

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

**Petition No. 46 of 2013
Date of Order: 24.10.2013**

In the matter of: Petition under clause 51 of the conditions of supply for necessary interpretations to the effect:-

- (i) That date of approval of construction plan of a housing colony by a competent authority has to be taken as cut off date for applying rules and regulations prevalent at that time and not the date when the connection is applied.
- (ii) Whether the clause 9.2 of ESMI-2011 could be made applicable on the petitioner, whose construction plan was sanctioned by the competent authority on 15.7.2009 and the construction has been done as per that construction plant?
- (iii) Whether the Commercial Circular 35/2009 or clause No.36.8 of ESMI-2011 could be made applicable on the petitioner, whose construction plan was sanctioned by the competent authority on 15.7.2009?

And

Further for issuance of necessary directions to the respondent to release the electricity connection to the petitioner on 11 KV supply.

AND

In the matter of : Punjab State Federation of Co-operative House Building Societies Ltd. (HOUSEFED PUNJAB) through its Managing Director, SCO No.150-152, Sector 34-A, Chandigarh.

Versus

Punjab State Power Corporation Limited through its Managing Director, The Mall, Patiala

Present: Smt.Romila Dubey, Chairperson
Shri Virinder Singh, Member
Shri Gurinder Jit Singh, Member

ORDER

This petition has been filed by Punjab State Federation of Co-operative House Building Societies Ltd. (Housefed Punjab) under clause 51 of the 'Conditions of Supply' (CoS) approved by the Commission for Punjab

State Power Corporation Limited (PSPCL), seeking interpretation of the following:-

- (i) Whether the date of approval of construction plan of a housing colony by a competent authority has to be taken as cut off date for applying rules and regulations prevalent at that time and not the date when the connection is applied?
- (ii) Whether the clause 9.2 of ESMI-2011 could be made applicable on the petitioner, whose construction plan was sanctioned by the competent authority on 15.7.2009 and the construction has been done as per that construction plan?
- (iii) Whether the Commercial Circular 35/2009 or clause No.36.8 of ESMI-2011 could be made applicable on the petitioner, whose construction plan was sanctioned by the competent authority on 15.7.2009?

2. The petitioner has stated that it applied for sanction for construction of 912 number flats to the Nagar Council, Banur, on 14.01.2009. The sanction was accorded by the Nagar Council, Banur, vide letter dated 15.07.2009. As per then prevailing rules and regulations of PSPCL, the petitioner was required to construct local distribution system within the housing complex and adequate infrastructure through Government approved contractor at 11 kV. The petitioner accordingly kept the space for 11 kV sub-station for supplying electricity to the residents of the housing complex. The site plan of the petitioner was approved by the Nagar Council, Banur, accordingly. The petitioner has further submitted that as per Sales Regulations issued by erstwhile PSEB, the predecessor of the respondent, PSPCL, a connection for bulk supply could be given on 11 kV supply line if the load is upto 5 MW and if the load is above 5 MW, then the connection would be released only on 33 kV as per Regulation No.4.4 of the Sales Regulations which reads as under:-

“4.4 SUPPLY VOLTAGE FOR BULK SUPPLY CONSUMERS

- 4.4.1 The existing Bulk Supply consumers having load of 5 MW and above and getting supply at 11 kV shall not be required to convert their system to 33/66 kV or higher voltage.

- 4.4.2 If an existing Bulk Supply consumer applies for extension of load and total load after extension exceeds 5 MW, he shall be allowed extension in load provided he gets his supply converted to 33/66 or higher voltage.
- 4.4.3 The prospective consumers requesting for release of new connections with load exceeding 5 MW shall be given connections only on 33 kV or higher voltage as is technically feasible”.

3. The petitioner applied to the respondent for release of electricity connection for contract demand of 3625 kVA and load of 3262.708 KW vide letter dated 21.08.2012 after completion of construction of the housing complex. The Chief Engineer/Commercial sent the said letter to the SDO/Distribution Sub-Division to check the load calculation as per Commercial Circular No.35/2009. This circular had been issued by the respondent on 15.10.2009 after the Nagar Council had sanctioned the construction plan of the petitioner on 15.07.2009. The Commercial Circular No.35/2009 had been issued without the approval of the Commission in violation of the provisions of the Electricity Act, 2003. The AEE/PSPCL, Banur informed the Managing Director of the petitioner vide letter dated 17.12.2012 that load demanded works out to 4953.564 kW and the same could be released on 66 kV and for that purpose the petitioner was required to construct 66 kV Sub-Station. The petitioner has submitted that the refusal of the PSPCL to release electricity supply to the petitioner for its housing complex at 11 kV was totally wrong and illegal. The respondent had framed its Electricity Supply Instruction Manual (ESIM)-2011 on 31.03.2011. As per rules prevalent at the time of sanction of construction plan, the supply was required to be given on 11 kV if the load of a colony was less than 5 MW. In the instant case, the petitioner had demanded contract demand of 3625 kVA with 3262.708 kW connected load and as such the load was less than 5 MW, therefore, PSPCL was bound to give supply at 11 kV line.

The petitioner has further submitted that the calculations made by the respondent on the basis of Commercial Circular No.35/2009 was totally wrong and illegal because this circular had been issued after the construction plan of

the housing complex had been sanctioned. The petitioner had kept provision for 11 kV sub-station as per the regulations applicable at the time of sanction of the construction plan and has no land for constructing 66 kV Sub-Station. The petitioner has further submitted that PSPCL was releasing connection to GAMADA on 11 kV but not to the petitioner in violation of Article 14 of the Constitution of India. The petitioner was required to give possession of the flats to the allottees before 31.12.2012 but due to non-availability of Electricity Supply the possession of the flats could not be given to the allottees till date.

The petitioner has submitted that the matter requires interpretation of provisions of the regulations framed by the Commission. The petitioner has prayed that the present petition be allowed and directions be issued to the respondent to release the electricity connection to the petitioner on 11 kV supply in the interest of justice.

4. The petition was admitted vide Order dated 14.08.2013 and PSPCL was directed to file reply by 30.08.2013 with a copy to the petitioner. PSPCL filed reply vide memo No.6187 dated 30.08.2013. The petitioner submitted that it required time to file rejoinder. The petitioner was directed to file rejoinder by 10.09.2013 vide Order dated 05.09.2013. Further, during hearing on 03.09.2013, the Commission also observed that the matter could be conveniently resolved through a meeting between the petitioner and PSPCL including single point connection for the colony and directed both the parties to hold a meeting and to put up agreed submissions, if possible, before next date of hearing on 17.09.2013. PSPCL, accordingly filed the minutes of meeting held on 24.09.2013 and the view points of PSPCL Minutes of Minutes dated 24.09.2013 are as under:-

- “1. Housefed does not agree to take electricity connection under clause 8.1 of Conditions of Supply due to non-availability of technical manpower to handle operation and maintenance of electrical equipment.
2. Housefed, Punjab has not submitted any new submission and proposal for reduction in projected load.

3. PSPCL advised Housefed for approval of their electric scheme of the Housefed Complex at Banur under clause 8.5 of Conditions of Supply with the provision of 66 kV compact type Sub-Station for which minimum land shall have to be provided by Housefed.
4. Housefed demanded 11 kV supply in view of letter no.378 dated 28.07.2010 issued by PSPCL vide which Housing and Urban Development Department, Punjab was requested to make provision of 40 mtrs. X 70 mtrs. land for erection of 33 / 66 kV Sub-Station to cater the electricity load in the case of Mega Housing Projects, but the scheme of Housefed complex at Banur has been approved in July 2009.
5. It was brought on record by PSPCL that Housefed, Punjab had applied for approval of electrical scheme of the housing complex on 21.08.2012, as such electrical scheme is required to be finalized / approved as per instructions applicable on 21.08.2012 i.e. as per clause-8 of Conditions of Supply applicable w.e.f. 01.04.2010 and duly approved by the Commission. Housefed, Punjab needed to get revised their layout plan from the Nagar Council Banur with provision for 66 kV Sub-Station.
6. PSPCL is ready to provide electricity supply at 11 kV voltage subject to furnishing of 150% Bank Guarantee against left over internal LD system including 66 kV Sub-Station alongwith allied equipments & all civil works”.

The petitioner filed rejoinder during hearing on 01.10.2013. The petitioner has reiterated all the points taken in the petition and has further submitted that the ‘Conditions of Supply’ was neither a rule nor a regulation and was not binding upon the petitioner. The respondent can ask the petitioner to comply with the rules and regulations framed by this Commission as per Section 181 of the Electricity Act, 2003. The petitioner has also submitted that the licensee can not on its own issue any circular or instructions and that ESIM was also not a regulation and mere inclusion of CC 35/2009 in the ESIM would not make it binding upon the petitioner. Further, CC 35/2009 was only meant for working

out the capacity of the transformer, HT system and LD system and has nothing to do with the release of connection on a particular contract demand.

The petitioner repeated its prayer to allow the petition and to issue the necessary directions to the respondent to release the electricity connection to the petitioner on 11 kV supply in the interest of justice.

5. After hearing the arguments of the petitioner and respondent on 01.10.2013, the Commission closed the hearing of the petition and directed the parties vide Order dated 04.10.2013 to file written submissions by 08.10.2013. The Order was reserved. Only the petitioner has filed the written submissions on 10.10.2013 and has cited a recent decision of Hon'ble High Court of Punjab and Haryana in CWP No.10644 of 2010 to submit that the 'Conditions of Supply' was neither a rule nor a regulation and was not binding upon the petitioner and to have an enforceable action against any consumer, the authority must be derived from the provisions of the Electricity Supply Act, 2003 or the Regulation made under Section 181 of the said Act as per procedure prescribed. The petitioner has again reiterated its prayer.

6. The Commission has carefully gone through the submissions made by the petitioner and PSPCL and observes as under:

The guidelines issued by PSPCL vide Commercial Circular No. 35/2009 circulated vide memo no. 56819-57619 dated 15.10.2009 has neither been approved by the Commission nor it draws its source from any regulations made by the Commission or any provision of the Act.

Keeping aside the legal status of ESIM, the clause 36.8 of ESIM suggests that the procedure laid down is just guidelines for the field officers of the respondent for assessment of load requirement purely for issuance of NOC by PSPCL to PUDA/PUDA approved colonies and for designing LD system of a colony. The note below clause 36.8 of ESIM states that *"this is to be used only for planning purposes. In actual practice, the load of the consumers shall be computed as per clause 9 of Conditions of Supply."*

As per clause 8.5 of Conditions of Supply (CoS), in the event of a developer/owner/association of residents/occupants not opting for one point supply, residents/occupants will obtain individual connections from PSPCL. In

such case, as per clause 8.5(i) of CoS, the LD system including receiving substations (at a voltage commensurate with the total load) will be provided at the cost of owner/developer and further as per clause 8.5(iii) of CoS, each resident/occupant will submit an application for supply of electricity to PSPCL in accordance with Clause 7 of CoS.

It is clear that in case individual connections are to be released to residents/occupants in the residential colonies under clause 8.5 of CoS, the release of connections and determination of load shall be governed by Clause 7 and Clause 9 of CoS.

Thus, the assertion of PSPCL to release load on 66 kV by assuming the load as 4953.564 kW, calculated as per the guidelines issued vide CC No. 35/2009 is not in accordance with the relevant provisions of CoS. The guidelines issued vide CC No. 35/2009 are for design and planning of LD system and cannot be used to determine the supply voltage which is to be decided as per Clauses 4 and 5 of CoS.

The Commission, therefore, directs that PSPCL shall first calculate actual load of individual occupants/consumers as per clause 9 of CoS and depending upon the total load of the colony arrived at as per clause 9 of CoS, the supply voltage shall be determined as per Clauses 4 and 5 of CoS and connection of electricity supply shall be released, accordingly.

The petition is disposed of in terms of above directions.

Sd/-

(Gurinder Jit Singh)
Member

Sd/-

(Virinder Singh)
Member

Sd/-

(Romila Dubey)
Chairperson

Chandigarh

Dated: 24.10.2013