

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO 220-221, SECTOR-34 A, CHANDIGARH

Petition No.88 of 2016

Date of Order: 05.05.2017

Present: Shri D.S. Bains, Chairman
Shri S.S. Sarna, Member

In the matter of: Petition under regulation 44 of Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2014 (hereinafter to be called Supply Code, 2014) read with Regulation 10 of the PSERC (Conduct of Business) Regulations, 2005 and other relevant regulations framed by this Hon'ble Commission and sections of the Electricity Act, 2003 seeking interpretation/clarification of the Regulation 6.7 of Supply Code, 2014.

AND

In the matter of: M/s Confederation of Real Estate Developers' Association of Industries (Punjab)(CREDAI Punjab)
.....Petitioner
Punjab State Power Corporation Limited (PSPCL), The Mall, Patiala

.....Respondent

Order:

1.0 The present petition has been filed by Confederation of Real Estate Developers' Association of Industries (CREDAI Punjab) under regulation 44 of PSERC (Electricity Supply Code & Related

Matters) Regulation, 2014 read with Regulation 10 of the PSERC (Conduct of Business) Regulations-2005 for interpretation of regulation 6.7 of the Supply Code, 2014 along with IA seeking stay of the operation of the demand notices issued to the members of the petitioner Association asking for Bank Guarantee (BG) on account of cost of LD system of undeveloped area of Super Mega project & Mega Residential projects under section 94(2) of the Electricity Act, 2003.

The gist of the submissions made by the petitioner is as under:

- 1.1 The members of the Association are builders, developers, contractors etc. doing the work of infrastructure development, construction of integrated townships, Industrial Parks etc. A licence has to be obtained from the competent authority as per the industrial policies of the State Govt.
- 1.2 For the purpose of developing these projects, firstly permission for change of land use of the land owned by the developers has to be obtained from the competent authority. Thereafter, the members of the society/developers submit detailed lay out plans of these projects for approval to Town and Country Planning Department, Punjab.
- 1.3 The projects approved by the competent authority though collectively called as Super Mega Mixed Land Use Integrated Industrial Park or Mega Projects but in fact these are conglomeration of various small projects like Group Housing, EWS Housing, I.T. Towers, Hotel Sites, Industrial

Plots, Commercial Sites, School Sites, Community Centre etc. As per Government of Punjab policy, the Project having area above than 250 Acres but less than 500 Acres of land would fall under category C of Super Mega Projects. Further in the policy, the project area break-up has also been given separately for Industrial, commercial, and residential pockets. There can be additional activities within the industrial pocket i.e. convention centers, community centers, hotels, health care centers etc. The Industrial, Commercial and Residential components are allowed to be developed on pro-rata basis keeping in view the mix of plotted sale of FSI. For the purpose of Mega Residential Projects, a developer must have land more than 100 Acres.

- 1.4 All these smaller projects i.e. industrial pocket, commercial pocket, residential pocket and further additional activities within the industrial pocket are separate from each other and are separate parts of the Super Mega Project. Same way different types of projects in Mega Residential Project i.e. Plots, Flats, EWS Flats etc. are separate projects which in total constitute Mega Residential Project. The lay out plans have been approved as one Super Mega/Mega Project but from the policy, it is clear that it consist of different pockets, separate from each other.
- 1.5 After the lay out plan is approved, the developers are required to approach PSPCL and submit the total requirement of the power in the whole approved project. The development of the whole Super Mega Project/Mega

projects cannot be done in one go but for the purpose of projection of the likely load requirement, the developers calculate the load requirement for the entire planned area as component wise approval is not permitted. This is only for the purpose of informing the PSPCL about the future need of power of a developer for the project. The number of transformers etc. which would be required in case the total project is ready, are also mentioned in the lay out plan alongwith expected load details and NOC is obtained from the PSPCL.

- 1.6 After the NoC is issued by PSPCL, the construction of different pockets of Super Mega/ Mega Project as per approved plan is started. There are certain areas in the project which have to be sold out as sites only i.e. Hotel sites, Institution sites, School sites etc. The developer is not required to develop these sites and is required to provide only the peripheral services. Therefore, while assessing the requirement of distribution transformers for the entire area as per the approved scheme, the transformers for such sites are also included though the developers are not required to provide these transformers as the connections for these sites are to be obtained by the end users. As the total connected loads of such sites exceed 100KW requiring connections at 11KV supply voltage only, therefore as per the prevalent policy of PSPCL, transformers are required to be provided by the consumers.

- 1.7 Sometimes when the construction work of single part of the mega project i.e. residential towers etc. is completed and the developer approaches the PSPCL for giving connectivity to the that specific area of the project/smaller project, PSPCL asks for the Bank Guarantee at the rates of 150% of remaining L.D work of whole super mega project/ mega project which is not possible for the developers. It is the result of mis-interpretation of the provisions of the Supply Code-2014 by the PSPCL.
- 1.8 The petitioner quoted a case of Janta Land Promoters Pvt. Ltd. (JLPL) who is developing a Super Mega Mixed Use Integrated Industrial area on an area of 262.69 Acres. The project area includes sites for Group Housing, EWS housing, IT towers, industrial plots, commercial sites, schools, community centre etc. The promoter approached PSPCL for providing connection for 4 MVA load but PSPCL demanded ₹22,74,42,134/- as BG at the rate of 150% of the cost of unfinished works. Through another communication, PSPCL demanded ₹1,62,47,550/- for its Mega Residential project. The major part of these costs is the estimated cost of distribution transformers. The other details of the projects are just to highlight the issue as brought out in the petition.

The petitioner prayed that necessary interpretation/clarification of regulation 6.7 of the supply Code, 2014 may be issued and the demand notices issued by PSPCL for BG on account of cost of LD system in underdeveloped areas of Super Mega projects & Mega Residential projects may be set aside and PSPCL may be directed

to provide connectivity to complete areas of the projects without insisting for BG.

2.0 The petition along with IA came up for hearing on 03.02.2017 and after hearing the learned Counsel for the petitioner the petition was admitted. It was decided to issue notice to PSPCL and the petitioner was directed to supply the paper book of the petition along with a copy of the IA to PSPCL through e-mail as well as hard copy. Petition was fixed for further hearing on 09.02.2017.

3.0 During hearing on 09.02.2017, the application seeking stay on the operation of the demand notices issued by PSPCL came up for arguments. The arguments of both the parties were heard and the Order in the IA was reserved. PSPCL was directed to file reply to the petition with a copy to the petitioner by 02.03.2017. The next date of hearing was fixed on 07.03.2017.

4.0 PSPCL through e-mail dated 06.03.2017 filed reply and submitted as under:

4.1 The instant petition is bad and liable to be set-aside since it is based upon raising a challenge to the provisions incorporated in the Regulations despite the fact that the action of PSPCL is based as per PSERC (Electricity Supply Code and Related Matters) Regulations, 2014.

4.2 A perusal of Regulation 6.7 clearly shows that the developer is required to furnish either cost of the LD System or a Bank Guarantee equivalent to 150% of the estimated cost of balance work. The aforesaid provisions have been incorporated with an objective to protect the interest of the

consumers. These provisions have been in existence ever since Regulations were introduced by the Commission. Larger public interest has to be protected and has to be promoted by the Commission, even if the same causes discomfort to the developer.

- 4.3 The petition has been filed for the sake of seeking clarification even though there is no vagueness or confusion as regards the provisions incorporated. The substance of the petition is in fact intended to assign the meaning which tantamount to incorporating the amendment in the Regulations. Such an incorporation of an amendment cannot be done by means of raising a dispute in the nature as alleged. The legislation function cannot be sought to be invoked by means of filling a petition.
- 4.4 The submission of Bank Guarantee involves miniscule expenses, which are in the nature of revenue expenses to be recovered from the allottees. As such, the developer is not burdened by any cost or inconvenience for the purpose of protecting interest of the consumers, who are also the allottees. Thus, the cost component for protecting the interest of the consumers is being recovered by the developer from the consumers by incorporating the said cost in the overall project cost.
- 4.5 The relief claimed for are not within the domain of the petition. It is well settled law that the petition has to be examined as a whole and in the light of the substantive intent

of the party filing the petition. The aforesaid aspects cannot be ignored while construing the possibility of relief to be extended to the petitioner. Merely because a petition has been smartly drafted, it cannot be a basis to exercise a jurisdiction that is not conceived in the appropriate Commission. Accordingly, the relief prayed for by the petitioner amounts to a judicial review of the provisions incorporated in the Regulations. The appropriate Commission has not been vested with the power of judicial review.

- 4.6 The instant petition is not tenable and is liable to be dismissed for the reasons that the petitioners are seeking relief under the grab of providing clarification/interpretation to clause 6.7.1(c) of the Supply Code Regulations, 2014. Such an aspect being within the regulatory framework and having not been incorporated in the existing claim cannot be brought in by way of a clarification.
- 4.7 The demand being raised on behalf of PSPCL was strictly in accordance with Regulations, 2014. Similar provisions have been in existence since 2011. Any such interpretation claimed to stay operation of a statute cannot be accepted as it is purely legislative act.
- 4.8 There is no ambiguity in the clause as it exists. A hardship being claimed by petitioner may be a basis to initiate & bring about a regulation, but so long as any such provision does

not exist, a regulation cannot be introduced by means of interpretation of clause.

- 4.9 That an interim relief can only be granted on satisfaction of the triple test VIZ.(i) prima-facie case; (ii) balance of convenience; and (iii) an irreparable loss and injury; and in the absence of satisfaction of above said essential conditions, the interim relief cannot be granted.
- 4.10 The main objective of this regulation is to safeguard the interest of owners/occupiers of the properties and also of the PSPCL so that in case a developer runs away leaving the project then the occupiers/ owners and PSPCL should not suffer and the PSPCL must have funds to lay down the L.D system etc.
- 5.0 During the hearing on 07.03.2017, the petitioner sought time to file a rejoinder to the reply filed by PSPCL. The prayer was allowed and the petitioner was directed to file a rejoinder with copy to the respondent by 14.03.2017. PSPCL was asked to file surrejoinder, if any, with a copy to the petitioner by 21.03.2017. The petition was fixed for arguments on 18.04.2017.
- 6.0 The petitioner filed rejoinder dated 15.03.2017 (received on 17.03.2017) to the reply filed by PSPCL. The gist of the submissions made in the rejoinder is as under:
- 6.1 PSPCL is mis-interpreting the Super Mega Projects and Mega Projects approved by the GMADA as “Residential Colonies/Multi-storey Residential complexes” as provided in clause 6.7 of Supply Code 2014 as one colony. The Mega

and Super Mega Projects are not Residential colonies/ Multi-storey Residential complexes but consist of mixed use development which includes commercial, institutional, industrial and residential components viz. multi use sites/areas for Schools, Hospitals cum Nursing Homes, Community Center, Hotel cum Multiplex besides sites earmarked for Group Housing and EWS Housing. Mega/Super Mega projects being of large magnitude cannot be taken up for development in one go whereas the provision refers to micro components i.e residential colonies/multi storey residential complexes which form one part of Mega /Super Mega projects.

- 6.2 The petitioner is not seeking any amendment of the Supply Code-2014 but if this Commission comes to conclusion that any amendment has to be done for clarifying the provisions of the Supply Code-2014 then this Commission is competent to take necessary measures.
- 6.3 As per the prevailing PSPCL policy, a developer is required to obtain NoC from PSPCL for the entire Project approved by the competent authority of the State Government. For the purpose of calculation of projected load, the entire area in the approved plan is considered by PSPCL and load of each and every site is worked out based on the norms fixed by PSPCL. PSPCL does not give NOC in case the part load of that area, which the developer wants to develop at first instance, is submitted.

- 6.4 Based on the load requirements, proposed LD system which includes LT Lines/ Cables, 11 KV Lines/ Cables and Transformers are to be quantified. Since the sites earmarked for schools, Community centers, Hospitals, Hotels cum Multiplex etc. are to be developed as independent units and generally loads of each of these sites are in excess of 100 KW, therefore independent connections for such sites are to be obtained by the prospective consumers (either by the developer if the developer develops it or the allottee of such sites). The connections are required to be released by PSPCL at 11KV supply voltage and as such, installation of transformers for such sites is out of scope of the developers and is in the scope of prospective consumers only.
- 6.5 In such areas, the scope of developers is limited to providing LD system to the extent of providing LT and HT lines only. Although the required KVAs for calculation of transformers capacity are to be depicted in the scheme, yet transformers for such sites are never required to be provided by the Developers.
- 6.6 Mega and Super Mega Projects are of large scale projects ranging from 100 Acres-500 Acres or above and as such the development of the project is to be carried out in phases. Due to low demand in the reality sector, the development takes longer period than expected. Under such circumstances, it is not possible to carry out the development works of the entire area at one go. The development works of the pocket selected for prioritized / phased development

are required to be undertaken and hence the electrification works of such pockets are provided. If the transformers for the entire project are provided at initial stage itself by completing the entire electrification works, the system shall get connected with PSPCL and 'NO LOAD' losses will begin which will be continuous loss to the PSPCL as the full load may not come up even in next 10-15 years. During the period, the LD system may get damaged/outlive its life or the material may be stolen due to non development of other construction related activities.

6.7 In the case of Mega and Super Mega projects, PSPCL should consider the area as per provisions of the Supply Code-2014, which has been considered for development and the possession of plots/flats are proposed to be offered by the developer. In case, some electrification works are pending in that area, PSPCL may insist for BG for balance works for such area only before allowing partial connectivity. The areas where independent connections at 11KV supply voltage are required by the developers/ allottees, the transformers considered in the scheme for arriving at total requirement of load calculations should not be insisted in terms of installation and towards calculation of BG amount.

6.8 There exist checks and balances in the system itself since before the possession, partial completion from the Regulatory Authority is mandatory. Only after possession letters are given to the allottees, such allottee can then approach PSPCL for release of connection based on these

possession letters. Completion/Partial completion for a property is not granted by the Regulatory Authority (GMADA) until all development works including electrification works of the proposed area for which partial completion has been sought, are complete. As such no person can approach the PSPCL for power connections when the supporting infrastructure is not made in place by the developer and bears clearance of completion by the Regulatory Authority. The plea of PSPCL that in case developers fail to carry out the development works in the balance area and the consumers of such area demand power connections, PSPCL shall have to provide connections to the consumers of such areas as well and therefore BG for pending works of such areas is insisted upon, is without any basis. The consumer who approaches PSPCL for release of connection is required to produce proof of ownership in the shape of possession letter issued by the developers and only then the application for connection is entertained. In case developers runs away before completing the development works of the project as is apprehended by the PSPCL, the onus of development shall rest with the State Govt. who has accorded approval of the project and role of developer will be taken up by the state Govt. and possession etc shall be given by the State Govt. and only then the allottee can approach PSPCL for release of power connection to them having possession letter and completion certificate in hand.

- 6.9 Hence the PSPCL should not insist on asking for BG of the electrification work of the undeveloped area while providing partial connectivity to the developed area of Mega / Super Mega projects.
- 6.10 The submission of BG is just not a letter from Bank rather it involves huge expenditure. First of all, 20% of the BG amount is required to be deposited with the Bank in cash which forms FD in the name of party seeking BG (The interest is paid @ 7% or so where as the lending by the Bank against the Credit limit is 12% or more and hence loss of 5% P.A to the Furnisher). Besides this the Bank Charges @3% per annum + 15% service tax till the time the BG remain valid is applicable on the entire BG amount. The bank also keeps its lien on the property equivalent to 80% of the value of BG and as such the property becomes unsellable till the validity of the BG. In all, if even a BG of ₹1 crore is to be furnished, it will cause loss to the furnisher to the tune of approximately ₹4.45 lac per annum. As the whole development may not take less than 5 years therefore cumulative loss for ₹1 crore BG shall be ₹22.25 Lac i.e. about 25% value of BG amount. Besides this, the property equivalent to 80 lac shall be held up for sale for 5 years. It is further submitted that the contention of the PSPCL that the development would recover the cost of the BG from the consumer is totally wrong and denied. The developer has to bear this cost which would not be compensated in any manner.

7.0 PSPCL vide Chief Engineer/ARR & TR Memo No.5527 dated 10.04.2017 filed reply to the rejoinder and submitted as under:

7.1 The rejoinder filed by the petitioner is based upon raising a challenge to the provisions incorporated in the Regulations despite the fact that the action of the PSPCL is based squarely as per PSERC (Electricity Supply Code and Related Matters) Regulations, 2014.

7.2 A perusal of the regulation 6.7 clearly shows that the developer is required to furnish either cost of the LD System or to furnish a Bank Guarantee equivalent to 150% of the estimated cost of balance work. The aforesaid provisions have been incorporated with an objective to protect the interest of the consumers. These provisions have been in existence ever since Regulations were introduced by the Commission. Larger public interest has to be protected and has to be promoted by the Commission, even if the same has to discomfort of the developer. The petitioner cannot raise a challenge to the legally valid provisions/regulations incorporated by this Commission.

7.3 Regarding averment that approved Super Mega Projects and Mega Projects cannot be classified as colonies, since these consist of mixed use development which include commercial, institutional, industrial and residential components the learned counsel of PSPCL referred to clause 5(i) of Punjab Apartment and Property Regulations Act, 1995 (PAPRA Act 1995) which is read as under:-

“Any promoter, who desires to develop a land into a colony, shall make an application in the prescribe form along with the prescribed information and with the prescribed fee to the competent authority for grant of permission for the same and separate permission will be necessary for each colony”.

So, all colonies are covered under clause 5(i) unless they are exempted as per provisions of clause 44(2) of PAPRA Act, 1995. The clause 44(2) of the Act provides as under:-

“if the State Governments is of the opinion that, the operation of any of the provisions of this Act, causes undue hardship, or circumstances exist which render it expedient to do so, it may exempt, by a general or special order, any class of persons or arrears from all or any of the provisions of this Act, subject to such terms and conditions as it may impose”.

Therefore, Mega/ Super Mega projects may be exempted by the State Govt. from obtaining license/ permission to develop the colony as per provisions of clause 44(2) of PAPRA Act, 1995, if it is causing hardship in the development of the project. Further, the definition of colony as given in the PAPRA Act 1995 is as under:-

“Colony” means an area of land not less than one thousand square meters divided or proposed to be divided into plots for residential, commercial and industrial purpose, but does not include any area of abadideh of village falling inside its Lal Lakir or phirny”.

- 7.4 Therefore any area more than 1000sq. meter for development as colony under the said Act has to seek license/ permission to develop the colony. However exemption under clause 44(2) of said Act can be granted by the Govt.
- 7.5 As per provisions of policy for grant of special package of incentives to Super Mega projects issued by the Punjab Govt., the total area of project (interpreted as colony in PAPRA Act 1995) is divided proportionately (%age wise) for development as residential, commercial and industrial components. As per para ii(c) of the policy these components will be allowed to be developed on pro-rata basis, keeping in view the mix of the plotted sale of FSI which means that any specific component/ area cannot be developed on priority. As per the conditions of para iv (b) of the policy "Sale of residential, industrial and commercial components will be allowed in equal proportion till the Promoter constructs the minimum industrial space in a period of 60 months, after which the sale of all components will be freely allowed".
- 7.6 Thus the Super Mega projects are termed as colony as defined in the PAPRA Act-1995 and which is covered under Reg. 6.7 of Supply Code. The electrical scheme ought to be developed/ planned for the entire project as a whole and not in components as provided & clarified in the policy for such projects. The conditions applicable for development are mandatory for the developers.

- 7.7 The petition has been filed for the sake of seeking clarification, even though there is no vagueness or confusion as regards the provisions incorporated. The contents of the petition intend to assign the meaning which amount to incorporating an amendment in the Regulations. Such an incorporation of an amendment cannot be done by means of raising a dispute of the nature as alleged. The legislation function cannot be sought to be invoked by means of filing a petition in the nature as aforesaid.
- 7.8 The submission of Bank Guarantee involves miniscule expenses, which are in the nature of revenue expenses to be recovered from the allottees. As such, the developer is not burdened by any cost or inconvenience for the purpose of protecting the interest of the consumers, who are also the allottees. Thus, the cost component for protecting the interest of the consumers is being recovered by the developer from the consumers by incorporating the said cost in the overall project cost.
- 7.9 The substance of the relief is beyond the scope of petition. It is well settled law that the petition has to be examined as a whole and in the light of the substantive intent of the party filing the petition. The aforesaid aspects cannot be ignored while construing the possibility of relief to be extended to the petitioner. The relief prayed for by the petitioner amounts to a judicial review of the provisions incorporated in the Regulations. The appropriate Commission not being vested with the power of judicial review and could not be competent

to adjudicate for the relief being sought. There is no arbitrariness in the action of PSPCL, which is squarely within the framework of the law laid down by the Commission.

8.0 Commission's findings and Order:

8.1 The petitioner is an Association of Real Estate Developers representing the Colonizers/Builders working in the State of Punjab. The members are involved in the construction of Mega Residential Projects including Integrated Townships, Industrial Parks etc. for which they submit layout plan of these Projects for approval to the Town and Country Planning Department, Punjab. According to the petitioner, though these projects are collectively called Super Mega Mixed Use Integrated Industrial park or Mega Residential Projects but these are in fact a group of small projects like group housing, EWS housing, I.T. Towers, Hotel sites, Industrial plots, Commercial sites etc.. As per the conditions of the licence, it is the responsibility of the developer to lay the LD system in the project area.

After approval of the lay out plan, the developers are required to approach the distribution licensee for the approval of electrical lay out plan for the entire project area and submit the total power requirement. Although development of the whole Mega Project cannot be done in one go but the load requirement is calculated for the entire project area including number of transformers and NoC is obtained from PSPCL. In case any developer approaches PSPCL for providing connectivity to in-complete LD system

in the project area then PSPCL asks for a Bank Guarantee (BG) at the rate of 150% of the remaining LD work of the project. The petitioner alleged that PSPCL is demanding BG by mis-interpreting regulation 6.7 of the Supply Code, 2014.

- 8.2 The main contention of the petitioner is that since the Mega Project consists of many small projects with residential, industrial and commercial sites etc. so the whole project cannot be considered as one project and he has alleged that PSPCL is mis-interpreting regulation 6.7 of the Supply Code, 2014 which provides that partial load can be released subject to the deposit of 150% of estimated cost of the balance work as Bank Guarantee. The petitioner raised the issue regarding definition of balance work particular in context of Mega Projects. The only prayer of the petitioner is interpretation/ clarification of regulation 6.7 of the Supply Code, 2014 with respect to the provision of BG in accordance with regulation 44 of the Supply Code, 2014. The petitioner also filed an IA seeking a stay on the demand notices issued by PSPCL for Bank Guarantee on account of the cost of the LD system in undeveloped area of the Super Mega Project/Mega Project during the pendency of the petition.
- 8.3 PSPCL contested the claim of the petitioner mainly on the ground that the demand of Bank Guarantee at the rate of 150% of the estimated cost of the remaining works is strictly as per the regulation 6.7 of the Supply Code, 2014 which has been incorporated to protect the interest of the consumers. The learned counsel for PSPCL argued that the relief sought

by the petitioner amounts to judicial review of the provisions of the regulation, which is not in the purview of the Commission. The Counsel for the PSPCL also contested the interim relief sought by the petitioner on the ground that such a relief can only be granted on satisfaction of a triple test viz i) prima facie case ii) Balance of convenience iii) irreparable loss and injury. In the absence of satisfaction of a above said essential conditions, the interim relief cannot be granted.

8.4 In its rejoinder, the petitioner submitted that the Super Mega Projects and Mega Projects are not covered under the provisions of regulation 6.7 of the Supply Code, 2014 since these projects are not residential colonies, Multi-storey residential complexes but consist of mixed use development which includes commercial, Industrial and residential components viz multi use sites areas for Schools, Hospitals, Hotels etc. etc. The learned counsel for the petitioner further contended that he is not seeking amendment in Supply Code but if the Commission comes to the conclusion that any amendment has to be done then the Commission is competent to take necessary measures.

8.5 The learned counsel for PSPCL countered the arguments by citing clause 44(2) of PAPRA Act, 1995 which defines 'Colony' as an area of land not less than one thousand square meters divided or proposed to be divided into plots for residential, commercial or industrial purpose, but does not include any area of the abadi deh of a village falling inside its Lal Lakir or "phirmy". Thus for any area more than 1000 Sq. Meter for

development as colony under the said Act the developer has to seek licence/permission to develop the colony. As per State Government policy for grant of a specific package, the total area of the project (i.e colony) is divided proportionately for development as residential, commercial and industrial components. The learned counsel for PSPCL also referred to para (iv)(b) of the State Government Policy on grant of special package of incentives to Mega Projects wherein it has been specified that these components will be allowed to be developed on the pro-rata basis i.e any specific component/area cannot be developed on priority. This fact has also been admitted by the petitioner in its submission made through the main petition.

- 8.6 After going through the submissions and arguments of both the parties, the two issues before us is whether Mega Projects with residential, commercial, industrial sites are covered under regulation 6.7 of the Supply Code, 2014 and whether PSPCL has acted as per regulation 6.7.1(c) of the Supply Code, 2014 in demanding a Bank Guarantee equivalent to 150% of the estimated cost of the balance work which is to be recovered from the developer in case of energisation of incomplete LD system. Before proceeding, let us examine Regulation 6.7 of the Supply Code, 2014 which reads as under:

“6.7 Supply of Electricity to Individual Consumers in the Residential Colonies / Multi- Storey Residential Complexes Developed under bye-laws/rules of the State Govt.

6.7.1 In the event of residential colonies/complexes developed by developers/builders/societies /owners/ associations of residents / occupiers under bye-laws /rules of the State Govt. not covered under Regulation 6.6 above, the residents/occupiers of such colonies /complexes shall obtain individual connections directly from the distribution licensee.

The release of such connections shall be governed by the following terms and conditions:-

a) The developer/ builder/society/owners/ association of residents/ occupiers shall submit the complete lay out plan of the electrical network proposed to be erected in the colony and other documents prescribed by the licensee along with the processing fee as per Schedule of General Charges and obtain the preliminary NOC from the licensee. The NOC shall be issued by the licensee within 45 days of the receipt of proposal complete in all respects along with requisite documents. In case the developer/ builder/ society/ owners/ association of residents/ occupiers withdraw his request or fails to comply with the conditions within stipulated time, the processing fee shall be forfeited.

Note: The developer/builder/society/owner/association includes any agency whether Govt./ Local body or private that constructs the colony/ complex.

b) For planning the L.D system of such colonies/complexes or to issue NOC, the following guidelines may be adopted by distribution licensee for assessment of expected connected load/ demand of such colonies/complexes:-

Sr.No.	Name of category	Load (kW)
1	Residential plots	
	1. Up to 100 (Sq. Yards)	5
	2. From 101- 200 (Sq. Yards)	8
	3. From 201-250 (Sq. Yards)	10
	4. From 251 -350 (Sq. Yards)	12
	5. From 351- 500 (Sq. Yards)	20
	6. Above 500(Sq. Yards)	30

2	Residential flats 1. One Bedroom Set 2. Dwelling unit (single room flat) under basic service to urban poor under JnNURM/EWS flats. 3. Two Bedroom Set 4. Three Bedroom Set 5. Four Bedroom Set 6. Five Bedroom Set	5 1.5 7 10 12 15
3	Commercial Area 1. Shop 2. Other Commercial plot(s) for dispensary, school, hospital etc. including other common services falling under commercial category	10 35 Watts per sq. yard
4	Other load for common services	As per requirement

Note: One third of the total residential load and 40% of all commercial load as calculated above will be taken as colony load, which will be further increased by 40% to take into account future growth of load. The load shall be converted in kVA by using a power factor of 0.90.

- c) The developer/builder/society/owners/association of residents/occupiers shall deposit the estimated cost of LD system of the colony as per approved layout sketch & get it executed from the distribution licensee. The expenditure incurred by the distribution licensee for erection of 11 kV feeder(s) including breaker from the feeding sub-station to the connection point of the internal distribution system shall also be borne by the developer/builder/society/owners/association of residents/occupiers. The expenditure of L.D system including service cable up to the metering point of each consumer & 11 kV system shall include cost of the material, labour plus 16% establishment charges there on. If the connection is released to the colony/ complex by tapping the existing 11kV feeder, the cost of service line and proportionate cost

of common portion of line including breaker shall be recoverable. The phase wise development of LD system may be carried out by licensee as per requirement but any cost escalation over a period of time shall be borne by the licensee. The distribution licensee shall be responsible to release individual connections within the time frame specified in regulation 8.

However, the developer/builder society/ owners/ association of residents/occupiers shall have the option to execute the works of internal L.D system of the colony/complex of its own in accordance with the approved layout plan/sketch approved by the distribution licensee subject to payment of 15% supervision charges on the labour cost to the licensee. After its completion and inspection by the Chief Electrical Inspector to Govt. of Punjab, the distribution licensee will take over the L.D system which will be connected to its distribution system. The distribution licensee shall thereafter maintain L.D system at its own cost. In case the developer requests for energisation of incomplete LD system, the same shall be allowed provided the developer furnish a Bank Guarantee (BG valid for 5 years) equivalent to 150% of the estimated cost of balance works. This amount of Bank Guarantee shall keep on reducing with the completion of remaining works of the LD system. After submission of Bank Guarantee to the satisfaction of licensee, it shall be the responsibility of the licensee to release connections to the residents/occupiers of the colony/complex according to the time frame specified in regulation 8.

- d) *In case the expected demand of the colony/complex computed as per (b) above exceeds 4000 kVA, the developer/ builder/ society/ owners/ association of residents/occupiers shall also pay the 'System Loading Charges' as provided in the cost data approved by the Commission in addition to the charges payable as per regulation (c) above. In such a case, the erection or augmentation of grid sub-station, if required, shall be carried out by the licensee at its cost. However, in case the*

grid sub-station is required to be erected in the colony, the developer/ builder/ society/ owners/association of residents/ occupiers shall provide the space and right of way free of cost, if permissible or at nominal token money @ of Rs.1 per sq. metre. In case the cost of grid sub-station and/or HT/EHT line including bay/breaker has been deposited by an authority under the State Act viz. PUDA/GMADA/GLADA etc., the 'System Loading Charges' for the same shall not be recovered from the developer of such colony/complex.

- e) *Each resident/occupant shall submit A&A form for supply of electricity to the distribution licensee in accordance with regulation 6 of Supply Code and connected load of each applicant shall be determined/ computed as per regulation 4.5 of the Supply Code. The distribution licensee shall release the connections within time limits prescribed in regulation 6.8 & 8.*
- f) *A developer/builder/society/owner/ association of residents/ occupiers shall obtain separate connection for common services under relevant category. The developer shall also be responsible to lay service cables up to the metering point of individual occupier's premises/common service connection points at its cost. In case meter is installed outside the consumer's premises, the service cable from the meter up to the main switch of the consumer shall also be provided at its own cost by the developer. The distribution licensee shall not recover any Service Connection Charges from individual consumers. However, applicant shall deposit Security (consumption) and Security (meter) as per Schedule of General Charges."*

8.7 From the comprehensive reading of the regulation 6.7 of the Supply Code, 2014, it is evident that this regulation is applicable where supply is provided by the distribution licensee to individual occupants/consumers residing in residential colonies and multi-stored complexes developed under bye-laws/rules of State Government. As mentioned in

sub-regulation 6.7.1, the regulation 6.7 is not applicable to Single Point Supply connections covered under regulation 6.6 of the Supply Code. Thus, broadly the Supply Code, 2014 specifies procedure to deal with two categories of colonies/complexes developed by promoters under bye-laws/rules of State Government. In the first case, the developer opts for getting Single Point Supply under regulations 6.6 and acts as Franchisee of the distribution licensee. The LD system is laid and maintained by the developer. The supply is made available to such colony at single Point for further distribution to the individual occupants by the Franchisee as per the terms & conditions of franchisee agreement signed between the developer and the distribution licensee as per 7th proviso to section 14 of the Electricity Act, 2003. In the second case, the developer opts for grant of electricity connections to individual occupants directly by the distribution licensee as per the conditions specified in regulation 6.7 of the Supply Code, 2014. The LD system is laid by the developer, which is taken over by the distribution licensee after its clearance from the Chief Electrical Inspector and thereafter the system is maintained by the utility. The issue raised by the petitioner is with respect to colonies/complexes covered under regulation 6.7 of the Supply Code, 2014 where the internal distribution system i.e LD system is provided by the developer and individual connections are released to the occupiers by the distribution licensee.

8.8 The word 'colony' or classification of colonies/complexes viz Super Mega Project or Mega Project or Mega Residential Project etc. has not been defined in the Supply Code, 2014. Thus for understanding the rules/regulations governing development of such sites, we may refer to the conditions/rules including definitions provided in the bye-laws/rules or Act of the State Government. The definition of colony as given in the PAPRA Act 1995 is as under:-

“Colony” means an area of land not less than one thousand square meters divided or proposed to be divided into plots for residential, commercial and industrial purpose, but does not include any area of abadideh of village falling inside its Lal Lakir or phirny”.

The Mega Projects, as referred to by the petitioner, are developed under the bye-laws/Act of the State Government. The petitioner has failed to convince the Commission or produce any documentary evidence that the Mega projects, as brought out in the petition, are not covered under the definition of 'colony' as provided in the bye-laws of the State Government. So we agree with the contention of the respondent that Mega Projects with multi use area are covered under the definition of 'Colony' and thus are covered under regulation 6.7 of the Supply Code, 2014. Moreover, sub-regulation 6.7.1(b), which provides for assessment of expected load/demand of such colony, also recognises the fact that any residential colony/complex under regulation 6.7, in addition to residential load, will also be having commercial

or motive load including dispensary, school, hospital etc.. The word 'etc' at the end of words dispensary, school, hospital, demonstrates that the list is not exhaustive but indicative only. **Thus all residential colonies/complexes including mixed land use projects/Mega Projects having different components of residential, industrial, commercial sites such as school, hospital, hotels etc. developed under the bye-laws of the State Government and where supply of electricity to individual consumers is released directly by the distribution licensee, are covered under Regulation 6.7 of the Supply Code, 2014.**

- 8.9 Now we will examine the second question regarding demand of PSPCL to recover BG at the rate of 150% of the estimated cost of in-complete LD works. As per the State Government bye-laws, the developer first approaches the competent authority of the concerned Govt. Department to get the approval for development of an area. After getting the approval of the State Government, the developer, as per the conditions of the licence, approaches PSPCL for approval of the complete lay out plan of the electrical network proposed in the project area. After assessing the demand of such colonies/ complexes, the lay out plan of electrical network is approved by the competent authority of the distribution licensee. A "No Objection Certificate" (NoC) and letter of approval of LD system is issued wherein total expected load/demand including length of HT/LT lines, number & capacity of distribution transformers along with estimated cost for laying

the electrical system in the project area is mentioned. The NoC is issued subject to certain conditions including the liabilities of the developer as provided in regulation 6.7 of the Supply Code, 2014. The work is taken in hand by the developer only after acceptance of all the conditions imposed by the distribution licensee and the State Government. After acceptance of all the conditions by the developer including liability to submit the BG in case PSPCL is requested to energise the in-complete LD system of the colony, there is no justification to raise objections on this issue at the time of seeking connectivity from the distribution licensee.

The Govt. may have created various categories such as Super Mega Project/Mega Project etc. and provided various incentives for planned development of some sites but for providing connectivity to the internal LD system of such colony or project area to the distribution main of the licensee, the complete project area is treated as one unit. The NoC is issued by PSPCL for the electrical network of the project area for which the developer has got the licence from the State Government and there is no occasion to treat different sites inside the project area as independent locations or units for the purpose of providing connectivity with distribution system.

- 8.10 The connection to some allottees/occupiers may be required to be released at 11 kV but the responsibility to lay the 11 kV line and install distribution transformers as per the approved sketch is that of the developer. The promoter/ developer may

enter into any bilateral arrangement with such allottees for providing electricity connection. As per regulation 6.7.1 (e) & (f) of the Supply Code, 2014, the occupants only submit A&A form along with Security (consumption) & Security (meter) to get connection from the licensee and it is the responsibility of the developer to lay electrical network up to metering point. Since no expenditure is incurred by the distribution licensee to provide electric line/plant so as per regulation 6.7.1(f), no service connection charges are recovered from the consumers by the distribution licensee. Thus the argument of the petitioner that since the consumers with load above 100 kW are required to provide distribution transformers so he has no responsibility for providing DTs is devoid of any merit. The provisions of regulation 9 of the Supply Code, 2014 are not applicable in this case.

- 8.11 Regulation 6.7.1(c) of the Supply Code, 2014 provides that the developer shall deposit the estimated cost of LD system of the colony as per approved lay out sketch and get it executed from the distribution licensee. Thereafter, the distribution licensee may develop the area in a phased manner but once the developer deposit the cost then it is the responsibility of the licensee to develop the LD system and release connections to applicants. Any cost escalation is also borne by the licensee. However, the developer has been given an option to execute the work at its own level as per approved lay out sketch by payment of 15% supervision charges on the labour cost of the licensee. Keeping in view

the fact that generally these projects/colonies/complexes cannot be developed in one go, a specific provision for the benefit of the developers has been incorporated in the regulation which specifies that a part of the LD system or incomplete LD system can be energized provided the developer furnish a Bank Guarantee (valid for 5 years) equivalent to 150% of the estimated cost of balance work and this amount of Bank Guarantee shall keep on reducing with the completion of remaining work of the LD system. So where as interpretation of words 'balance works' is concerned, there is no ambiguity as **the works which are yet to be completed as per the lay out sketch of the LD system approved by the distribution licensee, is the 'balance work'**. The clause for BG has been introduced to balance the interest of all the stakeholders i.e the developer, the licensee and the consumer. As per State Government bye-laws, it is the obligation of the developer to lay the complete LD system of the project area. Since it may not be possible to develop the entire area in one go and it may also be difficult for the developer to deposit the entire cost of balance works so to ensure that any occupier is not deprived of the electric connection, this provision of BG has been introduced. Here, it is important to refer to section 43 of the Electricity Act, 2003 which provides that every distribution licensee shall on an application by the owner or occupier of any premises should supply electricity to such premises within one month after receipt of application requiring such supply. Thus, it is the universal obligation of the distribution

licensee to provide electricity connection to an applicant in his area of supply. In case any developer fails to lay down the balance work after getting connectivity from the licensee or abandons the project, then under such circumstances, it shall be the liability of the distribution licensee to provide electricity connection to any applicant. Under such conditions, the licensee has to incur expenditure, which is otherwise the liability of the developer as per bye-laws of the State Government and conditions of his licence. There is no merit in the contention of the petitioner that check & balances are exercised by the departments of State Government while issuing possession letters to allottees which are essential to get electric connection and thus there shall be no liability of distribution licensee regarding release of connections. The functions of the distribution licensee are governed by the provisions of Electricity Act, 2003 & the Regulations framed under the Act and the utility has to perform its duties as per applicable law irrespective of the actions taken by other organs of the State Government.

8.12 Also the policy laid down by the State Government for grant of special package of incentives to Super mega projects annexed with the petition provides that sale of residential, commercial and industrial components will be allowed in equal proportion till the promoter constructs the minimum industrial space in a period of 60 months. So, all components of the project area are required to be developed simultaneously as provided in the policy. Thus the argument

of the petitioner that once a particular component is ready, PSPCL should provide connectivity to such area without insisting on BG is devoid of any merit. The regulation provides for BG for the 'balance works' which are yet to be developed as per the lay out plan approved by the distribution licensee.

- 8.13 It has also been provided in the regulation 6.7.1(c) that after submission of Bank Guarantee, it shall be the responsibility of the licensee to release the connection to the occupier of the colony/complexes within a time frame specified in the regulation. Thus the consumers have been protected from undue harassment in case the developer abandons his responsibility to lay the electrical network in the project area for which he has got the licence. The counsel for PSPCL also submitted a copy of the communication dated 18.06.2013 from Spl. Secretary/Department of Housing & Urban Development, GoP wherein it has been clarified that as per the suggestions of the Promoters, no BG (equivalent to 25% of the cost of internal development works) shall be taken by the State Government since PSPCL is taking a BG at the rate of 150% of the estimated cost of electric works. Thus, it is amply clear that all the developers/promoters are well aware of the conditions of licence granted to them by the State Government and also the provisions of Supply Code, 2014 including the provision of a BG. Even if there is some financial liability involved in providing BG, the interest of the

general public and the distribution licensee cannot be wished away.

Thus, as per regulation 6.7.1 (c) of the Supply Code, 2014, any developer requesting for energisation of incomplete LD system has to furnish a Bank Guarantee equivalent to 150% of the estimated cost of the balance work to the distribution licensee. Hence the demand of BG raised by the PSPCL from developers of Mega Projects, as brought out by the petitioner, is in accordance with regulation 6.7 of the Supply Code, 2014.

The petition along with IA is disposed of accordingly.

Sd/-
(S. S. Sarna)
Member

Sd/-
(D.S.Bains)
Chairman

Dated: 05.05.2017
Chandigarh