by GVK are open ended and appear impractical unless the balance 38% coal is arranged on long term basis by GVK and till then the existing PPA, supplementary agreement and relevant Orders of the Commission would remain applicable."

Thus, this Hon'ble Commission took strict note of the fact that despite directions from this Hon'ble Commission to the Petitioner to procure the balance coal at the earliest, the Petitioner had still not been able to procure the same and found the same to be in derogation of its Order. This Hon'ble Commission further categorically held that till the time the balance 38% coal is arranged by the Petitioner, the above stated Orders of the Commission were to remain applicable.

6.5

8.7 That accordingly, even at the time when the Tariff Petition [being Petition No.54/2017] was finally decided vide Order dated 17.1.2020, this Hon'ble Commission held as under:

"27..... The issue of energy charges already stands decided by the Commission vide common order dated 01.02.2016 in petition no. 65 of 2013 and 33 of 2015 and Order dated 06.03.2019 in petition no. 68 of 2017."

It is therefore most respectfully submitted that all issues as regards the landed cost of coal payable by the Respondent to the Petitioner have already been settled by this Hon'ble Commission in the above stated Orders. As regards the plea of the Petitioner that it is entitled to consequential benefit in the form of compensation should be allowed to the Petitioner in terms of Article 12.7(b) read with Article 13.2 of the Amended and Restated PPA, it is submitted that Article 12.7(b) record as under:

"12.7 Available relief for a Force Majeure Event:

Subject to this Article 12:

- (a)
- (b) *both the Parties shall be entitled to claim relief in relation to a Force majeure Event in regard to its obligations, including but not limited to those specified under Article 4.5."*
Article 4.5 referred to in Article 12.7 provided for extension of time during the period of occurrence of force majeure event, which is not the relevant context here. Article 13.2 recorded as under:

"13.2 Application and Principles for computing impact of Change in Law

While determining the consequences of Change in Law under this Article 13, the parties shall have due regard to the principle that the purpose of compensating the party affected by such Change in Law, is to restore through Monthly Tariff payments, to the extent contemplated in this Article 13, the affected party to the same economic position as if such Change in Law has not occurred."

B.S

A perusal of the Orders of this Hon'ble Commission as set out hereinabove show that in so far as the coal cost is concerned, the Petitioner has been allowed all permissible dispensation for coal cost recovery on actuals and as such, the requirement under Article 13.2 has been duly complied with. That being so, no question of any further "compensation" as is now being pleaded by the Petitioner by virtue of the Arbitral Award, can at all arise and the Petitioner cannot be allowed to re-open settled issues. The said plea of the Petitioner has already made before this Hon'ble Commissions in its Petition No.1/2018 as stated hereinabove and after careful consideration thereof, this Hon'ble Commission has passed its Order which has attained finality. Even otherwise, assuming though not admitting, that the Petitioner is in fact entitled to further compensatory relief with regard to coal procurement, the Petitioner has completely failed to demonstrate any losses faced by it so as to warrant grant of any further compensation. Thus, the Petitioner is entitled only to the cost of coal as per the Orders passed by this Hon'ble Commission.

- 8.8 That the contention of the Petitioner that since cancellation of coal block has been held to be a change in law and force majeure event by the Ld. Arbitral Tribunal, the Petitioner is entitled to be compensated for the same in terms of the PPA, is completely misplaced. Also misplaced is the reliance of the Petitioner on the judgement dated 21.12.2017 passed by the Hon'ble Appellate Tribunal in Appeal No.193/2017: GMR Kamalanga V. CERC & Ors. In as much as this Hon'ble Commission in its Order dated 6.3.2018 passed In Petition No.68/2019 has settled the issue of cost of coal after taking into consideration all relevant facts and circumstance and the regulatory position. Towards this end, it is relevant to set out the following findings of this Hon'ble Commission in the said Order:
- "10.3 With the Supreme Court Order on cancellation of mines, Pachhawara, Tokisud and Seregarah Block ceased to be available as a source of coal. GVK pleaded Force Majeure & change of Law and the Arbitration Award went in its favour. This is under challenge by PSPCL in a Civil Court. The Commission vide Order dated 01.02.2016 conveyed that GVK*

was free to commission its plant on the basis of the alternative coal it had tied up for the next 2-1/2 years. However, the cost of this coal was capped to weighted average cost of coal received by the thermal power plants of PSPCL from Coal India Ltd. and its subsidiaries in the particular month, along with the actual transportation charges paid by GVK to the Indian railways for transporting the coal to the project.

.....

10.7.1..... Therefore, the Commission clarifies in terms of its Order dated 01.02.2016 that PSPCL shall work out the weighted average cost of coal received by PSPCL's Thermal Power plants and GVK's plant including surface transportation charges from the mining/extraction point upto the pick-up/delivery point within the mine (internal STC) but excluding surface transport charges/handling charges etc. from pickup/delivery point to the railway siding (external STC) if required in cases where the railway siding is away from the pickup/delivery point."

Thus, this Hon'ble Commission, after duly considering the contention raised by the Petitioner as regards its entitlement for compensation due to alleged change in law and force majeure events, has determined the cost of coal. As stated hereinabove, neither the Petitioner nor the Respondent has challenged the said Order before the Hon'ble Appellate Tribunal on this account. As such, the findings of this Hon'ble Commission have become final and binding upon the parties. However, the Petitioner by way of the present Petition is trying to re-agitate the same issue which has been categorically dealt with by this Hon'ble Commission and has settled the issue of cost of coal. Having not challenged the same and accepted the same, the Petitioner cannot be allowed to wrongly widen the scope of the present true-up proceedings to re-open settled issues between the parties. As such, the contention of the Petitioner to be entitled to recover the entire cost of coal procured from sources other than captive coal mines being the

landed cost of coal including grade slippage, transit loss, transportation charges from mine to the nearest railway siding, is liable to be rejected by this Hon'ble Commission.

- 8.9 That as regards the contention of the Petitioner qua its entitlement towards the transit and handling loss in procurement of coal and the Surface Transportation Cost, it is submitted that the said issues also stand settled vide Order dated 6.3.2019 passed in Petition No.68/2017 wherein this Hon'ble Commission held as under:

10.11 Transit and Handling Loss

...The Regulations must be followed. GVK needs to show its actual losses after proper checking and weighing at both the loading and project end. The bill must include proof of actual loss and state whether actual loss is being billed or the normative loss of 1.0%. As per the Regulations, normative transit and handling losses as percentage of the quantity of indigenous coal dispatched by the coal supplying company as 1.0% (one) percent or actual, whichever is less, is payable upto 30.09.2018. Transit and handling losses upto 30.09.2018 for imported coal from the unloading port in India to the plant, if any, procured by GVK shall also be payable as per CERC Tariff Regulations, 2014 as the same is not provided for in the aforesaid PSERC Tariff Regulations. From 01.10.2018 onwards transit and handling losses @ 0.8% shall be payable in terms of the 2nd Amendment of the said PSERC Regulations issued on 08.08.2018 as amended upto date."

This Hon'ble Commission has thus categorically held that in case of any STC incurred by the Petitioner beyond the pick-up point within the mine (external STC), the payment of the same is to be limited to the cost incurred to carry the coal to the nearest railway siding and is to be as per the prescribed rates with separate bills for cost of coal and STC. The Petitioner has challenged the above said findings of the Commission before the Appellate Tribunal in Appeal No.189/2019. However, no stay has been granted by the Tribunal in favour of the Petitioner and as such, the above findings of the Commission

are binding upon the Petitioner subject to the outcome of its Appeal. Therefore, the Petitioner cannot be allowed to agitate the issue of STC in the present Petition.

8.10 That the Respondent further submits that the relief of force majeure claimed by the Petitioner before the Arbitral Tribunal was that of a declaratory nature seeking extension of COD due the alleged force majeure events impacting the scheduled completion dates of the construction of the plant and all/any relief available to the Petitioner on account of the cost over-runs due to the extended COD has already been granted by this Hon'ble Commission in its Order dated 17.1.2020 passed in Petition No.54/2017 while approving the capital cost of the Petitioner. Thus, it is submitted that the Petitioner, vide the present true-up Petition, is trying to re-open settled issues between the parties which is beyond the scope of true-up of tariff. A bare perusal of Regulation 9 of the PSERC Tariff Regulations, 2005 reveals that review/true up of tariff is an exercise conducted by this Hon'ble Commission wherein variations between approvals and revised estimates/pre-actuals of sale of electricity, income and expenditure for the relevant year are taken into considerations and accordingly necessary adjustments in the tariff are done. Thus, the Petitioner cannot be permitted to re-open settled issues and claim any compensatory relief payable to the Petitioner on account of the alleged force majeure events faced by it.

Re. Plant Availability Factor

8.11 That the Petitioner has submitted that in terms of Regulation 36 of the CERC Tariff Regulations, 2014, the normative PAF for the Petitioner's project should be 83%. The Petitioner has also submitted that the PAF of the plant has been severely affected by force majeure and change in law events, thereby entitling the Petitioner's plant to have PAF corresponding to the actual coal available whereas the actual PAF of the Petitioner's plant for the year 2016-2017 has been 4.707%. Towards this end, it is firstly submitted that both the parties during the course of proceedings of Petition No.68/2017 had

agreed before this Hon'ble Commission (as recorded in Order dated 6.3.2019) as regards the applicable Regulations as under:

"10.6.3 The Commission notes that it has been provided in the Schedule 6 of the Amended and Restated PPA dated 26.05.2009 that the monthly capacity charges based on the capital cost and the monthly energy charges, shall be calculated and paid as approved by PSERC as per CERC (Terms and Conditions of tariff) Regulations as applicable. During the course of hearings, both the parties agreed that the said CERC Regulations cannot be made applicable in the instant case as the project is located in the State of Punjab and supplies the entire power generated to the State utility.

10.6.4 Accordingly, it is clarified that upto FY 2016-17, the applicable Regulations shall be the Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 and thereafter from FY 2017-18 onwards, the applicable Regulations shall be the Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Generation, Transmission, Wheeling and Retail Supply Tariff) Regulations, 2014 as amended from time to time, for supply of electricity by GVK to PSPCL"

Thus, the applicable Regulations for calculation of the PAF for the Petitioner's plant are the PSERC Tariff Regulations, 2005 which are silent on the aspect of Plant Availability Factor and thus, the norms provided under the CERC Tariff Regulations, 2014 are applicable to the Petitioner which provide for a normative PAF of 85% for all thermal generating plants and 83% in case of any shortage of fuel.

8.12 That the contention of the Petitioner that by virtue of Article 12.7, the Petitioner is entitled to compensation due to unavailability of coal thereby entitling it to a PAF corresponding to the actual coal availability, is wholly misplaced. Firstly, the CERC Tariff Regulations, while making the normative PAF of 83% instead of 85%, itself contemplate a relief when there is shortage of supply of coal. Thus, Petitioner cannot be allowed to

seek a dispensation more than what has already been provided under the Regulations. Assuming though not admitted that the Petitioner is in-fact entitled to some relief due to shortage of fuel, the same can only be to the extent of reduction of PAF to 83% as provided in the Regulation and not below that. Secondly, as submitted hereinabove, at the time to declaration of COD, the Petitioner had undertaken that it had sufficient fuel to run the plant for 2 to 2 ½ years at its full capacity. This meant that for all practical purposes during the year 2016-2017, as per the undertaking of the Petitioner itself, it had sufficient fuel to deliver the entire contracted capacity. However, was a misstatement by the Petitioner which is corroborated by the fact that PAF of mere 4.707% could be achieved by the Petitioner during this Financial Year. This misstatement of part of the Petitioner further disentitles it from now seeking a special dispensation from this Hon'ble Commission based on its alleged case of compensation as a relief for force majeure as regards its PAF when the Regulations are clear. Lastly, as submitted above, this Hon'ble Commission while passing its Order dated 27.5.2019 in Petition No.1/ 2018, specifically took strict note of the fact that despite directions from this Hon'ble Commission to the Petitioner to procure the balance coal at the earliest, the Petitioner had still not been able to procure the same and found the same to be in derogation of its Order. This also means that the Petitioner has not taken any reasonable steps to mitigate the consequential impact of the force majeure on its coal availability, thereby dis-entitling it from any dispensation as regards change in PAF and the same ought to be as prescribed under the Regulations which is 85%.

Re. Auxiliary Consumption

- 8.13 That the Petitioner has submitted that as per Regulation 36(E)(a) of the CERC Tariff Regulations, 2014, the Petitioner is entitled to 8.5% normative auxiliary consumption and further 0.5% since it is using induced draft cooling tower thereby entitling it a 9% auxiliary consumption. Towards this end, it is submitted that the computation of energy charges is required to be done strictly in terms of the formula

Regulation 30(6) of the Tariff Regulations, 2014 of the Central Commission which has been adopted by the this Hon'ble Commission in its Order dated 6.3.2019 passed in Petition No.68/2017. In the said formula, the auxiliary consumption is to be considered in the denominator which has been considered. The declaration of availability by the generator is on ex-bus basis. The ex-bus energy declared available is the quantum of energy for which the fixed charges is payable. Thus, considering the plea of the Petitioner that PAF should be determined by grossing up the declared capacity with the normative auxiliary consumption of 9% has been considered and rejected by this Hon'ble Commission in its Order dated 6.3.2019. The Petitioner has challenged the said Order before the Appellate Tribunal in Appeal No.189/2019 which is pending adjudication before the Appellate Tribunal wherein no stay has been granted to the Petitioner. As such, the findings of this Hon'ble Commission are binding on the Petitioner. Further, having already challenged the finding of the Commission on the said aspect the Petitioner cannot be allowed to re-agitate the same issue again in the present Petition when the same is pending adjudication before the Tribunal.

8.14

That it is submitted that the payment of fixed charges is based on the quantum of energy declared available as certified by SLDC. The quantum must be certified by the SLDC which is a statutory authority. The certification of SLDC is on ex-bus basis, and on this the Petitioner is entitled to the fixed charges at tariff determined by the Hon'ble Commission. It is further submitted that as per provisions extant Regulations, the payment of monthly fixed charges is based on the AFC, the Cumulative Plant Availability Factor and Normative PAF. The cumulative PAF and Normative PAF must be certified by the SLDC which is a statutory authority.

Re. Design Heat rate; Specific Fuel Oil Consumption.

8.15 That the Petitioner has submitted that as per the EPC Contract, Design Heat Rate (DHR) for the project is 2221 Kcal/kWh. The Petitioner has further submitted that as per Regulation 36(C)(b) of the CERC Tariff Regulations, 2014, the Gross Station Heat Rate

(SHR) is to be calculated by multiplying a factor of 1.045 to the DHR. As such, the Petitioner has prayed for allowing SHR of 2321 Kcal/kWh. Further, the Petitioner in terms of the Regulation 36(D) has sought specific oil fuel consumption at 0.50 ml/kWh. As submitted hereinabove, computation of energy charges is required to be done strictly in terms of the formula Regulation 30(6) of the Tariff Regulations, 2014 of the Central Commission which has been adopted by this Hon'ble Commission in its Order dated 6.3.2019 passed in Petition No.68/2017. Thus, the norms as prescribed under the said Regulations may be applied to the Petitioners project as well.

Re. GCV of Coal

8.16 That the Petitioner has computed the GCV of coal on the weighted Average GCV of coal on as received basis (ARB). The same is in line with the Order dated 6.3.2019 passed by this Hon'ble Commission in Petition No.68/2017 wherein this Hon'ble Commission held as under:

10.9 Gross Calorific Value (GCV)

....

10.9.3.....The Commission holds that in line with the aforesaid Regulation 39.4, Weighted Average Gross Calorific Value of coal as received (ARB), in kCal per kg, shall be considered by PSPCL while working out the energy charge rate for GVK plant.

Further, GCV on ARB shall be considered for working out the weighted average cost of coal for PSPCL's own plants and GVK's plant for comparison and deciding the cost of coal for calculating the energy charge rate.

GVK is directed to set up the accredited coal testing facility/laboratory at its plant within one month. After the establishment of coal testing facilities at GVK project site, the testing of coal shall be carried out in the presence of PSPCL's representative(s) at the project site.

In case, for any reason, GCV of previous month(s) is considered for working out weighted average coal cost for PSPCL's thermal power plants against the GVK's bill of a particular month, then, in such cases the accounts/bills shall be reconciled by PSPCL with GVK within 15 days after the end of each quarter in a financial year.

It is submitted that the above findings of this Hon'ble Commission have been challenged by the Respondent before the Hon'ble Appellate Tribunal in Appeal No.192/2019 and the same is pending adjudication. As such, any true up on the said aspect would be subject to the outcome of the said Appeal.

Re. Landed Price of Coal

8.17 That the Petitioner has given weighted average landed cost of coal in Table Q of the present Petition and has submitted that the said cost inclusive of the price of surface transportation from the delivery point in the mine till the railway siding (external STC). In this regard, the Respondent craves leave of this Hon'ble Commission to refer to and rely upon the detailed submissions made herein above under Paras 8.2-8.10. It is further submitted at the risk of repetition that this Hon'ble Commission, in its Order dated 6.3.2018, has held as under as regards STC:

"10.8 Surface Transport at Mine End & Handling Charges (External STC)

.....

10.8.3 The Commission has been made aware of instructions issued by Coal India Ltd. and its subsidiaries stating therein that there are flat rates charged for various distances upto 20 km of surface transport from the mines to the rail head. The instructions also state that actual costs are charged beyond 20 km. Distances would vary depending on the rail head/siding where the coal is loaded and as and when the coal is taken to the washeries. GVK has pleaded that for reasons of efficiency and faster handling it has engaged its own handlers and road transporters to move the coal from the mine to the rail head and asked for separate surface transportation charges.

.....

10.8.6 In view of the above, the Commission decides that in case GVK resorts to surface transport from pick up/delivery point at the mine end to railway siding on its own, it would be limited to surface transport up to the nearest railway siding and at the rates prescribed by BCCL or its subsidiaries upto 20 kms and for the distances beyond 20 kms at actuals (as provided in the notification above) as would have been billed by these coal agencies for the same nearest rail head. In such cases, the bill issued by the coal company for the coal would not include external surface transport costs. Such separate bill for the external surface transportation shall be supported by documentary evidence where the coal company has charged the rate for external surface transport as per actuals for distances beyond 20 kms in the most recent past."

Thus, this Hon'ble Commission has categorically held that in case of any surface transportation cost incurred by the Petitioner beyond the pick-up point within the mine (external STC), the payment of the same would be limited to the cost incurred to carry the coal to the nearest railway siding and would be as per the rates prescribed by M/s Bharat Coking Coal Ltd.(BCCL) up-to 20KM and the said charges would be charges by the coal company with separate bills for cost of coal and STC. It may be mentioned here that the Petitioner has challenged the above said findings of the Commission before the Appellate Tribunal in Appeal No.189/2019. However, no stay has been granted by the Tribunal in favour of the Petitioner and as such, the above findings of the Commission are binding upon the Petitioner. In view thereof, in order to claim charges for any external STC, the Petitioner is required to submit separate bills in consonance with the rates prescribed by M/s BCCL as decided by this Hon'ble Commission in the above said Order.

K.S.

Re. Tax on Income and Non-Tariff Income.

8.18 That the claim of the Petitioner as regards Tax on Income and Non-Tariff Income may be allowed by this Hon'ble Commission in accordance with applicable Regulations framed by this Hon'ble Commission.

9. That in view of the detailed submissions made hereinabove, it is respectfully submitted that the Petitioner, by way of the present Petition, is trying to re-agitate settled issues between the parties as already determined by this Hon'ble Commission and/or are pending adjudication before the Hon'ble Appellate Tribunal. It is reiterated that the completed capital cost of the project, based on annual audited accounts of the Petitioner has already been determined by this Hon'ble Commission vide its Order dated 17.1.2020 in Petition No.54/2017. The same has been challenged by the Petitioner before the Hon'ble Tribunal in Appeal No.41/2020 and is presently pending adjudication. Thus, so far as the capacity charges of the Petitioner are concerned, the same have been duly decided by this Hon'ble Commission based on audited account and all other relevant applicable data with no scope any further true-up or adjustment. Further, this Hon'ble Commission, in its Order dated 6.3.2019 in Petition No.68/2017 and Order dated 27.5.2019 passed in Petition No.1/2018 has also decided various components of the energy charges of the Petitioner as has been elaborated hereinabove and more particularly in Para 7 and 8 above. The Petitioner has challenged the above said Order dated 6.3.2019 before the Hon'ble Appellate Tribunal in Appeal No.189/2019 on the findings with respect to
- (i) calculation of capacity charges after inclusion of 9% normative auxiliary consumption;
 - (ii) testing charges of coal; and
 - (iii) IEGC compensation for backing down power and surface transportation charges

The Respondent has also filed an Appeal against the said Order before the Hon'ble Appellate Tribunal in Appeal No.192/2019 on the issues of

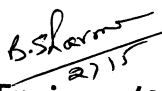
- (i) calculation of GCV on ARB total moisture; and
- (ii) rebate reversal rate and interest on rebate.

Both the above said Appeals are pending adjudication before the Hon'ble Appellate Tribunal and where no stay of the operation of the Order dated 6.3.2019 has been granted. The other issues as decided by this Hon'ble Commission have remained unchallenged by either parties and thus the said Order to that extent has attained finality and is binding on both the parties. Thus, in view of the clear regulatory framework of this Hon'ble Commission and the settled law as regards true-up of tariff, the scope of the present Petition is restricted and the attempt of the Petitioner to expand the same to unjustly get revision in its tariff by re-opening settled issues and re-agitate claims already pending for adjudication before the Appellate Tribunal is impermissible and is liable to be rejected by this Hon'ble Commission.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Commission may be pleased to:

- (a) take the objection and submissions made by the Respondent in the present Reply on record and consider the same while adjudicating the present Petition; and
- (b) pass such further and other order(s) as this Hon'ble commission may deem fit in the facts and circumstances of the present case.


Chief Engineer/ARR&TR,
PSPCL, Patiala.