

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

**Petition No.61 of 2014**

**(Suo-Motu)**

**Date of Order: 09.06.2015**

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

In the matter of: Single Point Supply to Residential Colonies/Building Complexes/Shopping Malls / Commercial Complexes/ Industrial Estates.

AND

In the matter of: Punjab State Power Corporation Limited, The Mall, Patiala.

**ORDER:**

**1.0 BACKGROUND**

The Commission approved 'Conditions of Supply' under regulation 40 of the PSERC (Conduct of Business) Regulations, 2005 and regulation 3.2 of the PSERC (Electricity Supply Code & Related Matters) Regulations, 2007. Clause 8 of the Conditions of Supply prescribes the conditions for providing Single Point Supply to following category of consumers:

- Residential Colonies/Building Complexes
- Shopping Malls/Commercial Complexes
- Industrial Estates/Complexes

- Complexes comprising of Residential Colonies/ Shopping Malls/ Industrial Estates
- Co-operative Group Housing Societies/ Employers Colonies

The Hon'ble Appellate Tribunal of Electricity in its Judgment dated 11<sup>th</sup> July, 2011 in Appeal No. 155 of 2010 and Appeal No. 156 of 2010 in K.Raheja Corporation Pvt. Ltd. V/s MERC case has held that

*“Single Point Supply in the context in which the parties have understood the matter should be done away with for all time to come by making proper arrangements in the alternative as suggested in the Commission’s impugned order. We direct the Commission to enforce its order within a period of six months from the date of this order”.*

In the aforesaid judgment, it has been clarified that the term consumer cannot be interpreted in a manner to justify a situation where number of end users each living separately in a building and connected to a consumer or owner of the building are conjoined together and treated as a single consumer. Sub-distribution and sale of electricity to the occupants of a building by the owner or consumer of such building is unlawful and contrary to Sections 12 and 14 of the Electricity Act, 2003. A consumer receives electricity only “for his own use” and this excludes a situation where a consumer can on receipt of electrical energy sell a part of that energy or the entire energy itself to different people for their respective consumption.

The Commission in order to regulate Single Point Supply connections to Residential Colonies/Building Complexes/ Shopping

Malls/ Commercial Complexes/ Industrial Estates and Single Point connections released to Universities & private educational institutes/medical colleges etc. under 'Bulk Supply' Schedule of Tariff initiated the present Suo-motu petition in light of Hon'ble APTEL judgement.

**2.0)** The Suo-moto petition brought out the following legal provisions of the Act along with the observations of Hon'ble Tribunal for response:

2.1) Section 12 of the Electricity Act, 2003 (Act) provides that no person shall transmit or distribute or undertake trading in electricity unless he is authorized to do so by a licence issued under Section 14 or is exempt under Section 13 of the Act. The relevant Sections 12, 13 & 14 of the Act are reproduced below:

**12. *Authorised persons to transmit supply, etc., electricity-***

*No person shall-*

- (a) transmit electricity; or*
- (b) distribute electricity ; or*
- (c) undertake trading in electricity*

*unless he is authorised to do so by a licence issued under section 14, or is exempt under section 13.*

**13. *Powers to exempt-***

*The Appropriate Commission may, on the recommendations of the Appropriate Government, in accordance with the national policy formulated under section 5 and in the public interest, direct, by notification that subject to such conditions and restrictions, if any, and for*

*such period or periods, as may be specified in the notification, the provisions of section 12 shall not apply to any local authority, Panchayat Institution, users' association, co-operative societies, non-governmental organizations, or franchisees.*

**14. Grant of licence-**

*The Appropriate Commission may, on an application made to it under Section 15, grant a license to any person-*

- (a) to transmit electricity as a transmission licensee; or*
- (b) to distribute electricity as a distribution licensee; or*
- (c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence:*

*Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:*

*Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:*

*Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:*

*Provided also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948 (14 of 1948), shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:*

*Provided also that the Government company or the company referred to in sub-section (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act:*

*Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area, shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements relating to the capital adequacy, credit-worthiness, or code of conduct as may be prescribed*

*by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:*

*Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:*

*Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under section 53:*

*Provided also that a distribution licensee shall not require a licence to undertake trading in electricity.”*

2.2) Hon'ble Tribunal in aforesaid judgement held that a consumer receiving electricity and distributing it to tenants/lessees/users etc. for furtherance of commercial interest is illegal and contrary to Sections 12 and 14 of the Electricity Act, 2003. A consumer receives electricity only “for his own use” and it excludes a situation where a consumer can on receipt of electricity sell a part of electricity or entire electricity itself to

different people for their respective consumption. A consumer cannot have his own distribution system for distribution of electrical energy in turn to his tenants/occupiers/users etc.

2.3) Single Point Supply is not a legal term defined anywhere in the Act. If a consumer upon receipt of electrical energy distributes such energy to different end users and if such end users are not consumers within the meaning of the Act and they are charged tariff or fee for such consumption of electrical energy with which a distribution licensee is not concerned thus engages himself in the business of sale of electricity to such end users without licence under Section 12 of the Act, such arrangement is termed as a Single Point Supply.

2.4) The only Single Point Supply permissible according to the Electricity (Removal of difficulties) Eighth Order , 2005 is to

- Co-operative Group Housing Society for residential purposes and
- to a person for making electricity available to his employees residing in the same premises for residential purposes on such terms and conditions as may be specified by the State Commission.

The Electricity (Removal of difficulties) Eighth Order , 2005 issued by the Central Government vide S.O 798(E) dated 9<sup>th</sup> June, 2005 under section 183 of the Act is re-produced below;-

**2. Supply of electricity at Single point by the distribution licensee to a Co-operative Group Housing Society-**

*A distribution licensee shall give supply of electricity for residential purposes on an application by a Co-operative Group Housing Society which owns the premises at a*

*single point for making electricity available to the members of such Society residing in the same premises on such terms and conditions as may be specified by the State Commission.*

*Provided that the provisions of this clause shall not in any way affect the right of a person residing in the housing unit sold or leased by such a Co-operative Group Housing Society to demand supply of electricity directly from the distribution licensee of the area on such terms and conditions as may be specified by the State Commission.*

### **3 Supply of electricity by distribution licensee at single point to a person for his employees-**

*A distribution licensee shall give supply of electricity for residential purposes on an application by a person at a single point for making electricity available to his employees residing in the same premises on such terms and conditions as may be specified by the State Commission.*

2.5) In view of the Electricity (Removal of Difficulties) Eight Order, 2005, the Commission notified PSERC (Single Point Supply to Cooperating Group Housing Societies) Regulation, 2008. A "Housing Society" as per clause 2 (f) of these Regulations has been defined as "a Co-operative Group Housing Society registered with Registrar Cooperative Societies Punjab".

Further Punjab Cooperative Societies Act, 1961 defines a "Co-operative Society" under Section 2 (c) as a society registered or deemed to be registered under the Act. Further,



under Section 75 of the Punjab Cooperative Societies Act, 1961, there is a specific bar against the use of word “Co-operative” by a society not registered under the Act.

“75. Prohibition against the use of the word “co-operative”.

*No person other than a co-operative society shall trade or carry on business under any name or title of which the word “Co-operative” or its equivalent in any Indian language is part:*

*Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he carried on business at the date on which the Co-operative Societies Act, 1912 (2 of 1912). Came into operation”.*

Thus residential colonies developed by private developers and not registered with Registrar Co-operative Societies cannot be permitted Single Point Supply under Electricity (Removal of difficulties) Eighth order 2005 read with the PSERC (Single Point Supply to Cooperative Group Housing Society) Regulation, 2005.

2.6) On the issue of Bulk Supply to Consumers, the petition brought out that as per the availability clause pertaining to Schedule for ‘Bulk Supply’ consumers approved by the Commission in the Tariff Order for FY 2009-10, Single Point Supply for catering to the general or mixed load to MES, Defence Establishment, Railways, Central PWD Institutions, Irrigation Headworks, Jails, Police/Para Military Establishments/ Colonies or other Institutions like Universities, Hospitals, Medical Colleges, Educational Institutions having mixed loads subject to a

minimum of 25% domestic load and Industrial load not exceeding 50% where further distribution will be undertaken by the consumer has been permitted.

As per Section 14 of the Electricity Act 2003, the Appropriate Govt. is a deemed distribution licensee and can engage in supply of electricity.

The provisos to Section 14 of the Electricity Act, 2003 bestow the deemed distribution licensee status on the following:-

- A person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified on or before the appointed date;
- The Appropriate Government;
- Damodar Valley Corporation, established under Section 3 (1) of the Damodar Valley Corporation Act, 1948;
- The Government company or the company referred to in Section 131 (2) of the Electricity Act and the company or companies created in pursuance of the Acts specified in the Schedule;
- A person appointed by the distribution licensee for undertaking distribution of electricity for a specified area within his area of supply (franchisee); and
- A person intending to generate and distribute electricity in a rural area notified by the State Government.

The term “Appropriate Government” has been defined in Section 2 (5) of the Electricity Act as under:-

- 5) *“Appropriate Government” means,*  
(a) *the Central Government,*

- (i) in respect of a generating company, wholly or partly owned by it;*
  - (ii) in relation to any inter-State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national highways, airports; telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations;*
  - (iii) in respect of National Load Despatch Centre, and Regional Load Despatch Centre;*
  - (iv) in relation to any works or electric installation belonging to it or under its control;*
- (b) in any other case, the State Government, having jurisdiction under this Act;”*

As Defence Establishments, MES, Railways, Central PWD Institutions, Jails and Police/ Para Military Establishments/Colonies, Irrigation Headworks are covered under the definition of Appropriate Government so they are deemed distribution licensees entitled to further distribute the electricity received through the distribution licensee of the State. Single Point Supply for further distribution to the aforesaid categories is thus permissible.

Similarly the definition of Appropriate Government in any other case means the State Government. Therefore, the Universities/Hospitals/Medical Colleges/ Educational Institutions which are under the control of the State Govt. could be treated as State Govt. and thus can be considered as deemed distribution licensee under the provisions of the Electricity Act, 2003. Thus Single Point Supply under Bulk

Supply category is permitted to these institutions for further distribution.

2.7) Apart from the aforesaid, the Ministry of Commerce & Industry (Department of Commerce), Government of India issued a notification on 03.03.2010 in exercise of the powers conferred under Section 49 (1) of the Special Economic Zone Act, 2005. By this notification, the Central Government introduced a proviso to the provisions of Section 14 (b) of the Electricity Act, 2003. By the said introduction, a developer of a Special Economic Zone was declared as a deemed licensee authorised to distribute electricity within the Special Economic zone area.

2.8) However, Single Point Supply under Bulk Supply category to other Institutions like Universities, private educational Institutions/ Hospitals etc. for further distribution cannot be permitted & hence the provision for release of connections to these institutions under Bulk Supply Category has been discontinued w.e.f 1.4.2014 as per Schedule of Tariff approved by the Commission in Tariff Order for FY 2014-15 for Bulk Supply consumers.

2.9) A notice bearing number PSERC/Reg./11297 dated 29.9.2014 was issued to PSPCL soliciting response on the issues brought out in the petition by 28.10.2014. The hearing was fixed for 4.11.2014.

3.0) PSPCL vide CE/ARR&TR Memo. No. 5319/TR-5/667 dated 27.10.2014 requested for 15 days time for submission of reply to the notice and postponement of the date of hearing. The Commission vide Order dated 5.11.2014 directed PSPCL to file reply by 19.11.2014. The petition was fixed for hearing on 25.11.2014. PSPCL filed its response vide email dated 19.11.2014 which was confirmed vide CE/ARR&TR Memo No. 5462/TR-5/667 dated 19.11.2014. PSPCL did not raise any objection on the legal interpretation of the issues as brought out in the petition and submitted following proposal to regularise the single point connections already released as per clause 8 of the Conditions of Supply:

**A) Where existing single point consumers opt for individual connections, following conditions will be applicable to them:-**

- i) Entire HT/LD system including grid substation, if any, laid down by the developer/owner will be taken over by PSPCL and shall become the property of the PSPCL. PSPCL shall not pay any charges to the developer/owner on this account. Thereafter PSPCL shall maintain the entire HT/LD system. However before taking over the HT/LD system, the developer/owner shall ensure that the system so laid conforms to the standards/specifications laid down by PSPCL and in case of inadequacy, if any augmentation/modifications are required shall also be done by the developer/owner before handing over the system.
- ii) Only complete HT/LD system will be taken over by the PSPCL. In case HT/LD system laid down by developer

/owner is incomplete, then he should deposit the actual cost of the incomplete portion and then PSPCL shall complete the execution of HT/LD system in phased manner as and when required.

- iii) All the individual consumers in the commercial complexes/industrial estates/IT parks/mix use (Residential/ Commercial & Industrial) Parks, residential colonies etc. shall have to sign their individual A&A forms with the PSPCL after depositing the Security (Consumption) as approved by the Commission. The Security (Consumption)/Security (Meter) deposited by the developer/owner will be refunded to the developer/owner by the PSPCL after making adjustment, if any due is pending. No service connection charges shall be recovered from the individual consumer as HT/LD system was laid by the developer.
- iv) Connections to the common services will be provided in the name of Developer/Associations of Residents after signing A&A form. Tariff of relevant category, as approved by the Commission, will be applicable to the individual consumer. However, Developer/Associations of Residents can recover the expenditure incurred on providing back up supply from the individual consumers.

PSPCL shall not be responsible for the backup supply being provided by the developer by installing Gen-set etc. The same shall be maintained by the Developer/Associations of Residents. The standby power shall in no way interfere with the distribution system of PSPCL and to avoid any back

feeding of supply to PSPCL system, Developer/Associations of Residents shall have to get its standby power arrangements approved from PSPCL.

**B) Conditions applicable to the consumers opting for Single Point Supply through Franchisee route:**

- i) This system shall be applicable to existing single point consumers such as industrial estates/IT parks/mix use (Residential/ Commercial & Industrial) Parks and residential colonies and Bulk Supply consumers such as private Universities, private educational institutions/Hospitals etc. to whom Single Point Supply has been discontinued from 1.4.2014 as per Schedule of Tariff and all Shopping Malls/Commercial buildings.
- ii) Only those applicants are eligible for the Distribution Franchisee who have developed all the distribution infrastructure in the given area at their own cost.
- iii) PSPCL shall enter into agreement with the Franchisee initially for two year. This agreement can be extended further at the discretion of PSPCL .The agreement may be extended beyond the term of the arrangement at the discretion of PSPCL based on additional terms and conditions, if required, as may be decided by PSPCL.
- iv) PSPCL shall provide supply to the Distribution Franchisee at HV/EHV level as a single point supply and the same shall be released from urban category feeders.

- v) Franchisee shall develop an efficient, coordinated distribution system to supply electricity in his area of supply. The complete cost of the infrastructure shall be borne by the Franchisee. All the provisions of Electricity Act, 2003 and as per Indian Electricity Rules, 1956 and 2005 as amended from time to time are to be observed by the Distribution Franchisee while developing and maintaining the infrastructure. Franchisee shall be responsible for maintenance and repair of distribution system including grid substation developed by him within his area of supply. It shall be the responsibility of the Franchisee to follow the 'Standard of Performance' laid down by PSERC/PSPCL.
- vi) The power supply shall be made available by PSPCL to the Franchisee as per existing load shedding/ power cut instructions as per approval of PSERC and shall also be governed in future as per directives of PSERC. Franchisee will have to make its own arrangement at its own cost for standby power to supply electricity in its area of supply if it wants 24X7 days continuous supply. Franchisee shall ensure that system for standby power shall in no way interfere with the distribution system of PSPCL and to avoid any back feeding of supply to PSPCL system, Franchisee shall get its standby power arrangements approved from PSPCL. The responsibility of mitigating load shedding will be solely of Distribution Franchisee (DF). Franchisee shall provide compatible meters as approved by PSERC for separately measuring the backup/standby power consumption. Franchisee may recover the additional



expenditure incurred by him in supplying back up power to the individual consumers..

- vii) It will be the responsibility of the Franchisee to get A&A form signed with PSPCL from all the individual consumers. Only Security (Consumption) and Security (Meter) shall be recovered from the individual consumers.
- viii) Franchisee shall be responsible for all liabilities and obligations including metering, billing, collection of charges from individual consumers within its area of supply.
- ix) Domestic and Non residential tariff as approved by PSERC shall be applicable in case of residential colonies and shopping malls/commercial complexes respectively at single point. HT/EHT Bulk Supply Tariff as per schedules of tariff approved by PSERC shall be applicable to the Private universities, Medical & Engineering Colleges, hospitals, Schools/Colleges etc. However, keeping in view the complications arising out of intermixing of load in case of industrial estates/ IT parks/mix use (Residential/ Commercial & Industrial) Parks and colonies having single point supply, Commission is requested to devise a Bulk Supply Tariff for these categories.
- x) Franchisee shall make arrangement for recording/collection of meter readings and providing the same to PSPCL. Franchisee shall arrange for distribution of bills prepared by PSPCL.

- xi) It will be the responsibility of the franchisee to collect payment of bills from the individual consumers on behalf of the PSPCL and transfer the same in PSPCL account on the same day/next working day. All the payments will be collected by the franchisee on behalf of PSPCL.
- xii) Distribution Franchisee should be vigilant for activities such as collection of bills and proper categorization of the consumers as this affects the revenue of the PSPCL.
- xiii) For all the legal and practical purposes the consumer in franchisee area are the consumers of PSPCL and hence PSPCL at all the times have overriding powers, when it comes to billing, applicability of norms (Supply Code and other Regulations framed by PSERC and PSPCL).
- xiv) All relevant provisions of Supply Code/PSERC regulations are applicable to Distribution Franchisee except section 126,135 and 138 of EA, 2003 and PSPCL will be authorized to take any such necessary action as per provisions of the regulations.
- xv) In case of any penalties levied on PSPCL by the competent authority/PSERC/Forum etc. for non compliance of the provisions of Regulation/Act, the same shall be passed on to the Franchisee.
- xvi) Franchisee is responsible for the distribution system within his area of operation to meet the standards that may be prescribed by Regulatory Commission/ Electricity Act-2003 and also as may be decided by PSPCL. Officers of PSPCL

are entitled to enter the area of Distribution Franchisee for its proper upkeep and to check discrepancies, if any.

xvii) To compensate Distribution Franchisee on account of maintenance of LD system and giving service to the consumers including bill distribution, recording of meter reading, collection of charges etc. on behalf of PSPCL, following benefits shall be given:

S.No.	Particulars of D.F Area	Distribution losses	Reimbursement Charges
1	I.T Park, Shopping Malls, Commercial buildings, Private institutions/Universities/Colleges etc.	Upto 4%	4% of billing amount
2	Residential Colonies not registered with Cooperative society, Industrial estates, Commercial Complexes.	Upto 6%	6% of billing amount

In case consumption of the main meter is found to be more than the sum of the consumption of individual consumers as per limits prescribed above during a month/billing cycle, then the difference shall be paid by the franchisee at the highest slab of applicable tariff.

xviii) In case of any default/violation by Franchisee, a 30 days' notice will be given to the franchisee to remove/rectify the default. In case default is not removed/rectified within the notice period, then PSPCL has the right to take over the entire distribution system including grid substation laid down

by the franchisee in his area of supply. Thereafter it shall become the property of PSPCL. PSPCL shall then carry out all the activities being done by franchisee except providing standby power.

xix) The residents in the area of supply of Distribution Franchisee shall have every right (if it so desired) to get supply of power from PSPCL distribution system and supply to these consumers shall be governed as per existing policy/ regulations of PSERC as amended from time to time.

**C) Conditions for new consumers:**

- i) For All prospective consumers such as industrial estates/IT parks/mix use (Residential/ Commercial & Industrial) Parks, residential colonies not registered with Registrar Cooperative Society, private Universities, private educational institutions/Hospitals etc. shall be allowed to be covered under Franchisee system in the event they opt for single point supply or they can opt for individual connections. However, Shopping Malls/Commercial buildings shall be covered under Franchisee system as per Regulation 6.6.2 of Supply Code.
- ii) The Owners/developers shall first apply for the NOC/feasibility clearance to PSPCL and after getting NOC from the PSPCL, owners/developers shall apply for Franchisee route. For the new consumers, the connection shall be released depositing service connection charges based on total load/ contract demand of the Distribution Franchisee. All other conditions mentioned in Para- B above shall also be applicable on these consumers.

PSPCL also requested the Commission to decide Bulk Supply tariff for such consumers especially for consumers where mix load i.e. DS, NRS and industrial load is used.

4.0) The Commission vide order dated 26.11.2014 decided to issue a public notice inviting objections/comments from the general public and other stakeholders on the issues raised in the Suo-motu petition and the response of PSPCL to the Suo-motu petition. Public hearing was also fixed on 12.1.2015. The Suo-motu petition along with comments/proposal of PSPCL was put on the Commission's website and through public notice dated 28.11.2014 request was made to all stakeholders/public to file objections/comments so as to reach the office of the Commission by 31.12.2014.

5.0) In response to public notice, following eight number objections were received:-

- (i) Lovely International Trust, Jalandhar
- (ii) President/Omaxe Chandigarh
- (iii) Managing Director/ Ganapati Township Ltd. Bathinda
- (iv) DLF Universal Ltd.
- (v) Ireo Waterfront Private Ltd., Ludhiana
- (vi) Advance India Projects Ltd., Amritsar
- (vii) AIPL Ambuja Housing and Urban Infrastructure Ltd., New Delhi
- (viii) Chairman, Punjab Unaided Technical Institutes Association, Mohali

The gist of the objections/comments is as under:

5.1) As per Act, a consumer can be 'an Association or body of individuals' (person) who is supplied with electricity by a licensee for use by the 'association or the body of individuals' (own use) that is to say for use by individuals comprising such association or body. The Association or body of individual will

pay for the energy received (at single Point) as per applicable tariff like any other consumers and distribution of electricity within its premises (Complex) will be the responsibility of the Association or body of individual like other consumers are responsible for distribution of electricity within their premises. Thus if a developer seeks Single Point Supply connection in the name of Resident Welfare Association (RWA) formed by the residents of the complex, the same apparently seems to be admissible as per the provisions of Electricity Act, 2003.

5.2 As per the suo motu petition, the intent of the Commission seems to be that as far as the existing single point supply connections released under clause 8 of Conditions of Supply of PSPCL are concerned, these can continue as such with the exception that such single point supply consumers (developers) shall be appointed as distribution franchisees, an agreement will be signed between the PSPCL and the Franchisee with appropriate terms and conditions to meet legal requirements and rest of the things should continue as per the earlier provisions of clause 8 of the Condition of Supply. The franchisee model suggested by PSPCL for regularizing the existing single point supply connections is nothing but out sourcing of the functions of meter reading, bill distribution, bill collection and disbursement of the amount collected to PSPCL in respect of residents of the complex by way of appointment of a contractor for the same who will be paid 6% of the billing amount for the services rendered.

5.3 The Franchisee Model as proposed by PSPCL in their comments is not acceptable and suggested that Franchisee Model to replace the single point supply connections released

under clause 8.1 of the Condition of Supply should broadly provide as under:-

- i) PSPCL shall supply electricity to the Distribution Franchisee (who can be a Developer/ Resident Welfare Association formed by the residents of the colony/ complex) at a single point at HV/EHV level depending upon the load/ demand of the Franchisee for providing electricity to the residents and for common services.
- ii) Franchisee shall, at his cost, install an efficient, coordinated distribution system in its premises for supply of electricity to the residents as per the electrical plan approved by PSPCL. Franchisee shall be responsible for operation and maintenance of distribution system including grid substation developed by it within its premises.
- iii) Franchisee shall be responsible for all liabilities and obligations including metering, billing, and collection of charge from individual consumers within its area of supply.
- iv) Franchisee will install meter/metering equipment for supply of electricity at single point at a convenient and easily accessible place.
- v) The power supply shall be made available by PSPCL to the Franchisee as per existing load shedding/ power cut instruction as per approval of PSERC and shall also be governed in future as per directives of PSERC. Franchisee will make its own arrangements at its own cost for standby power to supply electricity in its area of supply if it wants 24x7 days continuous supply. Franchisee shall ensure that there is no back feeding of supply to PSPCL system.

vi) Franchisee will charge the residents for the electricity supply from the distribution licensee at a tariff approved by the Commission from time to time for the respective category of consumers. However, for back up supply, the franchisee will be free to charge the residents separately for the same either in the form of annual charges for such back up supply or based on individual consumption by providing separate meters. The Franchisee will, however, be allowed to install compatible dual supply meters in case of provision of back up supply along with licensee's supply.

vii) Total consumption of electricity recorded at the single point of supply will be billed at the highest slab rate of domestic supply when it is provided for residential purposes including common services. A rebate of 12% will be allowed on the energy recorded at the incoming point of single point of supply. In case there is any NRS load other than domestic and common services, its consumption shall be metered separately & billed at NRS tariff and corresponding reduction in the energy recorded at the single point shall be affected. The MMC shall, however, apply to the combined sanctioned contract demand for the single point supply. Alternatively, Commission may devise a Bulk Supply Tariff which shall be applicable where, in a complex, bulk of the load is residential or for common services and the rest is NRS load. Commission may prescribe minimum percentage of domestic load plus common services load of the total load above which this bulk supply tariff shall be applicable.

5.4) In the exiting single point supply model for the Residential colonies/ Building complexes under clause 8.1 of Condition of



supply, there is no clarity whether the supply from the single point connection can be extended to a plot holder, within the complex, for construction. In this regard it is submitted that the same should be admissible as otherwise it would not be possible for the plot holder to obtain temporary supply for construction directly from the licensee. Necessary provision may kindly be made in the proposed Franchisee Model.

- 5.5) As per existing regulation for single point supply for Residential Colonies, the developer is required to obtain a separate single point connection under NRS category in case there is any NRS load within the colony. In this regard, it is suggested that in such a case the consumer can be billed as suggested above or the Commission may devise a common bulk supply tariff for residential cum commercial complexes having domestic as well as commercial loads so as to avoid duplicate infrastructure for domestic and commercial load in the same complex/ colony which otherwise can be fed from a single feeder.
- 5.6) Franchisee may be allowed to connect the power back up system to the main system within its area of control provided it is beyond the metering point of PSPCL. Dual supply meters whether postpaid/prepaid meters may be allowed to be used. It shall be the Franchisee's responsibility to ensure no back feeding of supply to PSPCL.
- 5.7) As per existing regulations, only A&A form of the franchisee should be signed with PSPCL and the individual consumers should sign the Agreement with the Franchisee as per terms and conditions approved by PSPCL/PSERC.
- 5.8) Bills should be prepared and distributed by the Franchisee as

per approved pattern, Tariff and applicable discount structure allowed by PSPCL/PSERC.

- 5.9) Direct billing and payment to PSPCL for individual collections from consumers may not be possible considering the discount structure applicable for Franchisee. It is proposed that only Franchisee is billed at the point of supply as per the provisions of the Single point system and individual consumers may be billed by the Franchisee.
- 5.10) Facility of billing as per slab system applicable to individual consumers should also be applicable for direct billing to Franchisee.
- 5.11) Franchisee should be allowed to disconnect power supply in case of defaulters. Franchisee should have the authority to enforce all provisions of Supply Code and other Regulations to individual consumers including section 126, 135 & 138 of EA-2003.
- 5.12) In case of any penalty levied on PSPCL, same shall be passed on to Franchisee only in case of non-compliance of provisions of the Regulation/Act by the Franchisee.
- 5.13) Designation of PSPCL officers and their purview for inspection needs to be clearly defined to avoid undue harassment to the Franchisee.
- 5.14) Although the present discount Structure (12% on DS, 10% on NRS) on the Tariff approved by PSERC is not sufficient to cover the expenditure incurred by the developer to operate & maintain the system but it should atleast be maintained to allow for the operation and maintenance expenses to be incurred by the Franchisee.
- 5.15) Initial period of Franchisee Agreement should be at least for

10 years and shall be extended automatically in case no violation is reported during this period. It should not be left at the sole discretion of PSPCL.

6.0) On the issue of connection released under 'Bulk Supply' category, the Association of Punjab Un-aided Technical Institutes (PUTIA) filed following objections/comments:

6.1) The Hon'ble Tribunal Judgment is not applicable to educational institutions, universities etc. because they only utilize the electric power to provide facilities to the students and staff with respect to classrooms, laboratories, workshops, libraries, hostels, book-shops, canteens etc. No sale of power is done at educational institutions, universities etc. and it is only enabling the system for supplying power for the aforesaid facilities at the institution premises.

6.2) Educational Institutions, colleges, universities etc., whether private or government, do not fall under the concept of Single Point Supply as detailed in the Petition as their whole set up for providing of power supply to the hostels, staff residences, vendors etc. at the campus/premises belong to them only and is for the ultimate benefit of the students who are the end-users. Nothing is for the sale of power to the outsiders.

6.3) Discontinuation of bulk supply to the institutions, colleges etc. will affect their functioning and operations in a big way. Both the proposed options to make the private educational institutions, colleges etc. to act as Distribution Franchisee for further distribution on behalf of the PSPCL and alternative option to release individual connections to the users in the area of the institution, colleges etc. are not feasible and are totally impractical to implement.

- 6.4) Permission of bulk supply to private educational institutions, universities and other such consumers, wherever has already been granted, is given after verifying the eligibility criteria, requirements and capability of the concerned educational institution, university etc. and thereafter especially by executing an Agreement between such educational institutions, colleges etc. and PSEB (now PSPCL) on mutually agreed terms and conditions. It is quite unjustified to take such a decision at this stage to nullify those agreements and as many time-consuming formalities/conditions fulfilled by such educational institutions, universities etc. for obtaining the permissions for Bulk Supply Connections and complying with the post-approval conditions etc.
- 6.5) The discrimination between the government institutions, universities, etc. vis-à-vis private ones in respect of permission for Bulk Supply is also quite unjustified.
- 7.0) PSPCL vide CE/ARR&TR Memo No. Spl-1/TR-5 dated 12.1.2015 submitted the following comments on the objections/observations of public:-
- 7.1) Individual consumers have to be the consumers of the Licensee since Franchisee acts as facilitator who helps the Licensee in the distribution of the supply. Individual consumers can't be the consumers of the Franchisee since it amounts to resale of power.
- 7.2) In the event developer seeks Single Point Supply Connection in the name of Resident Welfare Association (RWA) formed by the residents of the complex and supply is distributed within the premises by the Association, it

amounts to resale of power which is not admissible in the Act.

- 7.3) The franchisee has been made responsible for individual metering, billing, collection of charges from residents since this activity is already being undertaken by the developers for their own use and also the franchisee shall be reimbursed by the licensee for this work. In the Franchisee model, the developers or franchisee shall be reimbursed for this work by the licensee. Further the prevailing single point supply frame work cannot be adopted in the franchisee set up because previously the developers were the consumers of PSPCL who were indulging in resale of electricity to their individual consumers which is not admissible in the Act. In franchisee model, the individual consumers shall be the consumers of PSPCL by filling A&A forms and franchisee/developer shall act as facilitator for distribution of supply.
- 7.4) The proposal submitted by incorporating the provisions of existing supply framework under 8.1 cannot be adopted for reasons enumerated above.
- 7.5) The facility of allowing temporary connection to plot holders is addressed in the franchisee model since he will be an individual consumer of the licensee. This provision was not existing in the existing single point framework.
- 7.6) PSPCL agreed to the proposal for common bulk supply tariff for single point supply.
- 7.7) Agreement for initially two years has been proposed to take feedback from the Franchisee regarding applicability of terms and conditions. Thereafter the Franchisees agreement

can be extended for 10 years in the event of no problems being envisaged.

- 7.8) Franchisee shall enter into agreement with the PSPCL for partial LD system along with bank guarantee for the balance incomplete LD system.
- 7.9) Powers of issuing TDCO/PDCO or enforcing section 126, 135 and 138 of EA-2003 can't be transferred to Franchisee since Franchisee acts as facilitator for distribution of supply on behalf of Licensee but he is not a Licensee.
- 7.10) There is no requirement to change the existing LD distribution power system except for installation of PSPCL meters in place of those already installed by the developers.
- 7.11) Private educational institutions, colleges, universities take supply of power for its own use in classrooms, labs, workshops, libraries, hostels, conference rooms etc. However invariably canteens, bookshops, medical stores and other shops are given out on contract to vendors to run commercially where separate meters are installed. Even residential quarters of staff have individual meters. This amounts to resale of power.
- 7.12) In view of difficulties explained by PUTIA and examining existing L.D. system in private institutions, PSPCL recommended Bulk Supply Tariff for such institutions to facilitate these existing institutions from the hassle of running separate commercial/ domestic feeders. Keeping in view that more than 90% of total sanctioned load is exclusively being used in these institutions for the benefit of students/ staff or the indoor/ outdoor patients in case of medical institutions, bulk supply is the best option for such institutions. Some

mechanism may be evolved for ensuring that power supplied to end users is as per rates notified by the Commission since individual metering to all users within complex will pose lot of problems for PSPCL as well as the institution. Unless it is proved that the institute is reselling electricity for its commercial benefits, it will not be possible to defend ourselves in the court of law as institute premises is one premises and it is requested to reconsider this matter to avoid complications.

8.0) Public hearing was held on 12.1.2015 where participants reiterated the comments/objections filed in their written submission reproduced above. After hearing the views of all the participants, the Commission vide Order dated 13.1.2015 constituted a Committee of the following to deliberate the issues raised by the stakeholders and examine various legal/administrative aspects in the light of various provisions of the Act and Hon'ble APTEL judgment dated 11.07.2011.

1. Er. H.S.Bedi, Joint Director/Regulations, PSERC
2. Er.H.R.Singla on behalf of Punjab Unaided Technical Institutions (PUTIA)
3. Er.K.K.Singla on behalf of developers of colonies/commercial complexes.
4. Dy.CE/Regulations, Commercial, PSPCL, Patiala

8.1) A meeting was convened on 28.01.2015 vide meeting notice No. 19847-49/PSERC/DTJ-24/vol. II dated 19.1.2015 but EIC/Commercial vide Memo No.1977 dated 27.01.2015 requested for postponement of the meeting by at least 15 days. Accordingly, the meeting of the Committee was fixed

on 23.02.2015 & communicated to members vide Memo. No.20439-42/PSERC/DTJ-24/vol.II dated 5.2.2015. The meeting was attended by PSPCL officer who expressed his inability to put-forth the response of PSPCL and requested for giving 10-15 days time for the said purpose. EIC/Commercial was requested vide Memo No. 21340/PSERC/DTJ-24/vol.II dated 24.02.2015 to ensure submission of the response of PSPCL on the above issue by 09.03.2015 so that the meeting of the Committee may be fixed to discuss the proposal of PSPCL. Failing to solicit any response from PSPCL, EIC/Commercial was again requested vide Memo No. 62185/PSERC/DTJ-24/vol.II dated 13.3.2015 to submit the response of PSPCL by 17.3.2015. As no response was received from PSPCL so the members of the committee were informed vide Memo. No. 287-288/PSERC/DTJ-24/vol.II dated 09.04.2015 regarding non-responsive attitude of PSPCL and were requested to submit their written submissions, if they so desire, within 7 days of the receipt of the letter.

- 8.2) Sh. K.K.Singla submitted the written submissions on behalf of developers of colonies/commercial complexes vide e-mail dated 10.04.2015 & Sh.H.R.Singla submitted the written submissions on behalf of Punjab Unaided Technical Institutions (PUTIA) vide e-mail dated 15.04.2015. On the request of a member of the Committee, the Commission granted a hearing to the members of the Committee on 05.05.2015.



8.3) During hearing on 05.05.2015, the representative of PUTIA reiterated that the Hon'ble APTEL's judgment is not applicable to educational Institutions and universities and thus release of connections to these category of consumers under Bulk Supply category for further distribution at their end should be restored for new connections whereas in respect of existing consumers, status quo should be maintained. The representative of Developers of Colonies/Commercial Complexes while agreeing to be the franchisee of PSPCL submitted that the existing terms and conditions contained in Clause No.8 of the Conditions of Supply under which agreements were signed by the developers with PSPCL, so far as these are in line with the Act, should be incorporated in the franchisee agreement. It was further submitted that the issue of energy accounting and billing of commercial connections provided to some neighbourhood shops scattered across the vast area of Colonies, where feeding of such shops through an independent line is not technically feasible, should be resolved. Similarly release of temporary connections to the residents/occupiers for their construction purposes in such Colonies should also be addressed. PSPCL supported the arguments of PUTIA and recommended that Single Point Supply to all Educational/Medical Institutions under Bulk Supply category should be allowed to continue as there is no re-sale of electricity in these cases. PSPCL also quoted the Electricity (Removal of Difficulties) 8<sup>th</sup> Order of 2005 wherein it has been provided that employers can be granted Single Point Supply for making electricity available to their employees residing in

the same premises. The Commission vide Order dated 07.05.2015 directed PSPCL to file its written submissions along with comments on the issue of release of temporary connection and accounting/billing of energy for the neighbourhood commercial shops etc. spread across the Colonies by 08.05.2015. It was mentioned in the ibid Order that no further opportunity to file its response shall be provided to PSPCL. The hearing was closed and order was reserved.

9.0) PSPCL vide EIC/Commercial Memo. No. 55/DD/SR-75 dated 08.05.2015 submitted the following views on the objections/comments of the stakeholders:

9.1) PSPCL argued that Govt. aided Educational Institutions and Charitable Hospitals are funded by the Govt. These are provided land at subsidized rates and receive funds for infrastructure, equipment and maintenance of the Institution/Hospital etc. Thus they are serving the society equally by doing the same business as Govt. Institutions/Hospitals. Therefore, there cannot be any differentiation between Govt. and Govt. aided Institutions/Hospitals for consideration as a Bulk Supply consumer for supply of electricity.

9.2) The Single Point Supply to these Institutions may be considered as permissible according to the Electricity (Removal of difficulties) Eighth Order, 2005 wherein it has been provided that Single Point Supply may be obtained from the distribution licensee by any person for their members or his employees residing in the same premises, being not inconsistent with the provision of the Act.

- 9.3) Regarding Single Point Supply to all unaided Private Educational Institutions and Private Hospitals, it is stated that these may also be allowed Single Point Supply under Clause -3 of Electricity (Removal of difficulties) Eighth Order, 2005 as these are also performing the same functions as Govt./Govt. aided Institutions provided these are registered under statutory provisions laid down by the State or Central Govt. As per Supply Code only one electricity connection is permissible in one premises, Pvt. institutions viz Hospitals, Universities, Medical Colleges etc. are in one premises owned by either a single person or society. Further in such institutions, the owner can supply electricity to its employees as per tariff decided by the Commission. Their case is quite different from having colonies where dwelling units are owned by large no. of persons residing there in.
- 9.4) Since the private institutions are functioning on commercial principles, these may be charged NRS Tariff or a separate Bulk Supply Tariff be devised by the Commission for the institutions having mixed load.

PSPCL thus recommended that Single Point Supply to private Institutions viz Colleges, Universities, Hospitals etc. may be allowed.

- 9.5) Regarding Single Point Supply to Shopping Malls/Commercial Complexes/Industrial Estates and those Residential Colonies which have not been registered with Registrar Co-operative Societies, PSPCL agreed with the views of the Commission to either sign Franchisee Agreement with such Single Point Supply consumers or

release of individual connections in such colonies/complex. However, PSPCL argued that the consumers in the franchisee area shall not have the right for individual connection from the Distribution Licensee as it would not be possible to lay parallel LD system by PSPCL in the area of franchisee having its own LD system.

- 9.6) PSPCL further pleaded that Single Point Supply to Residential Colonies or Office-cum- Residential Complexes of employers, the group housing societies and residential or commercial-cum-residential complexes of developers which are bounded with walls and have restricted entry for further supply of electricity to the members/employees and other services/establishments inside their premises by the GHS/Employer/Developer on the pattern of Haryana may be allowed.

## **FINDINGS OF THE COMMISSION**

### **10.0) Single Point Supply to Residential Colonies/Building Complexes/Shopping Malls/Commercial Complexes/Industrial Estates.**

- 10.1) The Single Point Supply connections were released to the developers of Residential Colonies/Shopping Malls /Commercial Complexes/Industrial Estates under clause 8 of the 'Conditions of Supply'. The Commission approved 'Conditions of Supply' under regulation 40 of the PSERC (Conduct of Business) Regulations, 2005 and regulation 3.2 of the PSERC (Electricity Supply Code & Related Matters) Regulations, 2007. Although Conditions of Supply was approved by the Commission but such approval does not

grant it a status of a regulation and at the best can be considered as subordinate to the regulations. In the event of in-consistency in the instructions contained in 'Conditions of Supply' with the Electricity Act, 2003 or the Supply Code, the provisions of the Act or the Supply Code and/or orders of the Commission, as the case may be, shall prevail. Thus Conditions of Supply can be enforced to the extent the same does not offend any provision of the regulations or the Act.

The status of Conditions of Supply has also been clearly laid down in the Order dated 26.09.2013 of the Hon'ble Punjab & Haryana High Court in CWP 10644 of 2010 wherein it has been mentioned that

*“ in order to have an enforceable action against any consumer the authority must be derived from the provisions of the Act or the regulations framed under section 181 of the said act as per procedure prescribed.”*

- 10.2) The Hon'ble Appellate Tribunal of Electricity in its Judgment dated 11<sup>th</sup> July, 2011 in Appeal No. 155 of 2010 and Appeal No. 156 of 2010 in K.Raheja Corporation Pvt. Ltd. V/s MERC case has held that Sub-distribution and sale of electricity to the occupants of a building by the owner or consumer of such building is unlawful and contrary to Sections 12 and 14 of the Electricity Act, 2003. A consumer receives electricity only “for his own use” and this excludes a situation where a consumer can on receipt of electrical energy sell a part of that energy or the entire energy itself to different people for their respective consumption. Thus clause 8 of the Condition of Supply is not consistent with the provisions of the EA, 2003 and cannot be continued.

10.3) The Conditions of Supply stand repealed as per regulation 48.3 of the Supply Code 2014 w.e.f 01.01.2015 and only those clauses have been saved by regulation 48.4 of the Supply Code 2014, which are in line with the provisions of the Electricity Act 2003 and the Supply Code. The relevant regulations are as under:

*48.3 The “Conditions of Supply” approved by the Commission under Regulation 3.2 of PSERC (Electricity Supply Code & Related Matters) Regulations,2007 vide Memo No. 7725/26/PSERC/DTJ-49 dated 25.2.2010 and all the subsequent amendments carried out from time to time with the approval/Orders of the Commission shall also stand repealed from the date of commencement of these Regulations.*

*48.4 Notwithstanding such repeal of “Conditions of Supply” anything done or purported to have been done under the repealed “Conditions of Supply” shall be deemed to have been done or purported to have been done with the approval/Orders of the Commission provided it is in conformity with the provisions of the Act & the Supply Code.*

Since, clause 8 of the Condition of Supply is not consistent with the provisions of the EA, 2003 so the Single Point Supply connections already released under the repealed clause shall have to be brought in line with the Act.

10.4) From the submissions and arguments made by all the stakeholders including PSPCL on the issues raised in the

Suo-moto petition, the Commission observes that all stakeholder agree that Single Point Supply to Residential Colonies/Building Complexes/ Shopping Malls/ Commercial Complexes/ Industrial Estates released under clause 8 of the 'Conditions of Supply' is not in accordance with the provisions of Electricity Act, 2003 thus cannot be continued in the present form. A consumer/developer on receipt of electric energy as consumer cannot re-sell the entire energy or a part of that energy to different people having independent identity and premises for their respective consumption which is being practiced in the residential colonies and commercial complexes where Single Point Supply under clause 8 of the 'Conditions of Supply' has been granted.

There are two alternatives for regularization of Single Point Supply released under clause 8 of the 'Conditions of Supply' i.e either the individual consumers/occupants should get independent connections from the distribution licensee or the developer becomes the 'franchisee' of the distribution licensee. The existing consumers/developers getting Single Point Supply broadly accepted the proposal to become franchisee of the PSPCL. However, the only objection of the developers is regarding proposed conditions of the franchisees agreement brought out by PSPCL in its reply to the Suo-motu Petition. PSPCL's argument is that since the franchisee acts as a facilitator and performs functions on behalf of distribution licensee, so clause 8 of 'Conditions of Supply' cannot be adopted in franchisee model. It was stated by PSPCL that earlier developer was treated as consumer of PSPCL who was reselling the electricity to the other

consumers which cannot be permitted in view of Hon'ble APTEL orders mentioned above.

- 10.5) To bring clarity to the issue regarding roles and responsibilities which can be entrusted to a 'franchisee', we may refer to Section 2 (27) of the Electricity Act, 2003 which define 'Franchisee' as a person authorized by distribution licensee to distribute electricity on its behalf in a particular area within his area of supply. Further 7<sup>th</sup> proviso to section 14 of the, EA, 2003 provides that:

*“Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply”:*

From the above, it is clear that a franchisee engaged by a distribution licensee performs the functions of distribution licensee on his behalf in a specified area within the area of supply of distribution licensee. Hence a franchisee can cater to the consumers of the distribution licensee in a specified area on his behalf on mutually agreed terms & conditions. Thus the individual occupants of such a colony/complex have to be the consumers of distribution licensee. There cannot be a situation, where the occupants of a specified area within the area of supply of a distribution licensee are not consumers of the distribution licensee but are catered by a franchisee on behalf of such distribution licensee. However, presently no



such agreements have been signed by the occupants of these colonies/complexes with the distribution licensee i.e they are not the “consumers’ of the distribution licensee and such a situation cannot be permitted in the franchisee model. The franchisee can sign separate agreement with the occupants of the colony/complex in his area of supply. As per the Punjab Apartment & Property Regulation (PAPR) Act 1995 and rules framed under this Act, one of the conditions of licence issued to a promoter/developer is to lay LD system of such colony/complex at its own cost. However, as per Electricity Act 2003, for carrying out retail supply of electricity within the given area, the developer is required to either have a distribution licence under section 12 read with section 14 of EA 2003 or has to become franchisee as per 7<sup>th</sup> proviso to section 14 of the Act. The functions of distribution licensee with respect to metering, billing, collection, etc. which is being presently performed by the developers can be allowed to continue in their capacity as franchisee on behalf of distribution licensee. Since the local distribution system of such colonies/commercial complexes have been erected & maintained by the developer so a Single Point Supply can be released and further distribution can be continued to be taken up by the developer. However, it shall have to be ensured that all the consumers of such colonies/complexes getting supply from the franchisee shall have the same rights and obligations as that of other consumers of distribution licensee and are covered under PSERC (Forum and Ombudsman) Regulations, 2007. All provisions of Supply Code/Standard of Performance and other regulations framed by the

Commission including Tariff Orders issued by the Commission from time to time, shall be applicable to franchisee except section 126, 135 and 138 wherein the distribution licensee shall be authorized to take necessary action as per provisions of the Act. So those provisions of Clause 8 of the 'Conditions of supply' which are consistent with the Act may be included in the franchisee agreement. The franchisee agreement should preferably be for minimum 15 years, which may be terminated earlier in case of breach of agreement after following due process of law. The distribution licensee is allowed to sign franchisee agreements with the developers through MOU route provided the distribution infrastructure has been developed at his own cost.

- 10.6) The issue of grant of temporary connections to the individual occupants of such colonies/complexes for their temporary needs during the period of construction etc. has been raised by the developers. As per the Supply Code and Schedule of Tariff, connections under Temporary Supply schedule is required to be released to such consumers for temporary needs during the period of construction. Since the entire LD system has been erected by the developer and in many cases, the system is under-ground thus it will not be technically feasible for the licensee to release connections from its own distribution system. In such case, the temporary connections can be released by PSPCL to such individual occupants residing in these colonies/complexes from the LD system of the developer. The meters for such connections shall be inspected and sealed by the distribution licensee. Such consumption shall be charged at temporary supply

schedule rates and aggregate of such temporary supply consumption shall be deducted from the Main Meter consumption installed at commencement of supply to such colonies/complexes. The balance energy of main meter can be billed at the rates approved for such connections. Since the meter reading, billing and collection is to be carried out by the distribution licensee, so no rebate on consumption of such temporary connection shall be admissible to the developer. However, if the developer provide AMR metering on such temporary connections and take responsibility for collection of dues then rebate as admissible for respective DS/NRS connections, as the case may be, shall be admissible.

10.7) For feeding NRS load in a residential colony, the developer is required to obtain a separate single point connection under NRS category for supplying electricity for commercial purposes. It was brought out during hearing that concentrated NRS load is usually fed from a separate line and the consumption is recorded at one point and billed under NRS category. However, there are some small shops or other commercial establishments which are scattered all over the complex and feeding such small load from a separate line is not economical. The Commission is of the view that such connections under NRS category may be released by PSPCL through LD system of the colony erected by the developer and billed under the relevant category. The procedure as brought out in para 10.6 above for energy accounting, billing, collection shall be applicable in this case also.

10.8) Regarding providing back up supply to ensure uninterrupted power to the residents of such colonies, the developer shall

have to provide Dual Supply meters capable of recording the consumption from PSPCL system and back up supply separately.

The Franchisee shall issue regular electricity bills to the consumers residing in such colonies/complexes on the formats approved by the Commission. It shall have to be ensured that for electricity supply from the distribution licensee's system, no resident is charged with a tariff higher than that approved by the Commission for respective category of consumers.

**PSPCL is directed to draft Model Distribution Franchisee Agreement in accordance with the position brought out in para 10.1 to 10.8 above within 3 months of the issue of this Order and put it on its website for the information of all the stakeholders. Individual notices shall also be issued to consumers who have been granted single point supply under clause 8.1 to 8.4 of the repealed Conditions of Supply. It shall be ensured that Terms & Conditions offered to the existing single point supply consumers for continuing as 'franchisee' for the area/colony/ complex for which Agreement (A&A form) has already been signed under clause 8 of the 'Condition of Supply' shall not be changed to the disadvantage of the consumer/developer of such colony/complex provided the provisions of Franchisee agreement are in conformity with the Electricity Act, 2003. However, the parties are free to negotiate the Terms & Conditions of the franchisee agreement which are mutually acceptable to both the parties,**

**in accordance with the Act and the regulations framed under the Act.**

**The existing single point supply consumers who have been released connections under clause 8.1 to 8.4 of the repealed Conditions of Supply shall sign the franchisee agreement within 3 months of receipt of Model Distribution Franchisee Agreement from PSPCL.**

**11) Supply to Universities and Private Educational Institutions/hospitals under Schedule of Bulk Supply**

11.1) On the issue of release of connections to universities / private educational institutions/hospitals etc. under Bulk Supply Schedule for further distribution as provided in Schedule of Bulk Supply prior to 01.4.2014, it was stated by the representatives of such Institutions/Universities that Hon'ble APTEL order is not applicable to their institutions since they are using electricity to carry out the functions of universities by providing electricity to class rooms, laboratories, workshops/hostels and to commercial establishments connected with the functions of the educational institutions and for the welfare of students and staff such as canteen, book shops, bank facilities, post office, medical stores etc. It was also brought out that unlike residential colonies & commercial complexes, there is no separate private ownership of occupants in the premises of the universities/institutions and thus there is no re-sale of power by the educational institutions/universities for any other purposes but to facilitate the students and the staff members. Therefore, the Single Point Supply granted

to the universities and private educational institutions cannot be equated with the connections released to the colonies/shopping malls where the developers sell the energy to different independent owners of the plots/flats/shops.

- 11.2) PSPCL submitted its reply to the objections vide CE/ARR&TR Memo. No. Spl-1 dated 12.1.2015 wherein it has been stated that since these institutions are supplying power to commercial establishments such as canteens, book shops etc., which are being run by various vendors to carry out their commercial activities, so this, amounts to re-sale of power. However, in view of the difficulties explained by the representatives of the institutions and supply system being maintained by such institutions, PSPCL proposed that where more than 90% of the sanctioned load is exclusively used by the institutions for the benefit of students/staff, Single Point Supply under Bulk Supply Schedule may be continued.

Further, PSPCL in its comments submitted vide EIC/Commercial Memo. No. 55/DD/SR-75 dated 08.05.2015 argued that Government and private institutions cannot be differentiated. It has been proposed that Single Point Supply under clause 3 of the Electricity (Removal of difficulties) Eighth Order, 2005 may be released to both Government aided or unaided private educational institutes and private hospitals.

- 11.3) Whereas the issue of differentiation between government owned and non-government institution is concerned, the Commission holds that the discrimination between a

Government institution and a non-Government institution is due to provisions of Section 14 read with section 2(5) of the EA 2003 which granted deemed distribution licensee status to Appropriate Government which can engage in supply of electricity. The provisos to section 14 of the Electricity Act, 2003 bestow the deemed distribution licensee status on the following:-

- A person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified on or before the appointed date;
- The Appropriate Government;
- Damodar Valley Corporation, established under Section 3 (1) of the Damodar Valley Corporation Act, 1948;
- The Government company or the company referred to in Section 131 (2) of the Electricity Act and the company or companies created in pursuance of the Acts specified in the Schedule;
- A person appointed by the distribution licensee for undertaking distribution of electricity for a specified area within his area of supply (franchisee); and
- A person intending to generate and distribute electricity in a rural area notified by the State Government.

Further the term “Appropriate Government” has been defined in section 2 (5) of the Electricity Act as under:-

- 5) *“Appropriate Government” means,*  
(a) *the Central Government;*

- (i) *in respect of a generating company, wholly or partly owned by it;*
- (ii) *in relation to any inter-State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations;*
- (iii) *in respect of National Load Despatch Centre, and Regional Load Despatch Centre;*
- (iv) *in relation to any works or electric installation belonging to it or under its control;*
- (b) *in any other case, the State Government, having jurisdiction under this Act;”*

The definition of Appropriate Government in any other case in section 2(5)(b) means the State Govt. therefore the Universities/Hospitals/Medical Colleges/ Educational Institutions which are under the control of the State Govt. could be treated as State Govt. and can be considered as deemed distribution licensee under the provisions of the Electricity Act, 2003. Thus, in accordance with the provisions of the Act, Single Point Supply to MES, Railways, Central PWD Institutions, Jails and Police/ Para Military Establishments/Colonies, Irrigation Headworks, Government Hospitals/ Colleges/Educational Institutes for further distribution by the consumer to various end users has been permitted under Schedule SVII of Schedules of Tariff for Bulk



Supply. However, the same treatment cannot be extended to other Institutes/establishments which are not covered under the definition of deemed licensee(s) under section 14 read with section 2(5) or has been exempted under section 13 of the Electricity Act, 2003.

PSPCL argument that the Single Point Supply connections to all institutions whether Government aided or unaided private educational institutions or hospitals should be allowed for further distribution according to the Electricity (Removal of difficulties) Eighth Order, 2005 issued by the Central Government vide S.O 798(E) dated 9<sup>th</sup> June, 2005 under section 183 of the Act holds valid only where supply to the students residing in hostels and/or to employees residing in colonies of such Institutes/Universities is concerned and not to the entire Institute. The Electricity (Removal of difficulties) Eighth Order, 2005 provides that;-

**2. Supply of electricity at Single point by the distribution licensee to a Co-operative Group Housing Society-**

*A distribution licensee shall give supply of electricity for residential purposes on an application by a Co-operative Group Housing Society which owns the premises at a single point for making electricity available to the members of such Society residing in the same premises on such terms and conditions as may be specified by the State Commission:*

*Provided that the provisions of this clause shall not in any way affect the right of a person residing in the housing unit sold or leased by such a Co-operative Group Housing Society to demand supply of electricity directly from the*

*distribution licensee of the area on such terms and conditions as may be specified by the State Commission.*

**3. Supply of electricity by distribution licensee at single point to a person for his employees-**

*A distribution licensee shall give supply of electricity for residential purposes on an application by a person at a single point for making electricity available to his employees residing in the same premises on such terms and conditions as may be specified by the State Commission.*

Thus Single Point Supply for making supply available for residential purposes to its employees and students residing in the premises of such institutes/Universities/hospitals can be allowed to these Institutes/Universities/Hospitals under PSERC (Single Point Supply to Cooperative Group Housing Societies) Regulation, 2008, framed as per the provisions of Electricity (Removal of difficulties) Eighth Order, 2005.

11.4) However, It is an admitted fact that the case of Single Point Supply to Educational Institutions/Universities/Medical Colleges/Hospitals are entirely different from the case of Residential Colonies/Commercial Complexes/Malls where either there is independent ownership of the occupants or occupants are using electricity for their independent personal use. On the other hand, in case of Educational Institutions/Universities etc. there is no separate independent ownership of any occupant and the supply is used by these institutions for running the affairs connected with the functioning of such institutions. The connections to such private Institutes/Universities/hospitals under Bulk Supply Schedule for catering to the mixed load can be

released for their own use and to run the affairs of such establishment treating them as 'consumers' of the distribution licensee. As per the existing conditions for release of connection under bulk supply category, the entire distribution system is laid and maintained by the bulk supply consumer at its own cost. As per section 2(15) of the Act,

a 'Consumer' *means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.*

Thus the Single Point Supply connection can be released to such private Institutes/Universities/Hospitals etc. to feed electricity supply to the classrooms, workshops, laboratories, administrative blocks, auditorium etc. which are used to carry out various functions of such Institutions mandated under various rules/by-laws of the land governing such Educational/Medical Institutes. However, there may be some functions for providing different services to the staff and the students, which the concerned authorities may intend to get executed from 3<sup>rd</sup> agency on mutually agreed terms and conditions. The supply to such establishments within the premises of the University/Educational/Medical Institute can be metered by putting up sub-meters by the authorities to ensure energy accounting to promote energy conservation. However, the supply

for all these activities should be to run the affairs of the University or the concerned educational institute/hospital having mixed load. Although in such a scenario the supply is being used by the outsourced agency but it is meant for carrying out the functions of such educational institute/hospital and thus comes under the term “for his own use”. However, there shall not be any re-sale of electricity as brought out in Hon’ble APTEL Order dated 11.7.2011 in Appeal No.155 and 156 of 2010. In case there is any re-sale of electricity to any third agency in the premises of the institute for commercial purposes then the institute/university/hospital shall have to either get licensee as per section 14 of the Act or become franchisee of the distribution licensee under proviso 7 of section 14 of the Act as per the terms & conditions enumerated in para 10.1 to 10.8 above.

**The Commission thus decides to continue/allow the Single Point Supply under Bulk Supply schedule of tariff for catering the mixed load of existing as well as new applicants of private Educational Institutions/Universities/ Colleges/ hospitals etc. for their own use and to run the affairs connected with the functions of such Educational Institutions/Universities/Colleges/hospitals. The Bulk Supply schedule shall stand amended to the above extent.**

**The petition is disposed of accordingly.**

Sd/-  
(Gurinder Jit Singh)  
Member

Sd/-  
(Romila Dubey)  
Chairperson

Chandigarh

Dated: 09.06.2015