

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 47 of 2021

Date of Hearing: 03.08.2022

Date of Order: 26.08.2022

Petition under section 43 of the Electricity Act, 2003 read with Regulation 5.1 of the Supply Code, 2014 and other relevant rules and regulations as approved by the Commission including 68,69,70,71 and 72 and other relevant provisions of Chapter XIII of the Conduct of Business Regulations 2005 as amended up to date and the provisions of the Electricity Act, 2003 for directing the Respondents to render respective permanent Domestic Supply Electricity connection to the Petitioners for their residential houses in the colony.

AND

In the matter of: Mr. Sanjeev Thakur, S/o Sh. Shobha Ram Thakur, R/o Kothi No. 99, R.K.M City, Sector-112, Sahibzada Ajit Singh Nagar, Mohali and Ors.

.....Petitioners

Versus

1. Punjab State Power Corporation Ltd., the Mall, Patiala
2. Greater Mohali Area Development Authority, PUDA Bhawan, Sector-62, SAS Nagar Mohali.

.....Respondents

Commission: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

Petitioner: Sh. Aditya Grover, Advocate

PSPCL: Sh. Naveen S. Bhardwaj, Advocate
Sh. Rupinderjit Singh, CE/ARR&TR
Sh. Ravi Luthra, SE/TR-2
Sh. Gurvinder Singh, Sr.Xen/TR-5
Sh. Sukhjot Singh Sidhu, SE/Regulation

GMADA: Sh. Balvir Singh Gill

ORDER

1.0 The petition has been filed by the residents of a colony known as RKM City, situated at Sector-112, Sahibzada Ajit Singh Nagar, Mohali under Section 43 of the Electricity Act, 2003 read with Regulation 5.1 of the Supply code, 2014 and other relevant rules and regulations as approved by this Commission including Regulations 68, 69, 70, 71 & 72 and other relevant provisions of Chapter XIII of the PSERC (Conduct of Business Regulations), 2005 as amended up to date and the provisions of the Electricity Act, 2003 for directing the Respondent PSPCL to render respective permanent domestic supply electricity connections to the petitioners for their houses in the colony.

1.1 It has been submitted that the petitioners own their respective houses/flats in the above said colony and as such there are almost 75 houses in the colony wherein almost 50-60 families are residing. The said colony has been developed by one Sh. Kawaljeet Singh Walia and accordingly the plots/ houses/flats have been sold to the persons like the petitioners. The petitioners are being supplied electricity by the Developer for which the petitioners have been duly paying the electricity charges on the pretext that the Developer is a franchise/authorised by PSPCL. The petitioners have duly paid the entire amount on account of the electricity consumed as demanded by the Developer from time to time and nothing is payable by the petitioners on account of electricity charges. Later on, it has transpired that the Developer has not been authorized by PSPCL for selling electricity in the colony to the occupants, rather the Developer had only taken a temporary

NRS electricity connection from PSPCL and had been wrongly selling electricity in the colony. Accordingly, the Developer has been charged on account of unauthorized use of electricity (UUE) by PSPCL for which a penalty has been imposed upon the Developer. The Developer Sh. Kawaljeet Singh Walia is absconding and has abandoned the colony, leaving the petitioners in the lurch.

- 1.2 It has been pleaded that due to the sins and wrongs of the Developer, the innocent petitioners, who have been cheated by the Developer, are unnecessarily being made to suffer. They have been regularly paying the electricity dues to the Developer on account of the consumption of electricity by them and are being pressurized to pay the charges imposed by PSPCL on account of UUE upon the Developer which is totally illegal, arbitrary, unjust and unsustainable in the eyes of law. They have time and again approached PSPCL for rendering respective electricity connections, however, PSPCL has flatly refused to provide electricity connection to any of the houses in the colony. As per the provisions of the Electricity Act as also the regulations framed by this Commission, the petitioners are entitled to get individual electricity connections.
- 1.3 The petitioners have further stated that in terms of PSPCL's Electricity Supply Instructions Manual (ESIM) Clause 3.3 (C), no NOC is required for the release of connection for domestic /industrial/ commercial use of electricity. As per Commercial Circular No. 19 of 2017 issued by PSPCL itself, on the basis of the instructions issued by the Government of Punjab, it has been held that no NOC /CLU is required for the release of

electricity connection/extension of load/demand for domestic, Industrial and commercial category anywhere in Punjab. The petitioners in terms of the regulations framed by this Commission are willing to pay the requisite charges to PSPCL for release of electricity connections. As per Section 43 of the Electricity Act, PSPCL is bound to render connectivity to the petitioners being the sole distribution licensee in Punjab. However, PSPCL instead of performing its duties, is unnecessarily harassing the petitioners. In this regard, Section 43 of the Electricity Act has been quoted as under:

“Section 43. (Duty to supply on request): --- (1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation.- For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”

It has been added that once the petitioners are willing to pay the requisite charges for seeking new connection, PSPCL cannot be permitted to refuse new electricity connections to them. By this act of refusal, PSPCL is showing its dominance being the sole distribution licensee and is working on the might is right fundamentals.

- 1.4 Further, on various occasions and from time to time, the Hon'ble courts have rendered indulgence on similar issues being faced by similarly placed persons, upon which the distribution licensee has been directed to immediately provide the connectivity to the residents. In case of Ravi Dutt Badyal vs. PSPCL and others, while deciding Civil Misc. No. 5737 in CWP No 34999 of 2019, vide order dated 20.07.2020, Hon'ble Punjab and Haryana High Court has passed the following order:

“CM-5737-CWP-2020

1. Learned counsel for the Respondent No. 5/Builder states that the laying of electricity cables for the Petitioner's plot will be completed within one week from today.

2. *As regards providing the electricity connection to the Applicant/ Petitioner's plot, it appears that the plot was not part of the Mega Housing Project. It is part of a colony which was subsequently regularized by the competent authority of the local government in Patiala. It appears that the plot is under the jurisdiction of the Municipal Council, Kharar.*

3. *Learned counsel for the Punjab State Power Corporation Ltd. ('PSPCL') states that a separate electricity line has to be laid to the Petitioner's plot for providing electricity connection. Learned counsel for the Petitioner, on instructions, states that the Petitioner is prepared to pay the requisite charges for the laying of such line "as per regulations".*

4. *Mr. Sehajbir Singh, Advocate for the PSPCL states that within two weeks from today, the Petitioner will be informed about the requisite charges that have to be paid by him for laying of the line from the transformer, as per regulations.*

5. *It will be open to the Petitioner, if aggrieved by such decision of the PSPCL, to seek appropriate remedies in accordance with law.*

6. *The application is disposed of in the above terms.*

.....”

The petitioners are living under threat of disconnection and have no choice except to seek electricity from the temporary arrangement made by the Developer under the aid of PSPCL to the Developer and they are coerced upon to bow before them, as PSPCL is not performing its duties to render permanent electricity connection to them.

Further, most of the requisite part of the LD system is already laid down/available in the colony, by which presently electricity is being supplied from the temporary connection taken by the Developer. Thus, there is no reason for PSPCL for not

rendering permanent electricity connections to the petitioners, especially since they are also willing to pay the applicable service connection charges. Photographs depicting the availability of the LD system in the colony have also been appended.

- 1.5 Emphasising their right to live a peaceful and dignified life, the petitioners have pleaded that by not rendering permanent electricity connections to them, PSPCL is impinging upon their life and liberty and their health and survival may be under threat especially in the approaching harsh summer season. Even this Commission, while adjudicating upon Petition No. 22 of 2020 vide interim order dated 02.11.2020, has inter-alia held that residents cannot be denied essential electricity services and, therefore, till such time the matter is resolved, PSPCL is obligated to provide supply to the residents. Further, while adjudicating a similar matter in case of Gulmohar City Vs. PSPCL, in Petition No. 48 of 2020, vide its interim order dated 15.03.2021 in IA No. 7 of 2021, this Commission has inter-alia passed the following order (relevant extract):-

“.....After hearing the counsel and the officers of PSPCL, the Commission directs PSPCL to release electricity connections to the residents of Gulmohar Residency after recovery of Service Connection Charges/ other applicable chargers as per the Cost Data approved by the Commission within the time limits specified in Regulation 8 of the Supply Code, 2014 subject to the final order in the instant petition. A separate account of the expenditure incurred by PSPCL on release of these connections may be

kept and the amount may be recovered from the Developer or the delinquent officials/officers as per applicable law. It is reiterated that the above interim directions to PSPCL have been issued keeping in view the peculiar facts and circumstances of the present case and are not necessarily applicable to other cases. IA No. 07 of 2021 stands disposed of accordingly.

.....”

Further, the petitioners have pleaded for similar relief by citing interim order dated 30.07.2021 in Petition No. 13 of 2021, wherein this Commission has directed PSPCL to render regular /permanent electricity connections to the residents of a similarly placed colony known as Sunny Enclave, Patiala while charging service connection charges and other applicable charges.

The copies of above mentioned orders have also been appended.

- 1.6 The Petitioners have also referred to Petition No. 07 of 2021 filed by PSPCL before this commission under Regulation 6.7 & 47 of Supply Code, 2014 and Regulation 69,70,71 & 72 of Chapter XIII of the PSERC (Conduct of Business Regulations), 2005 regarding erection of LD system by PSPCL and release of electricity connections in those licensed colonies where Developers sold plots/flats without obtaining NOC from PSPCL or where Developers after obtaining NOC, have abandoned the project without installing the LD system and other related matters. This colony has been mentioned at Sr. no.25 in Petition No. 7 of 2021. Once PSPCL concedes and has applied for seeking approval from this Commission to erect LD system

by PSPCL and release of electricity connections in those licensed colonies where Developers sold plots/flats without obtaining NOC from PSPCL or where Developers after obtaining NOC have abandoned the project without installing the LD system, therefore, no prejudice shall be caused to PSPCL in case a similar order in this case.

- 1.7 It has been prayed that in case the instant matter is not taken up immediately and the petitioners are not rendered regular electricity connections in the interim, they shall suffer irreparable loss and injury.
- 2.0 The petition was admitted vide Order Dated 24.09.2021 and PSPCL was directed to file its reply within two weeks and the petitioner was asked to file rejoinder to the reply within a week thereafter.
- 3.0 PSPCL filed its reply to the petition vide memo No. 7505 dated 26.10.2021. It has been submitted by PSPCL that the relief sought by the petitioners by way of the petition is not sustainable as per the prevailing regulations of this Commission and instructions issued by PSPCL and that the petition is misplaced and misconceived, has failed to disclose violation of any rule and regulations by PSPCL and is liable to be dismissed for the reason that PSPCL has rightly not released the electricity connections to the petitioners in the absence of NOC (No Objection Certificate) to the developer.
- 3.1 The background of the case as given by PSPCL is that the colony namely RKM City is a licensed colony for which license to develop a colony was issued to the developer by GMADA vide License No. LDC 07/12012 which expired on 06.03.2015.

The original NOC to the developer M/s RKM Housing Ltd. was issued for 28.984 Acres colony RKM City Sector-112, Mohali vide memo no. 105-107 dated 01.03.2012 for a colony load of 3320.80 kW to be fed through 11 Nos. 300 kVA & 2 Nos. 200 kVA DTs. The electric connections in the proposed colony were to be governed by Clause 8.5 of Conditions of Supply. Later the Developer applied for revised NOC to PSPCL under Regulation 6.7.1 of Supply Code-2014 vide RID-18753 for an area of 29.37 Acres on 12.01.2018 for an estimated load of 3207 kVA with 8x500 kVA and 1x100 kVA DTs. The developer is under statutory obligation to get the NOC by virtue of Regulation 6.7.1 *ibid*, extract of which has been reproduced as under:

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

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

- a) The developer/ builder/society/owners/ association of residents/ occupiers shall submit the complete lay out plan of the electrical network proposed to be erected in the colony and other documents prescribed by the licensee along with the processing fee as per Schedule of General Charges and obtain the preliminary NOC from the licensee. The NOC shall be issued by the licensee within 45 days of the receipt of proposal complete in all*

respects along with requisite documents. In case the developer/ builder/ society/ owners/ association of residents/ occupiers withdraw his request or fails to comply with the conditions within stipulated time, the processing fee shall be forfeited.

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

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

.....
.....

- c) The developer/ builder/ society/ owners/ association of residents/ occupiers may deposit the estimated cost of Local Distribution (LD) system of the colony as per approved layout sketch and get it executed from the distribution licensee. The expenditure of L.D system including service cable up to the metering point of each consumer and the 11kV system shall include cost of the material, labour plus 16% establishment charges there on. The phase wise development of LD system may be carried out by the licensee as per requirement but any cost escalation over a period of time shall be borne by the licensee. The distribution licensee shall be responsible to release individual connections within the time frame specified in Reg. 8. The expenditure incurred by the distribution licensee for providing connectivity to the colony shall also be borne by the developer/ builder/ society/ owners/ association of residents, as the case may be. This shall include the expenditure incurred by the distribution licensee for providing the individual 11kV service line(s) to the colony (cable or conductor from pole/ tower of feeder/ distribution main to the colony premises/ metering point) and proportionate cost of common portion*

of the distribution main including breaker from nearest feeding grid sub-station having power transformer of 33-66/11kV or 132-220 /11kV, as the case may be, which is feeding the 11kV line connected to the colony, as per the Standard Cost Data approved by the Commission. In case the existing 11kV distribution main is required to be augmented/ extended/bifurcated or a new 11kV line/plant is to be erected to allow connectivity to any colony then such work shall be carried out by the distribution licensee at its own cost provided the applicant pays the full cost of service line and proportionate cost of the common portion of the augmented/extended /bifurcated /new distribution main including breaker as per the Standard Cost Data approved by the Commission. However, the developer/ builder society/ owners/ association of residents/ occupiers shall have the option to execute the works of internal L.D system of the colony/ complex of its own in accordance with the layout plan/sketch approved by the distribution licensee subject to payment of 15% supervision charges on the labour cost to the licensee. In such case, the developer/ builder society/ owners/ association of residents/ occupiers, as the case may be, shall furnish a Bank Guarantee (valid for the period of NOC) from any bank registered and regulated by RBI equivalent to 20% of the estimated cost of the LD system of the colony to be executed by the developer/ builder society/ owners/ association of residents/ occupiers before the approval of the electrification plan and issue of NOC by the distribution licensee. This BG shall be returned after the developer fulfils the conditions of NOC and submit BG in case he avails partial connectivity from the distribution licensee. Provided that the distribution transformers and other material to be used for the internal LD System of the colony shall be as per the specifications approved by the licensee and shall be procured from the vendors approved by the licensee. The Distribution Transformers (DTs) may be procured by the developer

from the distribution licensee. However, the developer shall be at liberty to procure the DTs from the approved vendors of the distribution licensee after getting the same inspected from the distribution licensee at manufacturer's site. A 21 days' notice shall be served on the distribution licensee by the developer to inspect the DTs. In case DTs are not inspected within 21 days from the date of receipt of notice by the distribution licensee from the developer, it shall be deemed to have been inspected and approved by the distribution licensee. Provided further that the phase wise development of LD system may be carried out by the developer/ builder society/ owners/ association of residents/ occupiers, as per requirement. In case the developer/ builder/ society/ owners/ association of residents/ occupiers requests for energisation of incomplete/partial LD system, the same shall be allowed provided the developer/ builder/ society/ owners/ association of residents/ occupiers furnish a Bank Guarantee (BG valid for 3 years) from any bank registered & regulated by RBI equivalent to the estimated cost of balance works as per the cost of material and labour prevailing at the time of allowing connectivity for the partial load plus expected % age increase in the cost of material & labour in the next 3 years as may be approved by the Commission on the basis of increase in the cost during the preceding 3 years. This BG may be extended for each block of 3 years by increasing the base value with expected % age increase in the cost of material & labour as may be approved by the Commission. The amount of Bank Guarantee shall keep on reducing with the completion of remaining works of the L.D system. After submission of Bank Guarantee to the satisfaction of the licensee, the BG accepted at the time of issue of NoC shall be returned to the developer and it shall be the responsibility of the licensee to release connections to the residents/ occupiers of the colony/complex according to the time frame specified in Reg. 8. After its completion

and inspection by the Chief Electrical Inspector to Govt. of Punjab, the distribution licensee will take over the L.D system which will be connected to its distribution system. The distribution licensee shall thereafter maintain the L.D system at its own cost.”

As per aforesaid Regulation 6.7.1 of Supply Code, 2014, the LD system of the colony was to be laid by the developer after taking NOC from PSPCL. The electricity connections to the residents/occupiers of plots/flats inside the colony are to be released from the LD system erected by the developer inside the colony. If the internal LD system is not laid by developer, then PSPCL cannot release the electric connections to the residents. In this case, the Developer has failed to submit 20% BG (amount of Rs. 26,52,870/- ,valid for 3 years) against the internal LD system of the colony and hence the NOC case could not be processed further for grant of NOC. Now it has been gathered that the Developer has absconded leaving the LD system incomplete and the NOC case midway.

3.2 PSPCL further submitted that a similar matter had come up before the Hon'ble Punjab & Haryana High Court in CWP No. 23009 of 2019 titled as 'M/s Impact Project Private Limited and another Vs. PSPCL and others' wherein an identical prayer was made by the petitioners which was contested and it has been held by the Hon'ble High Court that the communication issued under the Supply Code, 2014 are valid and cannot be held to be without any statutory basis. The relevant portion of judgment is reproduced as under:

“...4.8 It may be noted here that it is not disputed by the petitioners have failed to completely develop the local

distribution networks in most of the projects as the occupancy is low. The petitioners want to hand over the incomplete projects to the distribution licensee and walk away. In such circumstances, the distribution licensee is entitled to insist upon the petitioners to comply with the necessary requirements, so that the infrastructure for the expected demand of electricity is in place before the petitioners hand over the management of the electricity distribution to the PSPCL. No doubt, individual electricity connections have been issued to the occupiers/buyers/individual owners of the residential premises, however, that would not absolve the petitioners from fulfilling the requirements of the Supply Code, 2014.

4.9 This matter can be examined from yet another perspective. If in the absence of complete infrastructure, the distribution licensee is forced to take over the incomplete local electricity distribution network, the consumers are likely to suffer. The developer after handing over the complete management would walk away from the project and the distribution licensee would be then either be unjustifiably required to invest in the infrastructure which is the responsibility of the developer as per Supply Code, 2014 or the occupier will get proper supply of the electricity.

In these circumstances, the petitioners-developers are not entitled to the writ as prayed for.....”

A copy of the above mentioned order dated 07.04.2021 has also been enclosed. PSPCL has submitted that since the controversy has already been decided by the Hon'ble High

Court and it has been categorically held that the builder/developer shall not be permitted to avoid its responsibility as provided in the Supply Code, 2014, so the relief prayed for by way of instant petition is not sustainable and liable to be rejected.

3.3 It has been added by PSPCL that the connectivity (as temporary connection to developer) was released to this colony on 30.10. 2019. An amount of Rs. 132 Lakh (approx.) is required to lay the internal LD system of the colony which is required to be deposited by the Developer as per Supply Code, 2014. The Developer has been charged with UUE for illegally selling electricity in the colony to the occupants of houses/flats.

3.4 PSPCL has further submitted that Clause 3.3 (C) of Electricity Supply Instruction Manual (ESIM) referred to in the petition is not applicable for release of electric connections to the individual residents/occupiers of plots/flats in a licensed colony which is governed by Regulation 6.7.1 of Supply Code, 2014. Also the Commercial Circular No. 19 of 2017 issued by PSPCL referred to in the petition is not applicable on the release of individual connections to residents/occupiers of plots/flats in a licensed colony. Regarding CWP No 34999 of 2019 mentioned in the petition, PSPCL pointed out that the aforementioned case was of un-approved regularized colony which was subsequently regularized by the Local Body i.e. M.C. Kharar whereas the present case is of licensed colony where the Developer has abandoned the project. It has been added that on directions from the Commission, PSPCL vide memo no. 1392-1419 dated 09.04.2021 issued instructions upholding the Department of Housing & Urban Development, GOP instructions dated

06.05.2008, as per which a developer must get NOC from PSPCL before start of any development work at site. Considering & interpreting these instructions imply that a developer must get NOC from PSPCL before any temporary connection is granted to the developer. In the instant case, the temporary connection is already running, but the developer has failed to get NOC from PSPCL. As per above instructions, even the running temporary connection needs to be disconnected. However, PSPCL shall have no problem in releasing the electricity connections to the residents/occupiers if the pending liability amounting to Rs. 132 Lakh (approx.) pertaining to completion of LD system is arranged from the licensing authority and provided to PSPCL. Since as per the petition, the developer has absconded, the RWA may pursue with the pending NOC case and licensing authority may be asked to arrange funds (Rs. 132 Lakh approx.) at disposal of PSPCL for completing the LD system. Though the LD system is already partially laid down, the same is not approved by PSPCL. For the purpose of getting it approved, the RWA may pursue with the pending NOC case as stated above. The Developer has not developed the complete LD system and the developer and Licensing Authority are solely to blame for the present precarious station of petitioners.

- 3.5 Further, in its interim order dated 02.11.2020 in Petition No. 22 of 2020, this Commission directed PSPCL to release electricity connections to the residents of colonies of Shivalik City after recovery of Service Connection Charges/other applicable charges as per the Cost Data specified in Regulation 8 of

Supply Code, 2014 **subject to final order in this petition** (emphasis added by PSPCL). Any expenditure incurred by PSPCL on release of connections may be recovered from the developer or the licensing authority or the delinquent officials/officers as per law. Further it was reiterated that the above interim directions to PSPCL have been issued keeping in view the peculiar facts and circumstances of the case and are not necessarily applicable to other cases. PSPCL has similarly referred to the interim order dated 15.03.2021 given by this Commission in Petition No. 48 of 2020 in the case of Gulmohar Residency, Sector 116, Mohali. PSPCL went on to refer to interim order dated 30.07.2021 in Petition No. 13 of 2021 in the case of Sunny Enclave, Patiala wherein similar directions were given subject to formation of Residents Welfare Association for taking over the electricity connections for maintaining common services such as street lights, water works etc. with directions that **further action against the developer including but not limited to disconnection & recovery of charges shall be taken by PSPCL as per law**(emphasis added by the respondent PSPCL). PSPCL has requested that the underlined (highlighted) words may be perused and contemplated upon in the instant case. It has been submitted that the release of electricity connections to residents by taking service connection charges is rather a stop gap interim measure than a permanent resolution to the problem of abandoned colonies. Unless the licensing authority acts and arranges funds which were originally to be provided by developer as per terms of NOC, the licensee PSPCL shall be under tremendous financial stress and shall continue to bleed financially.

- 3.6 PSPCL further submitted that they have filed Petition No. 07 of 2021 before this Commission regarding erection of LD system by PSPCL and release of electricity connections in those licensed colonies where developers sold plots/flats without obtaining NOC from PSPCL or where developers after obtaining NOC have abandoned the project without installing the LD system and other related matter. This colony is also enlisted in the 71 nos. abandoned colonies given in the said petition. Moreover, PSPCL vide memo no. 1616 dated 01.06.2021 also submitted a proposal regarding release of electricity connections to residents of such colonies, which is sub-judice before this Commission. However, in the instant case, an amount of Rs. 132 Lakh (approx.) is required for completing the LD system of the colony. The licensing authority (GMADA) may be asked to release the amount at disposal of PSPCL so that the pending works of LD system may be completed by PSPCL and electricity connections could be released to the individual residents/occupiers inside the colony.
- 3.7 Accordingly, PSPCL prayed that the petition may be dismissed in the facts and circumstances of the case and in the interest of justice and fair play.
- 4.0 During the hearing on 10.11.2021, the learned counsel for the petitioners submitted that the petitioners cannot be denied electricity connections merely because the Developer has not fulfilled the conditions of license. The petitioners are facing acute hardships due to non-supply of permanent electricity connections by PSPCL. It was also submitted that electricity is being supplied to the residents by the Developer through his

temporary connection for which the Developer is raising the bills and collecting the charges from the residents. The learned counsel assured that a Resident Welfare Association of the colony shall be formed which would take the electricity connection for common services from PSPCL.

- 4.1 An office memo No.7566 dated 13.10.2021 from Dy.CE/DS, PSPCL, Mohali to SE/Regulations, PSPCL appended with the above mentioned written submission dated 26.10.2021 of PSPCL states that a temporary connection was given to the Developer on 30.10.2019 against which defaulting amount of Rs.3.09 lakh was outstanding as on 09.10.2021. Further, a 49.80kW temporary connection was again given to the Developer on 12.11.2020 against which a defaulting amount of Rs.5.76 lakh was outstanding as on 09.10.2021. Above mentioned written submission also state that UUE charges have been imposed on the Developer for illegally selling electricity in the colony. However, it was also stated therein that no data related to UUE case was available.
- 4.2 During the hearing on 10.11.2021, PSPCL failed to satisfactorily explain the release of 2 nos. temporary connections to the Developer, especially sanctioning of a higher capacity connection of 49.80kW load for temporary requirement without verifying the ground position. Upon a query by the Commission regarding the present status of misuse of electricity by the Developer and the status of the UUE, the officer representing PSPCL assured that the detailed position would be intimated expeditiously after personally verifying the same. Vide Order

Dated 23.11.2021, PSPCL was directed to furnish the same within a week and further directions were issued as under:

“.....Since the matter requires detailed investigation also, PSPCL was directed to conduct a thorough inquiry into this matter regarding sanctioning of 49.80kW load for temporary requirement of the Developer specially in view of the fact that the Developer was already a defaulter of the earlier temporary connection. List of officers responsible for the same and action taken against them by PSPCL be indicated. PSPCL to submit its report within one month. Further, PSPCL is also directed to file its submissions regarding total number of temporary or permanent electricity connection being released alongwith the latest status of LD system in the colony.

After hearing the counsel for the petitioners and the officers of PSPCL, the Commission directs PSPCL to release electricity connections to the petitioners in the residential colony, RKM City situated at Sector-112, Sahibzada Ajit Singh Nagar, Mohali, after recovery of service connection charges/other applicable charges as per the Cost Data approved by the Commission subject to the final Order in the present petition. A separate account of the expenditure incurred by PSPCL on release of these connections may be kept and the amount may be recovered from the Developer or the delinquent officials/officers as per the applicable law. PSPCL shall ensure legitimacy and credentials of the Resident Welfare Association to safeguard its commercial interests.

GMADA issued the license to the Developer to develop the colony in question and also obtained the requisite documents from the Developer. GMADA is a necessary party for proper adjudication of the matter in the present petition and is therefore impleaded as a respondent in the petition. Notice be issued to GMADA to file its reply within two weeks with a copy to PSPCL (through hard copy and soft copy) and to indicate action taken by it to ensure compliance of licensing

condition relating to obtaining NOC from PSPCL and completing the LD system. Further, GMADA is also directed to provide the correct name and address of the Developer and details of bank guarantees held by it for ensuring completion of infrastructure in the colony and ensure compliance of licensing conditions.....”

- 5.0 PSPCL submitted vide memo no. 7944 dated 29.12.2021 that the inquiry was marked to the office of CE/Technical Audit & inspection. However, because of ongoing agitations by various employee unions, the enquiry report could not be finalized due to non-availability of concerned employees directly or indirectly concerned and no relevant office record could be accessed by investigating agency. It was requested to grant time period of one month more for submission of action taken report. PSPCL filed another report vide memo No. 5791 dated 21.04.2022
- 6.0 GMADA filed their reply vide memo No. 3740 dated 23.12.2021 stating that due to non-compliance with the conditions of licence by the promoter company M/s RKM Housing Ltd., Deputy Commissioner & Tehsildar, S.A.S. Nagar have been asked to stop registrations of the plots in the colony. Vide Order dated 13.05.2022, the Commission observed that GMADA has failed to ensure compliance with the conditions of license which has caused suffering to the residents of the colony and in view of this lapse, GMADA was directed to file an affidavit within two weeks as to why it should not be asked to complete the LD system in the colony. GMADA was also directed to submit a detailed reply as earlier directed vide Order dated 23.11.2021 within two weeks.

- 7.0 However, since GMADA failed to file their affidavit, vide Order Dated 23.06.2022, it was given the last opportunity to do so on affidavit in compliance of the Order dated 13.05.2022, within three weeks, failing which action may be taken against GMADA as per the law.
- 8.0 GMADA filed an affidavit stating that GMADA had issued license bearing No. 07/2012 dated 07.03.2012 to the Promoter M/s. RKM Housing Limited for setting up a residential colony at Sector-112, S.A.S. Nagar, which stood expired on 06.03.2015. A copy of aforementioned license has also been enclosed. The conditions no. (vii) and (xxii) of license dated 07.03.2012 have been reproduced as under:

“vii)The Licensee shall obtain a final/confirmed No objection Certificate from the PSPCL within 90 days from the issue of this License, failing which penal action shall be initiated against the Licensee under the relevant provisions of PAPP Act, 1995 and rules made there under.”

“xxii)The Licensee shall make his own arrangements for providing water supply; installation of sewerage treatment plant, ensuring smooth power supply and other requisite services for the colony at its own cost. It shall also be ensured that such costs are included in the estimates and no earth excavation will be allowed from the plot by the Licensee for the construction of roads.”

GMADA further submitted that as per the terms and conditions of the aforementioned colony license, it is only the responsibility of the Promoter to ensure smooth power supply and other requisite services for the colony at its own cost. Vide memo No.

1731 dated 05.07.2021, this Promoter was directed to produce the final NOC from PSPCL as per conditions of License. However, the same was not submitted by the Promoter. Thereafter, Additional Chief Administrator, GMADA vide his Memo No. 3115-16 dated 01.11.2021 had requested Deputy Commissioner, S.A.S. Nagar and Tehsildar, S.A.S. Nagar to stop registration of plots, commercial sites, booths etc. falling in RKM City, Sector-112, Mohali developed by this Promoter due to non-compliance of the terms and conditions of License including failure to obtain the final NOC from PSPCL . A copy of the aforementioned letters dated 05.07.2021 & 01.11.2021 have also been enclosed. Further, this Promoter has not submitted any amount or Bank Guarantee with GMADA for carrying out electricity works in this project, as per instructions issued by Department of Housing and Urban Development, Government of Punjab vide Memo No. 12092-98 dated 18.06.2013, a copy of which has been enclosed. GMADA has submitted that in view of above, it cannot be burdened with the liability to complete the electricity works in this colony developed by the Promoter, which he was bound to complete at its own cost as per terms and conditions of License.

- 9.0 The above mentioned affidavit given by GMADA was taken on record and the order was reserved vide Order dated 05.08.2022.

Commission's Findings and Order

10. The petition sought directions to the distribution licensee i.e.PSPCL to render respective permanent domestic supply electricity connections to the petitioners for their houses in the colony named

RKM City, Sector-112, S.A.S. Nagar Mohali for the development of which the licence bearing No. 07/2012 dated 07.03.2012 was issued by the licensing authority i.e. GMADA to M/s. RKM Housing Limited. The main argument of the petitioners was that they cannot be deprived from electricity connections on account of failure of the Developer to comply with the conditions of licence to obtain NOC from PSPCL and to complete the LD system in the colony. It was pleaded that as per Section 43 of the Electricity Act, PSPCL was bound to release connections to the petitioner being the sole distribution Licensee in the state of Punjab.

On the other hand, PSPCL submitted that as per Regulation 6.7.1 of Supply Code, 2014, the LD system of the colony was to be laid by the developer after taking NOC from PSPCL, from which the electricity connections to the residents/occupiers of plots/flats inside the colony are to be released by PSPCL. If the internal LD system is not laid by developer, PSPCL cannot release the electric connections to the residents. In this case, the Developer has absconded leaving the LD system incomplete and NOC case midway, so the connections cannot be released to the residents.

In this context, it is observed that the Commission in exercise of its powers, conferred under Section 181 of the Act read with all other powers enabling it in this behalf, notified PSERC (Electricity Supply Code and Related Matters) Regulations, 2014 as amended from time to time (hereinafter referred to as Supply Code, 2014) and Regulation 6.7 of ibid Regulations specifies as brought out at Para 3.1 above.

As per Section 43 of the Electricity Act, 2003, the obligation of the distribution licensee to provide supply of electricity in its area of supply is subject to the rules/regulations framed under the Act. The

aforementioned Supply Code, 2014 regulations specify the procedure to be followed and conditions to be fulfilled by the developers in case of licensed colonies before the electricity connections are released by the distribution licensee. However, in this case, the Developer has left the process of obtaining NOC midway and has not completed the LD system in the colony. However, PSPCL also failed to take up the matter with the licensing authority i.e. GMADA regarding non-compliance by the Developer with the conditions of licence in respect of obtaining NOC from the distribution licence and developing the LD system in the colony. Even PSPCL went ahead with issuing temporary connections to the Developer even without the NOC being processed. Further, the licence issued by GMADA on 07.03.2012 expired on 06.03.2015. Keeping in view the foregoing and that the developer has not fulfilled the conditions of the license and the licensing authority and distribution licensee have failed to get the conditions of the licence implemented by the developer, to extricate the residents from their hardship due to lack of electricity connections, the Commission vide Order dated 23.11.2021, as an interim measure, directed PSPCL to release electricity connections to the petitioners after recovery of Service Connection Charges/other applicable charges as per the Cost Data approved by the Commission within the time limits specified in Regulation 8 of the Supply Code, 2014 subject to the final order in the instant petition. PSPCL was also asked to keep a separate account of the expenditure incurred on release of these connections and to recover the amount from the developer or the delinquent officials/officers as per applicable law. PSPCL shall ensure legitimacy and credentials of the Resident Welfare Association to safeguard its commercial interests.

Further, Sr. No. (vii) of the Supplementary Terms & Conditions of the Licence No. LDC-07/2012 dated 07.03.2012 issued by GMADA to the Developer clearly provides the following:

“vii) The Licensee shall obtain a final/confirmed No objection Certificate from the PSPCL within 90 days from the issue of this License, failing which penal action shall be initiated against the Licensee under the relevant provisions of PAPR Act, 1995 and rules made there under.”

The Developer left midway the process of obtaining NOC from PSPCL. Further, Superintendent (Licensing), GMADA memo no. 1731 dated 05.07.2021 addressed to the developer M/s RKM Housing Ltd., which has been enclosed with the affidavit furnished by GMADA mentioned in Para 8.0 above, refers to the above mentioned Sr. No. (vii) of the Supplementary Terms & Conditions of the Licence No. LDC-07/2012 dated 07.03.2012 and conveys to the developer that even after lapse of 7 years, the developer has not submitted the final NOC to be taken from PSPCL. The Commission, however, observes that GMADA took an inordinately long time in noticing this lapse and conveying the same to the developer. Thus GMADA failed to take notice of the non-compliance by the Developer with the condition of licence and did not take timely penal action against the Developer. The submission of GMADA that it is only the responsibility of the Promoter to ensure smooth power supply and other requisite services for the colony at its own cost does not absolve GMADA of its responsibility as the licensing authority to ensure compliance of the conditions of the license by the Developer and to take penal action against the Developer in case of non-compliance as has happened in the instant case.

Moreover, Govt. of Punjab, Department of Housing and Urban Development issued a notification dated 06.05.2008 which provides that the concerned departments including PSPCL shall ensure that no development work is started by the promoter before getting No Objection/Clearance Certificate, if required from the concerned Departments/Agency. The Para 3 & 4 of the said notification provides as under:

- “3. No objection Certification from the different departments shall not be a precondition for issuance of licence for development of colonies, but the promoter shall be liable to get No Objection Certificate from the concerned departments e.g. Punjab Pollution Control Board, Punjab State Electricity Board, P.W.D. (Drainage Department), Forest Department or the concerned Municipal Corporations/Committees as the case may be before start of development works of the colony at site.*
- 4. A copy of the license shall be endorsed to the concerned Department by the concerned Competent Authority asking the said Department to ensure that the Development works shall not be started by the promoter before getting No. Objection/Clearance Certificate if required from the concerned Departments/Agency.” [Emphasis supplied]*

In spite of the above guidelines by the Govt. of Punjab, PSPCL released temporary electricity connections in favour of the developer even though the Developer had not taken the mandatory NOC from PSPCL. The Government instructions reproduced above forbade the start of any development work without getting an NOC from PSPCL. PSPCL also failed to take up the issue with GMADA regarding the

violation of the conditions of licence by the developer. Even GMADA, as the licensing authority, failed to prevent the commencement of development work in the colony without issue of NOC by PSPCL and further failed to prevent the sale of properties to customers without ensuring the mandatory development in the colony as per license conditions.

Thus, despite clear provisions in the conditions of licence to take action against the errant Developer, GMADA has not brought on record any action taken by it against the Developer except now, as an afterthought asking the concerned authorities to stop the registration of the plots. It is though an action too late since a substantial number of plots have already been sold and also occupied after construction of houses resulting in the present petition. GMADA's action is akin to trying to close the stable after the horse has bolted.

The Commission observes that people invest their lifelong earnings in purchasing a dwelling unit or a plot in an approved colony duly licenced by the licencing authority like GMADA, with their sacred belief in the enforceability of the conditions of licence and robust development of requisite civic facilities including well-developed local electricity distribution (LD) system and electricity connections. However, rampant violations of the conditions of licence by the Developers, e.g., non-development of LD system as in the instant case coupled with inexcusable inaction by the concerned departments results in undue harassment to the residents. In this backdrop, negligent attitude of the licencing authorities and their turning a blind eye towards violations by the Developers is alarming. The Commission directs the Secretary, Department of Housing and Urban Development, Govt. of Punjab and the Chief Administrator,

GMADA to identify the lapses which led to collusive or lenient oversight of GMADA officials regarding the violation of the conditions of licence by the Developer i.e. M/s.RKM Housing Ltd. and further fix responsibility and to take appropriate action against those responsible and also remedial measures to prevent recurrence of such lapses. Moreover, as a deterrent, the licensing authority i.e. GMADA should take immediate penal action against the Developer i.e. M/s.RKM Housing Ltd. and its Directors as per law. The Secretary, Housing and Urban Development, Govt. of Punjab may also look into inserting appropriate checks in licensing conditions to plug the loopholes which enable such developers to get away with encashing the benefits of their license without meeting their obligations to the detriment of their customers/buyers of plots. PSPCL also needs to take similar action against those responsible for providing temporary connections to the developers, enhancing the connection load capacity inspite of payments outstanding and license conditions being violated by the developer.

PSPCL has intimated that the cost of completing the LD system of the colony is Rs. 132 lakh and that the licensing authority GMADA may be asked to place the amount at the disposal of PSPCL so that the pending works of the LD system are completed by PSPCL and electricity connections released to the individual residents/occupiers inside the colony. However, GMADA has filed an affidavit stating that the promoter/developer has not placed any amount with GMADA for carrying out electricity works in this project nor has any Bank Guarantee for completing electricity works been obtained by GMADA from the developer. Referring to the instructions issued by the Department of Housing and Urban Development, Government of

Punjab vide Memo No. 12092-98 dated 18.06.2013, GMADA has stated that it cannot be burdened with the liability to complete the electricity works in this colony which was the responsibility of the promoter/developer, as per terms and conditions of License. The aforementioned memo dated 18.06.2013 reads as under:

“The promoter brought to the notice of the government that as per the provisions of PAPRA they have to deposit bank guarantee equivalent to 25 percent of the cost of internal development works to the licensing authority. But the Punjab State Power Corporation Limited (PSPCL) again asks them to deposit 150% of the estimated cost of electric works in the colony with it as bank guarantee. This is double bank guarantee for the same work puts extra burden on the promoter. It should either be the total responsibility of licensing authority to transfer the bank guarantee taken in lieu of electric works in the colony to PSPCL or the estimated cost for providing the electric works be excluded from the total estimated cost for internal development and for electric works the PSPCL should take separate bank guarantee.

The Govt. has agreed to the suggestions of the Promoters and has decided that from now onward no bank guarantee against electric works to be carried out by the Promoters in his project under PAPRA 1995 shall taken by the licensing authority.”

However, inspite of GMADA's assertions to the contrary, it is amply clear from above mentioned Govt. of Punjab memo dated 18.06.2013 that the Bank Guarantee taken from the Developers before the issue of this memo included and covered the electric works

to be executed by the Developer. Moreover, as per the provisions of the PAPR Act, the Bank Guarantee is to be taken by the licensing authority from the Developer before the issue of licence. In this case, the licence was issued on 07.03.2012 i.e. well before the issue of the above mentioned Govt. of Punjab memo dated 18.06.2013. Thus the Commission does not agree with the submission of GMADA that the Bank Guarantee against electric works to be carried out by the Developer has not been taken as per instructions issued by the Department of Housing and Urban Development, Govt. of Punjab vide memo no. 12092-98 dated 18.06.2013. Vide Officer (licensing), GMADA's memo no. 3740 dated 23.12.2021, it has been intimated that M/s RKM Housing Limited was required to deposit a Bank Guarantee/ hypothecation amounting to Rs. 2.33 crore in connection with the colony RKM City, but the same has not been deposited by them till date. In spite of this serious lapse, no action taken by GMADA against the developer seems to have been taken except stopping the registration of plots that too only now vide memo dated 05.07.2021. GMADA is thus held responsible for failure to implement and monitor the licensing conditions and directed to immediately pay Rs.132 lakh to PSPCL, for completion of the LD system in the colony which was to be a part of Bank Guarantee for license issued prior to the Govt. of Punjab memo dated 18.06.2013.

PSPCL is also directed to keep releasing electricity connections to the residents of RKM City after recovery of Service Connection Charges/other applicable charges as per the Cost Data approved by the Commission within the time limits specified in Regulation 8 of the Supply Code, 2014. PSPCL shall also keep a separate account of the expenditure incurred on release of these

connections and to recover the amount from the developer or the delinquent officials/officers as per applicable law. The Resident Welfare Association formed by the residents of the colony, the legitimacy and credentials of which will be ensured by PSPCL, shall take the electricity connection for common services from PSPCL. Further, PSPCL is also directed to take suitable action against the Developer for recovering the amount spent/to be spent on developing and completing the LD system in the colony and to investigate the lapses that led to issue of temporary connections in the colony even without NOC and to fix responsibility to prevent any such recurrence in the future.

Further, the licensing Authority i.e. GMADA and the distribution licensee i.e. PSPCL are directed as under:

Licensing Authority i.e. GMADA

1. Compliance of the conditions of licence by the Developers including the one for obtaining NOC from distribution licensee i.e. PSPCL be monitored regularly and a multilateral institutional mechanism be immediately set up. A mechanism be set up to ensure that the license conditions are complied with within the specified period failing which the required action as per law be initiated by the licensing authority.
2. To prevent cheating of customers, licensee should be allowed to sell plots, only after complying with the licensing conditions.
3. Clearance from the distribution licensee i.e. PSPCL be taken before giving completion/partial completion certificate for the colony.
4. Immediate action be taken against the Developer i.e. M/s RKM Housing Ltd. and its Directors as per law.

Distribution Licensee i.e. PSPCL

1. Expeditious reporting to the licensing authority be ensured in case the Developer fails to obtain the NOC within the stipulated time or fails to implement the conditions of licence related to PSPCL/electricity system.
2. It must be ensured that temporary electricity connections are issued only in the name of the Developer after the issue of NOC.
3. It must be ensured that the temporary connection is used only for the purpose for which it has been given.
4. The timeline to set up the LD system must be a part of the NOC
5. Formal mechanism be set up immediately to undertake periodic checking vis-à-vis the timelines for erection of the LD system as per the conditions of NOC.
6. Immediate action be taken against the Developer as per law for effecting the recovery of expenditure for laying the LD system in the colony.
7. The expenditure to lay the LD system and to release electricity connections be recovered from the service connection charges, recovery from encashment of the Bank Guarantee with GMADA/its own resources, the Developer & from errant PSPCL officers. Any uncovered expenditure will be borne by PSPCL and will not be allowed as a pass through in the ARR.

Since this is a serious issue affecting many similar licensed colonies and their residents both in Local Govt. and Development authority areas, this Commission had earlier flagged the issue and also formally discussed it in the meetings with RERA, PSPCL and Senior Govt. representatives to bring about appropriate policy

changes to prevent similar violations in the future. As yet no action seems to have been taken to address the problem. Thus, in addition to the above, the policy making authorities in the Local Govt. and Housing and Urban Development Departments may now coordinate to devise a comprehensive policy to plug above loopholes in the licensing procedures and conditions so that the hard earned savings of common citizens, who aspire to acquire plots for building their homes, are not jeopardized. Keeping that in mind, a copy of this order may be furnished to the Principal Secretaries of the above departments for further effective policy intervention.

Secretary, PSERC may also forward a copy of this order to the Chief Secretary, Punjab to as to apprise him of the issue so that coordinated policy correction can be done in the concerned departments and linked municipal and Development authorities.

The petition is accordingly disposed of.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh
Dated:26.08.2022