

Gujarat Electricity Industry Reorganisation And Comprehensive Transfer Scheme, 2003

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Gujarat Electricity Industry Reorganisation And Comprehensive Transfer Scheme, 2003

In exercise of powers conferred by Sees. 28, 29 and 30 of the Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003 (Guj. 24 of 2003), the Government of Gujarat hereby makes the following scheme for the purpose of providing and giving effect to the comprehensive transfer and vesting of assets, properties and interest therein; rights, liabilities and obligations; functions, duties, powers and personnel of the Gujarat Electricity Board in the Government of Gujarat and revesting them by the Government of Gujarat in GETCO, GSECL and DISCOMS and for determining the terms and conditions on which such transfer and vesting shall be made.

1. Short title and commencement :-

- (1) This scheme may be called the Gujarat Electricity Industry Reorganisation and Comprehensive Transfer Scheme, 2003.
- (2) It shall come into force from the date of its publication in the

2. Definitions :-

In this scheme, unless the context otherwise requires,-

(a) "Act" means the Gujarat Electricity Industry (Reorganization and Regulation) Act, 2003;

(b) "Assets" includes power systems, dams, tunnels, generating plants, machinery, equipment, transformers, meters, poles, lines, towers, sub-stations, conductors, switchyards, land, building, offices, stores, furniture, fixtures, vehicles, residential quarters and guest houses and amenities and installations pertaining thereto and other movable and immovable properties, cash in hand, cash at bank, investments, stocks, book debts (corporeal and incorporeal), tangible and intangible assets, benefits, licenses, consents, authorities, registrations, patents, trade marks and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages, benefits and approvals, contracts deeds, schemes, bonds, agreements and other instruments and interest of whatever nature and wherever situated;

(c) "Board" means the Gujarat Electricity Board constituted under Sec. 5 of the Electricity (Supply) Act, 1948;

(d) "Commission" means the Gujarat Electricity Regulatory Commission established under Sec. 3 of the Act;

(e) "Date of transfer" means the date notified by order by the State Government for effecting transfer of assets, properties and interest therein; rights, liabilities and obligations; functions, duties and powers; proceedings and personnel to the relevant transferee in accordance with this scheme and different dates may be notified for different transfers.

(f) "DISCOMS" means Discom 1, Discom 2, Discom 3 and Discom 4;

(g) "Discom 1" means Uttar Gujarat Vij Company Limited, a company incorporated under the Companies Act, 1956;

(h) "Discom 2" means Dakshin Gujarat Vij Company Limited, a company incorporated under the Companies Act, 1956;

(i) "Discom 3" means Madhya Gujarat Vij Company Limited, a company incorporated under the Companies Act, 1956;

(j) "Discom 4" means Paschim Gujarat Vij Company Limited, a company incorporated under the Companies Act, 1956;

(k) "GETCO" means the Gujarat Energy Transmission Corporation Limited, a company incorporated under the Companies Act, 1956;

(1) "GSECL" means the Gujarat State Electricity Corporation

Limited, a company incorporated under the Companies Act, 1956;

(m) "Liabilities" include all liabilities, debts, duties, obligations, statutory liabilities and Government levies of whatever nature and contingent liabilities which may arise in regard to the dealings before the date of transfer in respect of the assets, liabilities and proceedings transferred under this scheme;

(n) "Personnel" means workmen, employees, staff and officers of the Board by whatever name called and includes trainees, and those on deputation from the Board to other organisations or institutions;

(o) "Proceeding" means the proceedings of whatever nature including suits, appeals, complaints, petitions, applications, arbitration whether civil or criminal or other-wise;

(p) "Schedule" means the Schedules appended to this scheme;

(q) "State Government" means the Government of Gujarat;

(r) "Transferee" means GETCO, GSECL or any of the DISCOMS;

(s) Words and expressions used but not defined in this scheme and defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Classification of Undertakings of the Board :-

- (1) The Undertakings of the Board are classified as under, namely :
- (a) Generation undertakings specified in Schedule A;
 - (b) Transmission undertakings specified in Schedule B;
 - (c) Distribution undertakings specified in Schedules C, D, E and F and
 - (d) The undertakings specified in Schedule G.
- (2) If the assets of the undertakings referred to in under sub-clause (1) are subject to security documents or arrangements in favour of third parties for any financial assistance or obligation taken by the Board and the liabilities in respect thereof are to be classified in different undertakings, the State Government may, by order, provide for the apportionment of the liabilities secured by such assets, between the different undertakings and upon such apportionment, the security shall be applicable to the apportioned liability only.

4. Transfer of Assets, Liabilities and Proceedings to the State Government :-

(1) Subject to the provisions of the Act and this scheme, all the assets, liabilities and proceedings specified in Schedules A to F shall, on and from the date of transfer, stand transferred from the Board and shall vest in the State Government absolutely without any further act or things to be done by the State Government or the Board.

(2) Nothing in sub-clause (1) shall apply to rights, responsibilities, liabilities and obligations in respect of the personnel of the Board and other matters related thereto including statutory dues such as salary, wages, gratuity, pension, provident fund and retirement benefits and the same shall be dealt with the manner provided in clause 6 of this scheme.

5. Transfer of Assets, Liabilities and Proceedings by the State Government to GSECL, GETCO and DISCOMS :-

(1) All the assets, liabilities and proceedings forming part of Generation undertakings specified in Schedule A shall stand transferred to and vest in GSECL on and from the date of transfer subject to the terms and conditions of this scheme.

(2) All the assets, liabilities and proceedings forming part of Transmission Undertakings specified in Schedule B shall stand transferred to and vest in GETCO on and from the date of transfer subject to the terms and conditions of this scheme.

(3) All the assets, liabilities and proceedings forming part of Distribution Undertakings specified in Schedules, C, D, E and F shall stand transferred to and vest respectively in Discom - 1, Discom - 2, Discom - 3, and Discom - 4 on and from the date of transfer subject to the terms and conditions of this scheme.

(4) All the assets, liabilities and proceedings, specified in Schedule G, and those that have not been covered under Schedules A to F, shall be continued and retained by the Board till further orders of the State Government in this regard.

(5) On the transfer and vesting of all the assets, liabilities and proceedings in terms of sub-clauses (1) to (3) to the respective transferee, the GSECL, GETCO or, as the case may be, DISCOMS shall be responsible for all functions, contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature relating to the respective assets, liabilities and proceedings transferred to it to which the Board was a party, subsisting or having effect on the date of transfer, in the same manner as the

Board was liable immediately before the date of transfer, and the same shall be in force and effect against or in favour of the respective transferee and may be enforced effectively as if the respective transferee had been a party thereto instead of the Board.

(6)

(a) The transfer to and vesting of all the assets, liabilities and proceedings to the transferees in terms of this scheme shall take effect immediately on the date of transfer notwithstanding that the value of such assets, liabilities and proceedings have not been determined.

(b) The value of the assets, liabilities and proceedings transferred to the transferees shall be determined, as far as may be, based on the revenue potential of such assets.

(c) The State Government may, at any time during the period mentioned in clause 9, notify the opening balance sheets of the transferees containing the value of assets, liabilities and proceedings transferred to the transferees and the consideration to be paid or adjusted for such transfer.

(7) The State Government may at any time during the period mentioned in clause 9 of this scheme, by an order, amend, vary, modify, add, delete, alter or otherwise change the values of assets, liabilities and proceedings and the terms and conditions specified in the Schedules.

6. Provisions applicable to Personnel :-

(1)

(a) Subject to the provisions of Sec. 29 of the Act, all the personnel of the Board shall, on and from the date of transfer, stand provisionally transferred to the services of the GSECL, GETCO or DISCOMS, as the case may be, on as is where is basis and they will continue to serve at the place where they are posted and working on the date of transfer, till further orders of the State Government.

(b) The State Government may, from time to time, issue order directing the personnel provisionally transferred to a transferee under sub-clause (a) to reassign their services to another transferee, as the State Government may consider necessary.

(2) The personnel provisionally transferred under sub-clause (1) to the transferees shall continue to serve till the personnel are permanently absorbed in the services of the respective transferee

in accordance with the provisions of the Act, this Scheme and the orders issued by the State Government in this behalf.

(3)(a) The State Government shall, in consultation with GSECL, GETCO, DISCOMS and the Board, frame guidelines for the final transfer to and permanent absorption of the personnel in a transferee taking into account the nature of work, suitability, ability and experience of the personnel, number and nature of the vacancies and other relevant factors and issue appropriate orders for such final transfer and permanent absorption of the personnel within the period mentioned in clause 9.

(b) The Board shall, in consultation with GSECL, GETCO and DISCOMS, constitute a Committee to receive representations from the personnel in regard to their final transfer and absorption in the transferees under this scheme and to make recommendation to the State Government on their final transfer and permanent absorption.

(c) The State Government shall take a decision on the final transfer and permanent absorption of the personnel in the transferee after considering the recommendation of the Committee appointed for the purpose and shall issue orders for the final transfer and permanent absorption of the personnel.

(4) Upon the finalization and issue of orders in terms of the sub-clause (3), the personnel shall become the employee and be in the rolls of the transferee concerned in the post, scale of pay and the seniority in accordance with the orders that may be issued for this purpose, without any further act, deed or thing to be done by the State Government, the Board, GSECL, GETCO or DISCOMS.

(5) Subject to the provisions of the Act and this Scheme, the transferee shall be competent to frame new regulations or modify the existing regulations governing the conditions of service of the personnel transferred to the transferee under this Scheme.

(6) The transfer and permanent absorption of the personnel under this scheme shall be deemed to be the part of the assets, liabilities and proceedings transferred to GSECL, GETCO or, as the case may be, DISCOMS and shall be subject to the following conditions, namely :

(a) the terms and conditions of the service applicable to such personnel on the date of transfer shall not in any way be less favourable or inferior to than those applicable to them immediately before the date of transfer;

(b) the terms and conditions of the tripartite agreement dt. 13.10.2003 entered into between the Board, the State Government and the Unions/Associations;

(c) all such personnel shall have continuity of service in all respects;

(d) all benefits of service accrued before the date of transfer shall be taken into account for all the purposes including for the payment of any and all terminal benefits of such personnel; and

(e) the orders that may be passed by the Courts in the proceedings pending on the date of transfer in regard to seniority or other matters concerning the service conditions of such personnel shall be taken in account.

(7) in respect of all statutory and other schemes and matters related to employment including the provident fund, gratuity, pension and any other superannuation fund or any other special fund created or existing for the benefit of the personnel, the relevant transferee shall stand substituted for the Board for all the purposes and all the rights, powers and obligations of the Board in relation to any and all such matters shall become those of the transferee concerned.

(8) The Board, in consultation with the State Government, shall make appropriate arrangements in regard to-

(a) funding of the pension funds and other related funds of the personnel to the extent they are unfunded on the date of the transfer of the personnel to the transferee including for the due payment of the amounts to personnel who retire after the date of the transfer, by the respective transferee to which these personnel are transferred, and

(b) funding and due payment of the terminal benefits to the existing pensioners of the Board as on the date of the transfer and till such arrangements are made, all such payments shall be made by the Board. For the purpose of this sub-clause the term-

(i) "existing pensioner" means the person eligible for the pension from the Board as per the applicable scheme as on the date of transfer and shall include his family members, and

(ii) "terminal benefits" means pension, dearness allowance and other applicable benefits including the right to have the appropriate revisions in the above benefits consistent with the practice that were prevalent in the Board.

(9) All proceedings including disciplinary proceedings pending against the personnel prior to the date of the transfer or which may relate to misconduct, lapses or acts of commission or omission committed before the date of the transfer, shall not abate and shall be continued by the relevant transferee :

Provided that all disciplinary cases finalized prior to the date of

transfer shall not be reopened by the transferee.

(10) The personnel transferred to the transferees shall be deemed to have entered into an agreement with the transferee concerned to repay loans, advances and other sums due or otherwise perform obligations undertaken by them to the Board which remain outstanding as on the date of transfer, on the same terms and conditions as contained in the arrangement with the Board.

(11) Nothing contained in this scheme shall apply to,-(a) personnel of the State Government or the Central Government or other organization on deputation to Board as on the date of the transfer, but such personnel shall continue to be on deputation to the concerned transferee on as is where is basis or otherwise as per the orders of the State Government, and (b) the personnel recruited by GSECL, GETCO and DISCOMS.

7. Rights and obligations of third parties restricted :-

Except as provided in this scheme, the rights and obligations of all persons in regard to the assets, liabilities and proceedings transferred under this scheme, shall be restricted to the transferee to whom they are transferred to and notwithstanding anything to the contrary contained in any deed, documents, instruments agreements or arrangements which such person has with the Board, he shall not claim any right or interest against the State Government or the Board.

8. Pending suits, proceedings, etc. :-

The proceedings of whatever nature by or against the Board pending on the date of transfer in regard to the assets, liabilities and proceedings transferred to GSECL, GETCO and the DISCOMS shall not abate or discontinue or otherwise in any way prejudicially be affected by reason of transfer under this scheme but such proceedings may be continued, instituted, prosecuted and enforced by or against GSECL, GETCO or, as the case may be, DISCOMS.

9. Provisionally of the Transfer. :-

(1) The classification of undertakings and transfer of assets, liabilities and proceedings including personnel under this Scheme, unless otherwise specified in any order made by the State Government, shall be provisional for a period of twelve months

from the date of transfer.

(2) At any time within a period of twelve months from the date of transfer, the State Government may, by order to be notified, amend, vary, modify, add, delete, alter or otherwise change the terms and conditions of transfer and may transfer such properties, interests, rights liabilities, personnel and proceedings forming part of assets, liabilities and proceedings including personnel of one transferee to that of any other transferee or the Board or to the State Government in such manner and on such terms and conditions as the State Government may consider necessary.

(3) On the expiry of the period of twelve months from the date of transfer and subject to any directions given by the State Government, the transfer of assets, liabilities, proceedings and the personnel made in accordance with this scheme shall become final.

10. Transfer by operation of law. :-

The Transfers under this scheme shall operate and be effective pursuant to action of the State Government publishing this scheme and Orders issued thereunder without any further act, deed or thing to be done by the State Government, Board or the transferees.

11. Rights and Powers of the transferees during the provisional period :-

(1) The transferee shall, during the provisional period specified in clause 9, continue to function independently and undertake business activities assigned to them on behalf of and as agents of the Board till such time the State Government issues an order authorizing the transferee, to undertake such functions and activities on their own and independent of the Board.

(2) The State Government may issue such orders from time to time in respect of one or more of the transferee, but such orders shall not be made after the expiry of the provisional period mentioned in clause 9.

12. Decision of State Government to be final :-

If any difficulty arises in giving effect to the provisions of this scheme or difficulties arising in implementing the transfers effected under this scheme, the State Government may by an order make

such provision, not in consistence with the provisions of the Act, as appear to it to be necessary or expedient for removing the difficulty and the decision of the State Government thereon shall be final and binding.