

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

Petition No. 58 of 2017
Date of order: 11.06.2018

Present: Ms. Kusumjit Sidhu, Chairperon
Sh. S.S. Sarna, Member
Ms. Anjuli Chandra, Member

In the matter of: Petition under section 142 and other relevant provisions of the Electricity Act, 2003 read with regulation 9 and 10 of PSERC (Electricity Supply Code and Related Matters). Regulations, 2007 and clause 44 of the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2014 and other relevant provisions of the regulations framed by this Commission, praying for taking necessary action against the respondents under section 142 of the Electricity Act, 2003, for raising impugned demand of Rs.11,26,971, vide letter dated 31.05.2017 from the petitioner, on account of Less Service Connection Charges charged at the time of extension of load on 27.08.2008, and further for raising the said impugned demand by way of supplementary bill dated 13.09.2017 and later on adding the said impugned demand in the monthly bill dated 06.10.2017 issued for the month of September, 2017, being in violation of provisions of regulation 9 and 10 of PSERC (Electricity Supply Code and Related Matters), Regulations, 2007, provisions of the Electricity Act, 2003 and Limitation Act, 1908; and further for setting aside the above said impugned demand, supplementary bill dated 13.09.2017 and monthly bill dated 06.10.2017 wherein the above said impugned demand of Rs.11,26,971 has been added in the monthly energy bill as arrears.

Further for setting aside the Letter Memo.No.1169 dated 09.08.2017 (Annexure P-7) issued by the respondent no.3, whereby the representation made by the petitioner against the impugned demand of Rs.11,26,971 raised vide letter dated 31.05.2017, has been dismissed by passing a totally non speaking order and further the impugned demand has been upheld, having been issued in violation of principle of natural justice and equity and provisions of the Electricity Act, 2003 and Supply Code-2007.

In the matter of: M/s A.V.N. Manufacturing Co. (a partnership firm) through its partner, Vaneet Kapoor s/o Sh. Arun Kapoor, V.P.O. Randhawa Mansandha, Jalandhar-144 004.

.....Petitioner

Verus

1. Punjab State Power Corporation Ltd., through its Chairman, The Mall, Patiala.
2. The Chief Engineer, Commercial, Punjab State Power Corporation Ltd., The Mall, Patiala.
3. Assistant Executive Engineer, Commercial Sub Division, Unit No.-1, Under East Division, Punjab State Power Corporation Ltd., Jalandhar.

.....Respondents

ORDER

A.V.N. Manufacturing Co. (AVN), has filed this petition under section 142 and other relevant provisions of the Electricity Act, 2003 read with regulation 9 and 10 of Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2007 and clause 44 of the Punjab State Electricity Regulatory Commission (Electricity Supply Code and

Related Matters) Regulations, 2014 and other relevant provisions of the regulations framed by the Commission. The petitioner has prayed for taking necessary action against the respondents under section 142 of the Electricity Act, 2003, for raising impugned demand of Rs. 11,26,971, vide letter dated 31.05.2017, on account of Less Service Connection Charges charged at the time of extension of load on 27.08.2008, and further for raising the said impugned demand by way of supplementary bill dated 13.09.2017 and later on adding the said impugned demand in the monthly bill dated 6.10.2017 issued for the month of September, 2017, and for setting aside the above said impugned demand, supplementary bill dated 13.09.2017 and monthly bill dated 06.10.2017 wherein the above said impugned demand of Rs. 11,26,971 has been added in the monthly energy bill as arrears.

2. The Petition was admitted by the Commission vide order dated 08.11.2017 directing PSPCL to file reply by 30.11.2017 and rejoinder, if any, may be filed by AVN by 15.12.2017. PSPCL vide memo no. 5860 dated 05.12.2017 filed reply in the petition and AVN submitted rejoinder to the reply filed by the PSPCL on 01.02.2018. PSPCL vide memo. no. 1111 dated 15.02.2018 filed rejoinder through Addl. SE, East Division, Jalandhar to the rejoinder filed by AVN. PSPCL, through Chief Engineer/ ARR & TR, Patiala, further vide memo. no. 6450 dated 21.02.2018 filed rejoinder to the rejoinder filed by AVN along with the requisite affidavit. The petition was taken up for hearing on 11.04.2018 and vide Order dated 13.04.2018 PSPCL was directed to submit on an affidavit, the actual expenditure incurred by PSPCL for release of additional load to AVN, by 02.05.2018 and AVN was directed to file

comments, if any, by 09.05.2016. PSPCL vide memo. no. 2798 dated 19.04.2018 filed affidavit in compliance of the order dated 13.04.2018. The petition was taken up for hearing on 16.05.2018 ,wherein PSPCL submitted that while furnishing the actual cost incurred, they had not included establishment/ supervision charges in the affidavit furnished earlier . PSPCL was directed to submit on fresh affidavit the actual cost including establishment/ supervision charges incurred to release the extension in load of AVN. PSPCL on 16.05.2018, in compliance of the direction, submitted the fresh affidavit in continuation of the earlier affidavit dated 19.04.2018. After hearing the parties, on 16.05.2018, the order in the petition was reserved.

3. The submissions made by AVN in the petition are summarized as under:

- i) AVN is aggrieved of the impugned demand of Rs. 11,26,971 raised by the PSPCL on account of less Service Connection Charges charged from AVN on 27.08.2008, in violation of the clause 9 and 10 and other relevant provisions of the Supply Code - 2007, the Electricity Act, 2003 and the Limitation Act.
- ii) AVN had taken an electricity connection from PSPCL. In the year 2008, AVN wanted to extend the manufacturing facilities and needed more load and thus submitted a requisition form and deposited earnest money on 08.04.2008 for extension of load/ demand of 600 KW/ 660 kVA making total load / demand of 748.200kW/ 828 kVA on 11 kV Supply Voltage. PSPCL agreed to the same and AVN submitted A&A form on 27.08.2008 with PSPCL.

iii) PSPCL issued a demand notice No. 3081 dated 24.10.2008 and AVN was asked to submit test report and deposit Rs. 18, 10,546 as Service Connection Charges (Estimated Cost) and Rs. 4,61,000 as balance Advance Consumption Deposit (ACD).

iv) The Electricity Act, 2003 came into force on 10.06.2003 and before that the Indian Electricity Act, 1910 was in existence. As per section 181 of the Electricity Act, 2003 the State Commissions may by notification, make regulations consistent with the Electricity Act, 2003. Punjab State Electricity Regulatory Commission (PSERC) using the power under section 50, 181 and other sections of the Electricity Act, 2003 framed PSERC (Electricity Supply Code and Related Matters), Regulations, 2007. Clause 5 & 6 of the PSERC (Electricity Supply Code and Related Matters), Regulations, 2007 (Supply Code- 2007) deal with the duty of Licensee to supply on request and procedure for release of connection/ grant of additional load respectively. Clause 9 of the Supply Code deals with the Power to recover expenditure/ Service Connection Charges and clause 9.1.2 deals with the recovery of expenditure for grant of additional load. The relevant parts of the above said clauses are reproduced here under.

5. Duty of Licensee to supply on request

5.1 Every Licensee shall, on receipt of an application from the owner or occupier of any premises, provide supply of electricity to the premises within the time specified in Regulation 6. The application will be submitted in the form prescribed by the Licensee for this purpose. Such forms will be available at notified offices of the Licensee on payment of fee as determined by the Commission. A specimen of the application form will also be available on the website of the

Licensee and can be downloaded, if required. In such a case, the cost of the application form will be paid by the applicant at the time of its filing.

5.5 Where new or additional load/demand exceeds 500 KW/500 KVA, the applicant will first obtain feasibility clearance in the prescribed requisition form after payment of earnest money specified by the Licensee. The Commission will nominate one representative of the industry to the committee for feasibility clearances at the Head Office level. The applicant will also intimate the proposed commissioning schedule along with the requisition form. The requisition form will be available free of cost in the notified offices of the Licensee and on its website. The earnest money will not exceed 10% of initial security as specified in the Schedule of General Charges.

5.6 The feasibility clearance will be granted by the Licensee within thirty days of the receipt of request or such extended period as approved by the Commission. The applicant may thereafter submit the application adjusting the amount of earnest money towards initial security.

The Licensee will within fifteen days of the receipt of application for feasibility clearance seek approval of the Commission for extension of period in a case where such clearance is likely to take more than thirty days.

6. Procedure for Release of Connection/additional load.

6.1. The Licensee, will after receipt of the application, inform the applicant through a notice henceforth called Demand Notice which will specify;

- (a) Security (works) required to be deposited by the applicant under Regulation 19 of these Regulations ;
- (b) other terms required to be accepted by the applicant under Regulation 12 of these Regulations ;
- (c) submission of NOC by the applicant, as per statutory requirements, wherever applicable ;
- (d) submission of electrical contractor's test report by the applicant ;
- (e) any other compliances to be met by the applicant.

The terms and conditions specified in the Demand Notice once issued will not be altered except when necessitated by change in applicable laws.

9. Power to recover expenditure

9.1 Subject to the provisions of the Act and these Regulations and subject further to such directions, orders or guidelines which the Commission may issue, every Licensee is entitled to recover from an applicant requiring supply of electricity or additional load/demand, any expenses that the Licensee may incur in providing the facility. The expenditure recoverable by the Licensee will be computed as detailed in Regulations 9.1.1, 9.1.2 and 9.1.3.

9.1.2 For additional load

(i) Domestic, Non-Residential, Industrial and Bulk Supply categories:

(b) Where total load including existing load exceeds 500 KW/500 KVA, the consumer will pay per KW/KVA charges for the additional load/demand as approved by the Commission or the actual expenditure for release of load/demand, whichever is higher.

(c) In case of a consumer with supply voltage of 33000 volts and above, the consumer will only be liable to pay the cost of the service line and proportionate cost of back-up/common line (33000 volts or above) including bay, if any.

Provided that where a HT/EHT consumer having a sanctioned load/contract demand exceeding 500 KW/500 KVA who has paid the actual cost of HT or EHT service line or feeder, requests for additional load and such load can be fed from the same line without any augmentation, then the HT consumer would be liable to pay only the proportionate cost of HT main and feeding substation. A 33000 volts or EHT consumer would be liable to pay only the proportionate cost of back up/common line (33000 volts or above) up to the feeding substation including bay.

10. Standard cost data

10.1(a) The Licensee will within 3 months of the notification of the Supply Code submit data in respect of:

- (i) per KW/KVA charges for the cost of service line and proportionate cost of main and feeding sub-station payable by different categories of applicants;
- (ii) per BHP/KW charges under the AP category; and
- (iii) standard rates for provision/augmentation of feeders (per km basis) for different capacities and at different voltages.

(b) The Commission will with or without modification approve these rates within 2 months of their submission. **Till such time as these rates are approved by the Commission, the Licensee will continue to recover expenditure at existing rates specified in the Schedule of Service Connection Charges.**

10.2 *The Commission will thereafter annually approve rates effective for the period 1st April to 31st March. The Licensee will notify and place the annual rates approved by the Commission on its website by the 1st of April each year. The initial estimate for the cost of erecting/augmenting an electric line or electrical plant in order to extend supply will be based on these rates.*

10.3 *The Licensee will by the 31st of December each year apply for revision of these rates, where necessary. In case the Licensee does not submit an application for such revision, the Commission may suo motu approve rates for the ensuing year with or without modification.*

From the said provisions it is clear that Distribution Licensee is bound to supply the electricity connection to any applicant but it is entitled to recover the expenditure/ Service Connection Charges as determined by the State Electricity Regulatory Commission.

v) As per regulation 9.1.2 of the Supply Code-2007 in a case where a consumer needs additional load and after the additional load the total load including existing load exceeds 500 KW/500 KVA, the consumer is liable to pay per KW/KVA charges for the additional load/demand as approved by the Commission or the actual expenditure for release of load/demand, whichever is higher. As per Regulation 10 of the Supply Code -2007 the Distribution Licensee would give per KW/KVA charges for the cost of service line and proportionate cost of main and feeding sub-station payable by different categories of applicants and on the basis of this data the State Commission would determine the per KW/KVA cost to be recovered as per clause 9.1.2 of the Supply Code. As per regulation 10 (1)(a) of the Supply Code-2007 this

data would be supplied within 3 months from the notification of the supply code and thereafter the State Commission within 2 months thereafter approve the charges to be recovered. As per Regulation 10 (1) (a) (iii) of the Supply Code till such time as these rates are approved by the Commission, the Licensee will continue to recover expenditure at existing rates specified in the Schedule of Service Connection Charges.

vi) In view of the above said Regulation 10 .1(a) of the Supply Code- 2007 PSPCL Licensee submitted the Standard Cost Data vide office memo no.468 dated 15.05.2008 and this Hon'ble Commission vide letter dated 05.12.2008 informed PSPCL about the Service Connection Charges to be recovered from the consumer. PSPCL on the said letter issued Commercial Circular No. 68 of 2008 dated 17.12.2008 quoting the details of the letter received from this Hon'ble Commission mentioning the Service Connection Charges. The State Commission had determined the Service Connection Charges vide its letter dated 5-12-2008 and before that as per the regulation 10.1(a)(iii) of the Supply Code, till the rates are approved, the Licensee was bound to recover expenditure at existing rates specified in the Schedule of Service Connection Charges.

vii) PSPCL vide its notification No. PSEB/COMML./DTE.1/SMI-13; dated 03.01.1997 , amended para- II item (A), (B) & (C) of Schedule of Service Connection Charges and thereafter issued Commercial Circular No. 3 of 1997 giving details of the revised Schedule of Service Connection Charges as under-

2. *EXTENSION IN LOAD.*

(a) Where the consumer is either paying service rentals or had paid the service connection charges on KW basis for the original load:-

i) Extension in load bringing the total load upto (& including 1 MW).

To be charges @ Rs.750/- per KW for Extension part only.

However, the charges for service line in excess of 300 mts @ Rs. 125/-per mtr. shall be charged for the length of service line (new or augmented or both) to be provided for feeding such consumers.

ii) Extension in load bringing the total load above 1 MW.

Rs. 750/- per KW (Chargeable for extension Part only), or actual cost whichever is higher).

The clause 51.2 of the ESR deals with Service Connection Charges for Industrial and Bulk Supply consumers and clause 51.2.2 deals with extension in load. As the State Commission had not yet determined the per KW/kVA charges so the charges as per Schedule of Service Connection Charges as notified vide notification dated 03.01.1997 and further amended as per clause 51.2 of Electricity Supply Regulations- 2004, were to be charged from AVN and as per this Schedule only Rs. 750/- per KW (for extended load) could be charged. But in the demand notice PSPCL has demanded the Service Connection Charges on estimate basis so there was confusion.

viii) The partners of AVN firm were also directors in JMP Group of Companies. An application dated 07-11-2008 was moved by JMP Manufacturing Co. under the Right to Information Act, 2005 to PSEB seeking clarification regarding Service Connection Charges. PSEB vide its letter dated 02-12-2008 replied the said RTI Application and supplied the necessary information. Copy of the letter dated 12-11-2008 sent by Director/ Sales-I was also supplied. It was mentioned therein that Service Connection Charges are recoverable as per Electricity Supply Regulation 51.2. It was also mentioned that the revised Service Connection Charges are under approval/ finalization with PSERC. A representation was made by AVN requesting PSPCL to revise the demand notice dated 29.10.2008 and a revised demand notice for Rs. 11,45,335 was issued by PSPCL which was deposited by AVN on 08.01.2009.

ix) Now after more than 8 years, PSPCL has issued a letter dated 31-05-2017 to AVN mentioning therein that the connection of AVN was checked by the DDL Audit Party and as per its report AVN at the time of increase of load on 27-08-2008 had deposited less Service Connection Charges of Rs. 11,26,971. It was also mentioned that in case AVN wants to say something regarding this demand then it can file its reply within 15 days.

x) In the audit report dated 10-05-2017 it was mentioned that as per clause 9.1.2(b) of the Supply Code-2007 AVN was liable to pay Service Connection Charges i.e. per KVA/ Kw charges or actual charges whichever is more and at the time of release of extension of load PSPCL has spent Rs. 18, 10,546 (Rs. 14, 94,675 for material, Rs. 66,141 for labour charges and Rs. 2,49,730 for establishment charges). PSPCL has charged Rs. 6,84,375 only

against the above said Rs. 18, 10,546 and as such AVN is liable to pay Rs. 11,26,971 more.

xi) AVN made a representation dated 08-06-2017 against the above said impugned demand. It was specifically mentioned in the representation that after issuance of demand notice dated 08-04-2008 there was a confusion about the charges to be paid as the PSEB has not finalized the charges to be recovered and further that information under RTI Act was sought and PSEB (now PSPCL) informed that AVN is liable to pay Service Connection Charges as per clause 51.2 of the Electricity Supply Regulations. It was also mentioned that after the information under the RTI came AVN requested the then SDO to revise the Demand Notice and the SDO in the presence of AVN discussed with the Executive Engineer, East Division, Superintending Engineer Operations, Jalandhar and Chief Engineer, Commercial and the office of the Chief Engineer Commercial clarified that case for Service Connection Charges was under approval of PSEB and as such the Service Connection Charges have to be recovered as per clause 51.2 of the Electricity Supply Regulations. It was also mentioned that audit party of PSEB was also present in this discussion and only thereafter SDO issued revised Demand Notice and accordingly AVN deposited the amount as demanded vide revised demand notice on 08-01-2009.

xii) PSPCL sent a letter, memo no. 1169 dated 09-08-2017, and mentioned therein that the representation dated 08-06-2017 sent by AVN has been considered by the office and the case has been deliberated and the demand of Rs. 11,26,971 raised vide half note of the audit party is found to be correct. The perusal of the said letter would show that the same is totally non speaking and no

reason what so ever has been given in the said letter for upholding the impugned demand and denying the representation of AVN. AVN had further been directed to pay the amount of impugned demand within a period of 15 days and in case AVN fails to pay the impugned demand PSPCL would take action against AVN.

xiii) PSPCL issued monthly bill for electricity dated 04-09-2017 and wrongly and illegally added the above said amount as Arrears of Previous Years. AVN immediately approached PSPCL and informed that it is not liable to pay any amount as the impugned demand is totally illegal. PSPCL thereafter made a correction in the bill dated 04-09-2017 and reduced the above said impugned demand. But to the surprise of AVN ,PSPCL also issued a supplementary bill dated 13-09-2017 for the above said impugned demand of Rs. 11,26,971- and demanded the same on account of Sundry Charges. AVN had been asked to deposit the said amount upto 25-09-2017.

xiv) The impugned demand raised by PSPCL vide supplementary bill dated 13-09-2017 was totally wrong and illegal and as such AVN was not liable to pay the same. AVN visited PSPCL and requested to withdraw the said impugned demand. Instead of withdrawing the above said impugned demand PSPCL has now added the said amount in the monthly energy bill dated 06-10-2017. The due date of paying the said bill was 16-10-2017 and AVN had been informed that in case the payment of the due amount is not made then the electricity connection of AVN would be dis-connected without any further notice.

xv) AVN there after filed Civil Writ Petition No. 23559 of 2017 before the Hon'ble Punjab and Haryana High Court, Chandigarh. The said writ petition was allowed to be withdrawn vide order

dated 12-10-2017 with liberty to approach this Hon'ble Commission.

xvi) The impugned demand of Rs. 11,26,971 raised by PSPCL vide letters dated 31-05-2017 and 09-08-2017 whereby the representation of AVN against the above said impugned demand has been rejected without assigning any reason and the impugned demand has been upheld and further demanding the Supplementary Bill dated 13-09-2017 whereby the above said amount of Rs. 11,26,971 has been demanded from AVN on account of Sundry Charges and Energy Bill dated 06-10-2017 wherein the above said impugned demand has been added are totally wrong and illegal and are liable to be set aside by this Hon'ble Commission. The respondent No. 3 without assigning any reason has rejected the representation of the petitioner and upheld the impugned demand. The impugned letter dated 9-8-2017 rejecting the representation of the petitioner and upholding the impugned demand is totally non speaking and against the principle of natural justice and equity. It is further submitted that before issuing the letter dated 09-08-2017 no opportunity of being heard was given to the petitioner. The impugned demand raised by the respondents is totally time barred as per the provisions of the Limitation Act and is against the provisions of the Supply Code-2007 and the Electricity Act, 2003 , Supply Code-2014 and the respondents have no right to recover the impugned demand or disconnect the electricity connection of the petitioner on account of impugned demand.

xvii) The impugned demands are in violations of provisions of the Supply Code and provisions of the Electricity Act, 2003 and for the same the respondents are liable to be punished as per section 142

of the Electricity act, 2003. It is further submitted here respectfully that as per section 142 of the Electricity Act, 2003, only this Hon'ble Commission has power to decide a complaint and take necessary action as such the petitioner is filing the present petition/ complaint before this Hon'ble Commission. The section 142 of the Electricity Act, 2003, is reproduced here under for the kind perusal of this Hon'ble Commission.

“142. Punishment for non-compliance of directions by Appropriate Commission .In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction”.

The present matter also requires interpretation of provisions of the regulations framed by this Hon'ble Commission and as such this Hon'ble Commission has power to decide the present petition. It is pertinent to mention here that this Hon'ble Commission vide notification no. PSERC/Secy./Reg 97 dated November 5, 2014 and published in Govt of Punjab Gazette (Extra) dated November

5, 2014 issued Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2014, in short Supply Code 2014. It was specifically mentioned in clause 48 of the Supply Code-2014 that The Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2007, as amended from time to time, shall stand repealed from the date of commencement of these Regulations but notwithstanding such repeal, anything done or purported to have been done under the repealed Regulations shall be deemed to have been done or purported to have been done under these Regulations. Clause 44 of the Supply Code-2014 specifically says that any dispute arising between the distribution licensee and a consumer in respect of interpretation of the Supply Code shall be referred to the Commission. The clause 44 of the Supply Code-2014 is reproduced here under for the kind perusal of this Hon'ble Commission

44.1 These Regulations shall be read and construed in all respects as being subject to the provisions of the Act, Rules or regulations made under the Act and the provisions of any other law for the time being in force.

44.2 Nothing contained in these Regulations shall abridge or prejudice the rights of the distribution licensee and the consumer under the Act or any Rules or Regulations made there under.

44.3 Any dispute arising between the distribution licensee and a consumer in respect of interpretation of the Supply Code shall be referred to the Commission.

xviii) The petitioner has prayed to the Commission that:

- a) necessary action under section 142 of the Electricity Act, 2003, may kindly be taken against the respondent PSPCL and its officials for raising the impugned demand, on account of charging less Service Connection Charges at the time of releasing the additional load, in violation of regulations 9 and 10 of PSERC (Electricity Supply Code and Related Matters), Regulations, 2007;
- b) necessary interpretation may kindly be done in view of the regulations 9 and 10 of the Supply Code-2007 and clause 44 of the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2014 and other relevant provisions of the regulations framed by this Hon'ble Commission, and the impugned demand of Rs. 11,26,971/-, raised by the respondents vide letter dated 31-5-2017 from the petitioner, on account of Less Service Connection Charges charged at the time of extension of load on 27-08-2008, may kindly be set aside , being in violation of provisions of regulation 9 and 10 of PSERC (Electricity Supply Code and Related Matters), Regulations, 2007 , Provisions of the Electricity Act, 2003 and Limitation Act, 1908 ;
- c) supplementary bill dated 13-09-2017 whereby the above said amount has been demanded as sundry charges and the monthly bill dated 6-10-2017 to the extent of the above said impugned demand has been added as arrears may also be set aside , in the interest of justice, being in violation of the provisions of the Supply Code-2007, Supply Code-2014 and the Electricity Act, 2003 and the Limitation Act.
- d) Letter memo no. 1169 dated 09-08-2017 issued by the respondent no. 3 , whereby the representation made by the petitioner against the impugned demand of Rs. 11,26,971/- raised

vide letter dated 31-5-2017, had been dismissed by passing a totally non speaking order and further the impugned demand has been upheld, , may kindly be set aside , having been issued in violation of principle of natural justice and equity and provisions of the Electricity Act, 2003 and Supply Code-2007.

e) During the pendency of the present Petition before this Hon'ble Court the respondents may kindly be restrained from recovering the above said impugned demand and further the respondents be restrained from dis-connecting the electricity connection of the petitioner on account of the above said impugned demand, in the interest of justice.

4. The submissions made by PSPCL in the reply are summarized as under:

i) The demand of Rs. 1126971 was raised by the audit department and the same is correct according to the rules and regulations of PSEB now PSPCL.

ii) AVN applied for extension of load on 08-04-2008 and deposited earnest money as per rules and application was registered through A&A form on 27-08-2008 accordingly, demand notice was issued to AVN against extension of load to AVN on 24-10-2008 vide which AVN was requested to submit test report and deposit Rs.1810546 as estimated cost plus ACD Rs. 461700.

iii) The information under the RTI Act was sought by JMP Industries and the said information was not applicable on the facts of the present case. The revision in the demand of AVN was wrong as the facts of both the firms were different. On the basis of the RTI of JMP industries, AVN requested for the change of the demand. As submitted above the demand was revised, but that

was wrong revision of demand and the demand raised earlier was correct.

iv) The consumer case of AVN was checked by the Audit Department of PSPCL and found that AVN has deposited less Service Connection Charges in tune of Rs.1126971 accordingly, a notice was issued to AVN to deposit the requisite charges. The demand raised earlier in tune of Rs.1810546 was correct. The amount was recoverable under the provisions of Rule 9.1.2(b) of the supply code 2007 and audit has correctly charged the amount after going through the consumer case which was according to the rules and regulations of the PSEB now PSPCL.

v) AVN was issued a notice dated 31-05-2017 and against that AVN submitted its objections on 08-06-2017 to the office of Chief Engineer/ARR & TR as well as to the higher authorities and as AVN did not comply with the notices, the demand was charged through Sundry Charges according to the rules and regulations of the department.

vi) The amount has been correctly raised from AVN as per rules 9.1.2(b) of the Supply Code and as per the objection raised by the audit.

5. The submissions made by AVN in the rejoinder to the reply filed by PSPCL are summarized as under:

i) The impugned demand of Rs. 11,26,971 raised by PSPCL on account of less Service Connection Charges charged from AVN on 27-08-2008, is in violation of the clause 9 and 10 and other relevant provisions of the Supply Code-2007, Electricity Act, 2003 and the Limitation Act.

ii) The information under the RTI Act, was obtained by JMP Manufacturing Co. in which the partner of AVN firm was also director/ partner. It is totally denied that the information given under RTI was not applicable on the facts of the present case. PSEB vide its letter dated 02-12-2008 replied the said RTI Application and supplied the necessary information. As per the letter dated 12-11-2008 sent by Director/ Sales-I ,Service Connection Charges were recoverable as per Electricity Supply Regulation 51.2. It was also mentioned in this letter that the revised Service Connection Charges are under approval/ finalization with PSERC.

iii) The then SDO, after discussing and receiving clarifications from the senior officer issued a revised demand notice for Rs. 11,45,375. The demand earlier raised was not correct and accordingly it was revised and correct demand was made which AVN deposited.

iv) PSPCL has wrongly raised the impugned demand that too after a gap of 8 years. AVN has paid the Service Connection Charges as per the provisions applicable at that time. AVN was liable to pay Service Connection Charges as per clause 51.2 of the Electricity Supply Regulations and AVN deposited the same. The Regulation 9.1.2(b) has to be read along with regulation 10 of the Supply code and not in isolation.

v) PSPCL sent a letter memo no. 1169 dated 09-08-2017 and mentioned therein that the representation dated 08-06-2017 sent by AVN has been considered by the office and the case has been deliberated and the demand of Rs. 11,26,971 raised vide half note of the audit party is found to be correct. The perusal of the said letter would show that the same is totally non speaking

and no reason what so ever has been given in the said letter for upholding the impugned demand and denying the representation of AVN.

vi) PSPCL issued monthly bill for electricity dated 04-09-2017 and wrongly and illegally added the above said amount as Arrears of Previous Years. Thereafter AVN approached PSPCL and informed that it is not liable to pay any amount as the impugned demand is totally illegal. PSPCL thereafter made a correction in the bill dated 04-09-2017 and reduced the above said impugned demand. But to the surprise of AVN, PSPCL also issued a Supplementary bill dated 13-09-2017 for the above said impugned demand of Rs.11,26,971 and demanded the same on account of Sundry Charges. PSPCL has failed to mention those rules and regulations according to which the impugned demand was raised as Sundry Charges.

vii) AVN has paid the Service Connection Charges as per the provisions applicable at that time. AVN was liable to pay Service Connection Charges as per clause 51.2 of the Electricity Supply Regulation and AVN deposited the same. The Regulation 9.1.2(b) has to be read along with regulation 10 of the Supply Code and not in isolation.

viii) AVN deposited the Service Connection Charges in the month of January, 2009 and PSPCL has now raised the impugned demand which is totally time barred.

6. The submissions made by PSPCL in the sur- rejoinder to the rejoinder filed by AVN are summarized as under:

i) The demand is correct and has been raised by the Audit Department and the same is as per the Rules and Regulations

i.e. as per the Clause 8 and 10 of the Supply Code, and as per the Provisions of the Electricity Act 2003.

ii) The Information Called for by JMP Manufacturing Co., is not applicable on the facts of the present case as the Sanctioned Load of the said concern is more than 1000 KW, whereas the sanctioned loan of AVN is Rs. 748 KW after its enhancement. So the rates are separate in respect of both the units /concerns.

iii) AVN misrepresented to the then SDO on the basis of the information obtained under the RTI Act, in respect of JMP Manufacturing Co. and got wrong favour from the SDO on the basis of the misrepresentation. The mistake committed by the SDO has been detected by the Audit and the correct amount has been raised. It is wrong to suggest that the then SDO after discussing and receiving the clarification from the Senior Officers issued the revised demand notice for Rs. 11, 45, 375. The earlier demand was correct, the revised demand was not correct and now the correct demand has been raised on the basis of the Audit report. So there is no illegality of any sort. The demand raised on the basis of the Audit report is correct and the same is likely to be upheld by this Hon'ble Commission.

iv) The correct demand raised was revised on the basis of the mis representation of AVN and now the mistake has been found by the Audit, hence, the demand is correct. As the demand was revised on the basis of the misrepresentation of AVN so when the mistake has been found, the demand has been raised and AVN cannot say that the demand has been raised after a gap of 8 years. AVN is barred by its act and conduct from raising this contention and cannot be allowed to take the benefit of its own wrong.

v) It is wrong to suggest that AVN has paid the Service Connection Charges as per the provisions applicable at that time. The Service Connection Charges were less paid by AVN which was revised on the basis of the misrepresentation of AVN, so PSPCL is legally entitled to recover the Service Connection Charges which were less paid by AVN.

vi) The representation was considered, and the detailed order was passed and the letter was written. The amount raised by the Audit Party is correct and the same is recoverable from AVN and AVN is legally bound to pay the same.

vii) The amount was added in the Bill as arrear, on objection by AVN the same was corrected as the Supplementary demand which was not raised before adding the same in the bill, so the Supplementary demand was raised as required under the rules and regulations of PSPCL. No illegality of any sort was done.

viii) As the amount was detected by the audit so the Supplementary demand was raised from AVN. The Sundry demand was raised as per the rules and regulations of PSPCL and the same was correctly raised. The Service Connection Charges were not correctly deposited by AVN and the same are detected by the audit and have been correctly raised and AVN is legally bound to deposit the same. The petition itself is not maintainable before this Hon'ble Commission.

7. Commission's Findings and Decision:

i) The petition has been filed under section 142 of the Act for initiation of proceedings against the officials of PSPCL for violating provisions of the Supply Code regulations and for interpretation of Regulation 9 and 10 of the Supply Code, 2007 in accordance with

regulation 44 of the Supply Code, 2014. AVN also prayed to set aside the demand of Rs.11.26 lac raised by PSPCL on account of short fall in Service Connection Charges.

ii) AVN applied for extension in load of 600 kW/600 kVA on 08.04.2008, taking the total load to 748.2 kW with a contract demand of 828 kVA. The demand notice was issued on 24.10.2008 wherein Rs. 18,10,546 were demanded as Service Connection Charges (estimated cost) and Rs. 4.61 lac as balance Security. AVN on the basis of a letter dated 12.11.2008 issued by the office of the Director/Sales, PSEB in response to a RTI query of some other consumer, represented to concerned Sub Divisional Officer that the Service Connection Charges in his case are recoverable as per clause 51.2 of Electricity Supply Regulations (ESR). The demand notice was revised and AVN was asked to deposit an amount of Rs. 11,45,375 out of which Rs. 6,84,375 was on account of Service Connection Charges (comprising of Rs. 4,50,000 as kW charges plus Rs. 2,34,375 as variable charges) and Rs. 4,61,000 was balance Security. AVN complied with the demand notice on 09.01.2009.

iii) AVN received a notice dated 31.05.2017 from PSPCL wherein it was mentioned that the Audit Party has observed that at the time of enhancement of the load on 27.08.2008, Service Connection Charges amounting to Rs. 11,26,971 were charged less. PSPCL raised the demand on the plea that as per regulation 9.1.2 (i) (b) of the Supply Code, 2007, in case the total load (including additional load) is more than 500 kW/kVA, the consumer is liable to pay kW/kVA charges for additional load/demand as approved by the Commission or actual expenditure, whichever is higher. Since, the estimated cost of the line i.e. Rs. 18,10,546 was

more than kW/kVA charges of Rs. 6,84,375, so balance amount of Rs.11,26,171 plus Rs. 800 on account of less recovery of ACD i.e. Rs. 11,26,971 is recoverable from AVN.

iv) AVN argued that although Supply Code, 2007 was notified on 29.06.2007 but as per regulation 10.1(b), till new rates are approved by the Commission, the existing rates specified in Schedule of Service Connection Charges will continue. The cost data was approved by the Commission vide letter dated 05.12.2008 and the revised rates were applicable for demand notice issued w.e.f. 22.12.2008. According to AVN, before approval of the Standard Cost Data, clause 51.2 of Electricity Supply Regulations (ESR) was applicable wherein it has been provided that for extension in load bringing the total load up to 1 MW, the Service Connection Charges shall be Rs. 750 per kW for extension part only.

v) PSPCL on the other hand argued that the Supply Code, 2007 was notified on 29.06.2007 and was applicable w.e.f. 01.01.2008. The demand notice to AVN was issued on 24.10.2008 and thus provisions of regulation 9.1.2(i)(b) of Supply Code, 2007 was applicable to AVN wherein it has been specified that in case the total load (including additional load) is more than 500 kW/kVA, the consumer will pay kW/kVA charges for additional load/demand as approved by the Commission or actual expenditure whichever is higher. Regulation 10.1(b) only provides that till the revised per kW/kVA rates are approved by the Commission in the cost data, the existing rates specified in the Schedule of Service Connection Charges shall be applicable. Since the estimated cost of the line was more than kW/kVA charges so cost of line is recoverable from AVN.

vi) During proceedings, AVN admitted that as per regulation 9.1.2 (i)(b) of the Supply Code, 2007, he is liable to pay the kW/kVA charges or the actual expenditure, whichever is higher, but pointed out that PSPCL has raised the demand on the basis of sanctioned estimate and not on actual basis. PSPCL on the directions of the Commission filed an affidavit wherein it has been mentioned that the actual expenditure (material and labour) for release of extension in load/demand to AVN is Rs. 4,53,861. Later on, PSPCL submitted that Rs. 72,617 as establishment charges @ 16% are also recoverable from AVN. Thus according to PSPCL, the actual expenditure for release of extension in load/demand to AVN is Rs. 5,26,478.

vii) In view of the pleadings of both the parties stated above, there is no dispute that recovery of charges for release in extension of load/demand in case of AVN is governed by regulation 9.1.2(i)(b) of the Supply Code, 2007 which reads as under:

“Where total load including existing load exceeds 500 KW/500 KVA, the consumer will pay per KW/KVA charges for the additional load/demand as approved by the Commission or the actual expenditure for release of load/demand, whichever is higher.”

viii) The Commission notified Supply Code, 2007 on 29.06.2007 and was applicable w.e.f. 01.01.2008. Further, regulation 10.1(b) of the Supply Code, 2007 provides that

“The Commission will with or without modification approve these rates within 2 months of their submission. Till such time as these rates are approved by the Commission, the Licensee will continue to recover expenditure at existing

rates specified in the Schedule of Service Connection Charges.”

ix) The cost data in terms of regulation 10 was approved by the Commission vide letter dated 05.12.2008 and was applicable to the demand notices issued w.e.f 22.12.2008. Since the demand notice to AVN was issued on 24.10.2008 so as per regulation 10.1(b), the rates specified in the Schedule of Service Connection Charges existing prior to approval of the cost data shall be applicable to calculate service connection charges on kW basis. Clause 51.2.2.1 of the Electricity Supply Regulations, as reproduced in the petition, provides as under:

<i>“1 Extension in load bringing the total load up to and including 1MW</i>	<i>To be charged @Rs..750/- per KW for extension part only.</i>
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However, the charges for service line in excess of 300 meter shall be charged @ Rs..125/- per meter for the length of service line(new or augmented or both) feeding such consumers.”

x) **Thus there is no ambiguity that for extension in load not exceeding 1 MW, the service connection charges on kW basis include fixed charges @ Rs. 750 per kW for the extended load plus variable charges @ Rs. 125 per meter for the length of the service line in excess of 300 meters. Accordingly, Rs. 6,84,375 was calculated as Service Connection Charges (Rs. 4,50,000 as kW charges plus Rs. 2,34,375 as variable charges) and AVN deposited the amount at the time of compliance of demand notice release 09.01.2009. Now, according to regulation 9.1.2(i)(b) of the Supply Code, 2007, this Service Connection Charges determined on kW basis shall be**

compared with actual expenditure incurred for release of extension in load and the higher of the two shall be recoverable from AVN.

xi) In the present case since the actual expenditure of Rs. 5,26,478 reported is less than the per kW/kVA charges of Rs. 6,84,375, so as per regulation 9.1.2 (i)(b) of the Supply Code, 2007, nothing more is recoverable on account of Service Connection Charges from AVN. Accordingly, the demand raised by PSPCL vide letter dated 31.05.2017 for Rs.11,26,171 on account of less Service Connection Charges, is set aside. However, Rs. 800 on account of less ACD may be recovered from AVN.

The petition is disposed of accordingly.

Sd/-

(Anjuli Chandra)
Member

Sd/-

(S.S. Sarna)
Member

Sd/-

(Kusumjit Sidhu)
Chairperon

Chandigarh
Date: 11.06.2018