

Gujarat Electricity Industry Reorganization and Transfer of Gandhinagar Thermal Power Stations Scheme, 2003

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SCHEDULE 1 :-GENERATIONUNDERTAKINGS OF THE BOARD VESTED IN THE GOVERNMENT OF GUJARAT

Gujarat Electricity Industry Reorganization and Transfer of Gandhinagar Thermal Power Stations Scheme, 2003

In exercise of powers conferred by Secs. 28, 29 and 30 of the Gujarat Electricity Industry (Reorganization 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 transfer and vesting of assets, properties and interest therein; rights, liabilities and obligations, functions, duties, powers and personnels of the Gujarat Electricity Board in the Government of Gujarat and revesting them by the Government of Gujarat in the Gujarat State Electricity Corporation Limited and for determining the terms and conditions on which such transfer and vesting shall be made.

1. Short title, extent and commencement :-

This Scheme may be called the Gujarat Electricity Industry Reorganization and Transfer of Gandhinagar Thermal Power

Stations Scheme, 2003.

2. In this Scheme, unless the context otherwise requires :-

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

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

(c) "Date of the transfer" means the date notified by order by the Government of Gujarat for effecting transfer of assets, properties and interest therein, rights, liabilities and obligations, functions, duties and powers, proceedings and person- nel to the relevant transferee in accordance with the Scheme and different date of transfer may be notified for different transfers;

(d) "Generation Undertakings" shall mean the undertakings relating to Units 1 to 4 of the Gandhinagar Thermal Power Stations comprising of the Assets, Liabilities - and Proceedings specified in the Schedule;

(e) "GSECL" means the Gujarat State Electricity Corporation Limited, a company incorporated under the Companies Act, 1956;

(f) "Liabilities" includes all liabilities, debts, duties, obligations, statutory liabilities and Government levies of whatever nature and contingent liabilities which may arise hi regard to the dealings before the date of the transfer in respect of the undertakings transferred under the Scheme;

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

(h) "Proceeding" means the proceedings of whatever nature including suits, appeals, complaints, petitions, applications, arbitration whether civil or criminal or otherwise;

(i) "Property" includes power systems, dams, tunnels, generating plants, machinery, equipment, land, building, offices, stores, furniture, fixtures, vehicles, residential quarters and guest houses and amenities and installations pertaining thereto and other movable and immovable assets, cash in hand, cash at bank, investments, 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;

(j) "Schedule" means the Schedule appended to the Scheme;

(k) "Transferee" means GSECL, in whom the functions and undertakings of the Board are vested in terms of the provisions of the Scheme;

(1) Words and expressions used but not defined in the Scheme shall have the same meaning as assigned to them in the Act.

3. Transfer of Generation Undertakings and Business to the Government of Gujarat :-

(1) Subject to the provisions of the Act and the Scheme, all the assets, liabilities and proceedings set out in the Schedule with the functions and business of the generation of electricity relating to Units 1 to 4 of the Gandhinagar Thermal Power Station shall stand transferred from the Board and shall vest in the Government of Gujarat absolutely on and from the date of transfer without any further act or things to be done by the Government of Gujarat or the Board.

(2) Nothing in sub-clause (1) shall apply to rights, responsibilities, liabilities and obligations in respect of the personnel of the generation undertaking and matters relating thereto including statutory dues such as salary, wages, gratuity, pension, provident fund, compensation and retirement benefits and these shall be dealt with in the manner provided under clauses 5 to 8 of the Scheme.

4. Transfer of Assets, Liabilities by the Government of Gujarat to GSECL :-

(1) All the assets, liabilities and proceedings forming part of the Generation Undertakings as set out in the Schedule shall stand transferred to and vest in the GSECL on and from the date of transfer without any further act or thing to be done by the Government of Gujarat or the Board or the GSECL, subject to the terms and conditions of the Scheme.

(2) On such transfer and vesting of the assets, liabilities and proceedings in terms of sub-clause (1). the GSECL shall be responsible for all contracts, rights, deeds, Schemes, bonds, agreements and other instruments of whatever nature pertaining to the Generation Undertakings transferred to it, to which the Board was initially 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 full force and effect against or in favour of the GSECL and may be enforced as fully and effectively as if the GSECL had been a party thereto instead of the Board.

(3) As a consideration for the transfer and vesting of the assets, liabilities and proceedings of the Generation Undertakings, the GSECL shall assume the liabilities and shall issue the shares and instruments specified in the Schedule.

(4)

(a) The transfer to and vesting of the Undertakings to GSECL in terms of the Scheme shall take effect immediately on the date of the transfer notwithstanding that the value of such Generation Undertakings have not been determined.

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

(c) The Government of Gujarat at any time during the provisional period mentioned in Clause 9, notify the opening balance sheet of the GSECL providing the value of the assets, liabilities etc.. transferred to GSECL and the consideration to be adjusted for such transfer.

(5) The Government of Gujarat may by an order to be issued for the purpose amend, alter, vary, modify, add, delete or otherwise change the terms and conditions of transfer at any time during the period mentioned in Clause 9 of the Scheme.

5. Provisions applicable to Personnel :-

(1) The Personnel working in the Generation Undertakings shall continue to be in the service of the Board but on the date of transfer they shall stand assigned to the work of GSECL on deputation and on as is where is basis.

(2) The assignment of personnel under sub-clauses (1) to GSECL shall continue on deputation till the personnel are absorbed in the service of the GSECL or reverted to the services of the Board.

(3) The personnel deputed to the services of GSECL shall undertake and discharge the functions assigned to them by GSECL and they shall be under the control of GSECL.

(4) The Government of Gujarat shall in consultation with GSECL and the Board finalise the transfer to and permanent absorption in GSECL of the personnel assigned to GSECL under sub-clause (1) or such other personnel of the Board as the Government of Gujarat may consider appropriate taking into account the nature of work then performed, suitability, ability and experience of the personnel, number and nature of the vacancies and other relevant factors and issue an appropriate order for such transfer and permanent absorption within the period mentioned in Clause 9.

(5) The transfer and permanent absorption of the personnel under sub-clause (4) shall be deemed to be the part of the Generation Undertakings transferred to GSECL and shall be subject to the following conditions, namely

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

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

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

(d) 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.

6. Personnel not covered by the Scheme :-

(1) Nothing contained in this Scheme shall apply to personnel of the Government of Gujarat or the Government of India or other organisation on deputation as on the date of the transfer whose services are assigned to the GSECL on as is where is basis or

otherwise as per the orders of the Government of Gujarat or under the Scheme.

(2) The provisions of the Scheme shall not apply to any personnel recruited by the GSECL other than those transferred from the Board in accordance with the provisions of the Scheme.

7. Rights and obligations of third parties restricted :-

Except as provided otherwise in the Scheme in regard to Generation Undertakings transferred to GSECL, from the date of transfer, the rights, liabilities and obligations of all persons shall be restricted to the GSECL and notwithstanding anything to the contrary contained in any deed, documents, instruments, agreements or arrangements which such person has with the Board, shall not claim any right or interest against the Board or the Government of Gujarat.

8. Pending suits, proceedings etc :-

The proceedings of whatever nature by or against the Board pending on the date of transfer in regard to Generation Undertakings transferred to GSECL shall not abate or discontinue or otherwise in any way prejudicially be affected by reason of the transfer under this Scheme but the proceedings may be continued, instituted, prosecuted and enforced by or against GSECL.

9. Provisionality of the transfer :-

(1) The transfer of the Generation Undertakings including personnel under the Scheme, unless otherwise specified in any order made by the Government of Gujarat, shall be provisional for a period of twelve months from the date of the transfer.

(2) At any time within a period of twelve months from the date of the transfer, the Government of Gujarat may by order amend, alter, vary, modify, add, delete or otherwise change terms and conditions of the transfer of Generation Undertaking and transfer such other properties, interests, rights, liabilities, personnel and proceedings in such manner and on such terms and conditions as the Government of Gujarat may consider necessary.

(3) On the expiry of the period of twelve months from the date of the transfer and subject to any directions given by the Government of Gujarat, the transfer of undertakings, properties, interests, rights, liabilities, personnel and proceedings made in accordance with the Scheme shall become final.

10. Transfer by operation of law :-

The transfer under the Scheme shall operate and be effective pursuant to action of the Government of Gujarat publishing the Scheme and Orders issued in terms of the Scheme and without any further act, deed or thing to be done by the Government of Gujarat, Board and the transferee.

11. Rights and powers of the transferee during the provisional period :-

The GESCL during the provisional period, shall continue to function and undertake business activities assigned to it on behalf of and as an agent of the Board till such time the Government of Gujarat issues an order transferring the business activities and authorizing GSECL to undertake such functions and activities on their own and independent of the Board.

12. Decision of the Government of Gujarat to be final :-

The Government of Gujarat shall have the power to remove difficulties arising in implementing the transfers effected under the Scheme and the decision of the Government of Gujarat shall be final and binding.

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The Generation Undertakings shall comprise of all the assets, liabilities and proceedings

consisting of

1. THERMAL POWER STATIONS. Units 1 to 4 of the Gandhinagar Coal Based Thermal Power Station with 2 generating units of 120 MW capacity each and 2 units of 210 MW capacity each with all associated and related equipment such as generators, turbines, boilers, condensers, electrostatic precipitators, controls and instrumentation, Railway Sidings, coal handling system, ash handling system, ash pond, raw water supply and treatment system, Dm water plant, secondary fuel oil storage facilities and its handling system, switch yard including step up transformers, service transformers, auxiliary unit transformers circuit breakers, HT & LT Switchgears, control and protection system, overhead cranes, RCC chimney, Stores, spare parts, consumables, raw materials etc. and works in progress.

II. GENERAL ASSETS. Special tools and equipment, material handling equipment,

earth movers, bulldozers, concrete mixtures, cranes, trailers, heavy and light vehicles, furniture, fixtures, office equipment, air conditioners, refrigerators, computers and signal systems, spares, consumables, raw materials, lands and civil works installations including roads, buildings, guest house, residential colony, schools, dispensaries, testing laboratories and equipment, training centers, workshops, works in progress, machinery and equipment sent for repairs, scraps and obsolete to the extent they are utilized in, operated by or associated with the assets referred to under Clause I above shall also form a part of Generation Undertakings.

III. OTHER ASSETS. Other assets and movable properties including plant and machinery, motor car, jeeps, trucks, cranes, trailers and other vehicles, furniture, fixtures, air conditioners, computers, etc. to the extent they are utilized in, operated by or associated with the assets referred to under Clause I shall also form a part of Generation Undertakings.

IV. LIABILITIES. 1. Contracts, agreements, interest and arrangements to the extent they are associated with or related to Generation Undertakings or assets referred to in Clauses I to III.

2. Secured and unsecured loans to the extent it is specified by the Government of Gujarat.

3. Cash and bank balance to the extent it is associated with or related to Generation Undertakings or assets referred to in Clauses I to III.

4. Provident Fund, Pension Fund, Gratuity Fund and any other funds to the extent specified by the Government of Gujarat.

5. Other current assets to the extent they are associated with or related to Generation Undertakings or assets referred to in Clauses I to III.

6. Other Current liabilities and provisions to the extent they are associated with or related to Generation activities or the Undertakings or Assets referred to in Clauses I to III.

V. PROCEEDINGS. Proceedings to the extent they are associated with or related to Generation Undertakings or Assets referred to in Clauses I to III.

VI. GENERAL. 1. The Government of Gujarat may before the end of the period mentioned in clause 9 allocate the liabilities of the Board to GSECL to the extent and in the manner as the Government of Gujarat may consider necessary.

2. In consideration of the transfer of Generation Undertaking and other assets mentioned

above, the Government of Gujarat may, direct GSECL to issue instruments such as equity shares, preference shares debentures and other securities in favour of the Board or in other Company as the Government of Gujarat may direct taking into account the assets and liabilities transferred.