

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 46 of 2021
alongwith IA No 17 of 2021
& IA No. 06 of 2022
Date of Order: **22.03.2022**

Petition under Regulation 5, 6, 44, 45, 46 and 47 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 setting aside the impugned action of Respondent PSPCL, whereby the Respondent PSPCL has wrongly clubbed the electricity load of all the four projects separately setup by the petitioner, disregarding the distinctiveness of each project.

AND

- In the matter of:
1. M/s Kanhiya Real Estate & Infrastructure having office at SCF 6-7, Green City Colony, Green Palace Road, Bathinda, through its partner Sh. Prem Goyal.
 2. M/s Kanhiya Dhaliwal Developers, having office at SCF 6-7, Green City Colony, Green Palace Road, Bathinda, through its partner Sh. Dharam Pal Goyal.
 3. RKT Developers having office at SCF-3-4, Green City Colony, Green Palace Road, Bathinda, through its authorised representative Sh. Aseem Garg

...Petitioners

Versus

1. Punjab State Power Corporation Ltd, having its office at the Mall, Patiala, through its Chairman-Cum-Managing Director & Ors.
2. Chief Engineer (Commercial), PSPCL, the Mall, Patiala.
3. Chief Engineer/Enforcement, The Mall, Patiala.
4. Chief Engineer/Distribution, West Zone, PSPCL, Bathinda.
5. Superintending Engineer/SC, Regulations, PSPCL, The Mall, Patiala.
6. Additional Superintending Engineer (Distribution), City Division, PSPCL, Bathinda.
7. Assistant Engineer (Commercial), Sub-Division No. 01, PSPCL, Bathinda.

.....Respondents

Present: Sh. Viswajeet Khanna, Chairperson
Ms. Anjali Chandra, Member
Sh. Paramjeet Singh, Member

ORDER

M/s Kanhiya Real Estate & Infrastructure, M/s Kanhiya Dhaliwal Developers and RKT Developers have filed the present petition for setting aside the action of PSPCL of clubbing the electricity load of all the four projects and levy of Rs. 2,53,63,939 on account of system loading charges of 66 kV system and to direct PSPCL to treat the electric load of all the four projects separately. The petitioners also filed IA No. 17 of 2021 & 06 of 2022 for interim relief staying the impugned demand raised by PSPCL. The petition was taken up for hearing on admission on 06.08.2021 and PSPCL requested for time to file a detailed reply. PSPCL filed its reply vide memo No. 7379 dated 05.10.2021. The petition was admitted vide Order dated 09.11.2021 and after hearing the parties on 14.02.2022, Order was reserved.

2. The petitioners have submitted that they are separate registered partnership firms engaged in the business of development of real estate projects. They have setup four real estate projects namely Green City, Green City I & II, Green City Phase-III and Kanhiya Green City. All the four projects are distinct and non-contiguous having separate permissions from the competent authorities, separate PAN and GST numbers and have been setup at different times but PSPCL has wrongly clubbed the electricity load of all the four projects by treating all these projects as one project being contiguous and has levied Rs.2,53,66,939/- on account of System Loading Charges. On the other hand, PSPCL's argument is that all these colonies are contiguous and are managed

by firms with Sh. Dharam Pal Goyal being director of all the four firms and Sh. Darshan Kumar Garg being director in three firms. PSPCL further argued that the developers initially got the project approved for some particular area and thereafter, kept expanding the same by getting the additional projects approved for adjoining areas by getting different approvals/licences. A high powered committee of Chief Engineers inspected the site and concluded that these colonies are adjoining/contiguous & should be considered as one project. PSPCL also cited judgement of Hon'ble High Court in CWP No. 23009 of 2019 wherein it has been held that it is permissible to club the expected electricity load of the various projects in case these are contiguous.

Observations and Decision of the Commission

3. The brief facts of the case are that the NOC for Green City project was issued by Chief Engineer/Commercial, PSPCL on 21.12.2006 and electrical plan for the estimated demand of 1347 kVA was also approved. After completion of the LD system as per the provisions of NOC read with Supply Code Regulations, the same was handed over to PSPCL on 27.07.2019. For the second project namely Green City I & II with an estimated system demand of 2424 kVA, the NOC was issued by PSPCL on 20.07.2012. After completion of the LD system the same was handed over to PSPCL on 27.07.2017. For the 3rd project i.e. Green City Phase-III, the NOC for the project with estimated demand of 3188 kVA was issued by PSPCL on 21.07.2015. The LD system was handed over to PSPCL on 27.07.2017. According to the petitioners, all these colonies have been setup at different times having separate permissions from the Government authorities and also have separate water supply & sewerage connections/street light connections.

For the 4th project i.e. Kanhiya Green City, the petitioner applied for NOC on 16.12.2019 for a total estimated demand of 3108.82 kVA by way of offline mode. However as per the procedure of licensee, the NOC was re-submitted online on 21.08.2020 which was not granted. On enquiry by the petitioner, it was informed that PSPCL has constituted a high powered Committee comprising of Chief Engineer/Commercial, Chief Engineer/Enforcement and Chief Engineer/Distribution to visit the site and submit the report regarding contiguous status of the projects after verification of the facts.

The Committee visited the project site on 12.11.2020 and discussed the issue with the representative of the petitioner also. M/s Kanhiya Real Estate & Infrastructure represented his case to the Committee through a letter dated 16.11.2020 also claiming that all the projects are distinct and separate so each colony should be considered as a separate unit. On the report of the Committee PSPCL through letter dated 24.12.2020 informed the petitioner as under:

“

2. *The committee visited your project site on 12.11.2020 and also listened to your view point. Later a written representation dated 16.11.2020 has also been submitted by you in this regard. The Committee has drawn following inferences based upon the site visit, your view point along with your representation dated 16.11.2020 and commercial instructions in this regard:-*
 - i) *All colonies have been carved out under the common banner of 'Green City' and land has been purchased in contiguity to each other.*

- ii) *The plot numbers are continuous starting from Green City to Kanhiya's Green City indicating that the complete project is being treated as a single unit although development has been carried out in phases.*
- iii) *The main promoter viz Sit, Dharam Pal Goyal is common partner in all these four colonies.*
- iv) *As per letter No. 413/MTP dated 22.10.2019 of the MC Bhatinda to the address of Sr. Town Planner, it has been mentioned that Club, School, Mandir, Gurudwara etc. sites has already been approved in Green City Phase-3 because of which these sites have now not been proposed in the Kanhiya's Green City upholding that the project is being developed as an integral part of the existing colonies of Green City.*
- v) *The developer has claimed that the connectivity of 40' & 60' roads of Kanhiya's Green City with Green Ciy Phase-III is on account of approval of MC Bhatinda as these tend to become public property as per PAPRA Act 1995. However, the symbolic partition between these two colonies have been broken at will and common houses are being constructed having plot area in Kanhiya's Green City as well as in Green City Phase-111.*
- vi) *It was observed that commercial complex on the 60' connecting road between Kanhiya's Green City and Green City Phase-III near the Mandir is continuous without any distinction of being restricted to any one particular colony. Shop nos. 1-8*

(as per drawing) are in Phase-III and 9-17 (as per drawing) are in Kanhiya's Green City with common roof without any distinction or boundary wall.

vii) As per approved drawing, Mandir of 724.25 sq yds has been shown having part of it in Phase-III & part of it in Kanhiya's Green City.

- 3. In view of the above, it has been concluded that the Kanhiya's Green City colony, Green City Phase-III colony, Green City Part-I & II colony and Green City colony are adjoining/contiguous colonies.*
- 4. It has been observed that around 9.3 MVA load has already been planned by you in above mentioned 4 No. adjoining/contiguous colonies in a combined project area of around 142 acres. As per the provisions of Regulations 6.7.1(d) of Supply Code-2014, in case the expected load of colony exceeds 4000 kVA; the developer has to pay system loading charges towards development of 66 kV Grid Substation.*
- 5. Accordingly a common single NOC for your combined project is required to be issued so that comprehensive planning of the electrical infrastructure can be done. Load of all the 4 no. colonies listed above is to be considered for issue of the common single NOC.*

In view of the above, you are requested to apply for common single NOC for combined project by considering load of all the above mentioned 4 nos. colonies.-----”

The petitioner through email dated 28.12.2020 mentioned that the demand of clubbing of load of all these colonies is neither as per PSPCL rules nor is the demand legal and does not mention any specific grounds. It has further been mentioned in the mail sent by the petitioner that since they need the electricity connection they will move a fresh online application under protest and subject to their legal rights. However, there is nothing on record to show that the petitioner has refuted or challenged the specific observations/claims of the PSPCL after receiving the above communication. The petitioner applied for a revised consolidated NOC for all the four projects and the same was granted by PSPCL for a combined estimated load/demand of 8322 kW/9247 kVA. The earlier NOCs issued to the three projects were cancelled. The petitioner was asked to deposit an amount of Rs.2,53,63,939/- as System Loading Charges in accordance with regulation 6.7.1(d) of the Supply Code, 2014.

The petitioner, M/s Kanhiya Real Estate & Infrastructure, vide letter dated 10.02.2021 requested PSPCL that he may be allowed to deposit the amount of System Loading Charges in four half yearly instalments due to financial constraints. It is important to examine the wording of the letter dated 10.02.2021 which is reproduced below:

“-----In this context, it is submitted that due to worldwide epidemic disease of Covid-2019, there remained lockdown and curfew in Punjab for a long period. So, heavy unavoidable recession occurred in the market and our financial position became too tight. As a result therefore, we are unable to deposit huge amount of Rs.2,53,63,939/- as System Loading Charges of 66KV system in lump sum and we undertake to pay this huge amount in 4 half yearly instalments by all means.”

It is therefore, requested to kindly look in the matter sympathetically and allow us to deposit the amount in 4 equal half yearly instalments so that we may get connectivity of 11KV PSPCL system with our colony at the earliest.”

In this letter also the petitioner nowhere mentioned that he is depositing this amount under protest. The request of the petitioner was accepted by PSPCL and he was allowed to deposit the charges in four half yearly instalments with 12% interest. Accordingly, the 1st cheque for Rs.63,43,985/- was deposited by the petitioner on 22.02.2021 and three post dated cheques were also deposited.

PSPCL has referred to the judgment of Hon’ble High Court in CWP No. 23009 of 2019 in support its argument that it is permissible to club the expected electricity demand of the various projects in case these are contiguous and there is no physical separation between projects. In the instant case before the Hon’ble High Court, the petitioner challenged the communication of PSPCL to obtain revised NOC by treating six colonies set up under separate schemes having separate approvals including NOCs from the licensee, as one project. The facts of each case may differ somewhat, however, the Hon’ble High Court has held that in case the developed colonies are contiguous and without any physical separation, the entire area can be considered as one project and the developer is liable to provide infrastructure for supply of electricity to the residents as per the provisions of the Supply Code including payment of System Loading Charges in case the expected demand exceeds 4000 kVA. The Hon’ble court held as under;

“-----this entire developed area is contiguous and there is no physical separation between the houses/buildings of these six projects. The entire

*area has common facilities. There is neither any separate entry nor exit gate for the houses of each project nor the plots in these projects are separated by a boundary wall. In these circumstances, particularly when the distribution licensee is required to supply the electricity in the area, in which the expected demand is likely to exceed 4000 KVA, the petitioners, who are developers/colonizers, cannot be permitted to shy away from providing the infrastructure required for the supply of the electricity.-----
-”*

The Hon'ble court, on the argument that since the colonies have separate approvals from State Government and NOCs from the licensee so cannot be considered as one project, as has been argued by the petitioners in this case, also has held as under;

“There is also no substance in the next argument of the learned counsel for the petitioners that once the various 'NOCs' were issued for the 5 colonies, then the supply Code of 2014 shall not be applicable. The various 'NOCs' were issued to the petitioners under Section 5 of the Regulation Act, 1995. It is with reference to the proposal to develop the plain land into a complex. In exercise of the powers conferred by the Regulation Act, 1995, the Punjab Apartment and Property Regulation Rules, 1995 have been notified. Rule 10(1)(e)(xii) thereof requires a builder to obtain a 'NOC' from the distribution licensee. This 'NOC' is granted only to take the opinion of the distribution licensee with respect to feasibility of the supply of electricity at the location where the project is proposed to be developed. The issuance of 'NOC' does not confer any right on the developer to get the electricity supply on the basis of the supply code applicable at its issuance. Still further, on careful reading of

the 'NOC', it is apparent that the distribution licensee did notify that the instructions amended from time to time shall be applicable. In these circumstances, this Bench expresses its inability to accept the arguments of the learned counsel for the petitioners----."

Thus the Hon'ble High Court has unambiguously held that the distribution licensee as per the provisions of the Supply Code Regulations is within its right to club the load of colonies in case these are contiguous although these colonies developed at different times might have separate approvals/NOCs and developer is liable to pay System Loading Charges in case the combined load/demand is above 4000 kVA.

PSPCL in its communication dated 24.12.2020 has clearly mentioned the grounds for treating all the four colonies as one project for the purpose of planning of electrical supply infrastructure as per the provisions of the Supply Code, 2014. This communication has been issued by the licensee after affording opportunity to the petitioner to present his case. Thus the distribution licensee has acted in a transparent manner and issued a speaking order/communication clearly spelling out the grounds of the decision to consider the four colonies as one unit. Broadly the grounds mentioned are that colonies are contiguous and carved out under the common banner of the Green City, the main promoter i.e Sh. Dhram Pal Goyal is common partner in all the four firms, the plot numbers starting from Green city to Kanhiya Green city are continuous, common houses are being constructed having plot area in Kanhiya Green city as well as in Green city Phase III and the symbolic partition between these two colonies have been broken at will, shop nos. 1-8 are in Phase-III and 9-17 are in Kanhiya's Green City with common roof without any distinction or boundary wall and as per

approved drawing, Mandir of 724.25 sq yds has been shown having part of it in Phase-III & part of it in Kanhiya's Green City.

Only explanation to the observation regarding common amenities such as schools or religious places has been rendered by the petitioner by referring to clause 5(8) of PAPRA which empowers the competent authority to exempt the promoter to provide certain amenities if such amenities are available in the locality. Another explanation rendered by the petitioner is that since the common areas are vested with local Authority/government so inter connectivity of the roads cannot be restrained. However, no explanation to other specific observations of the committee has been submitted by the petitioners which tantamounts to admission of the findings of the licensee.

The petitioner also referred the letter dated 22.07.2021 from the office of M.C. wherein it has been mentioned that the CLU, licence, water and sewerage connection and the boundary wall of all the four colonies are separate and NOCs have also been issued separately, so these four colonies are separate. The interpretation and findings of the M.C may be correct as per the instructions/requirements of the local bodies department but we have to examine the issue in the light of the provisions of Supply Code Regulations. For planning and release of connectivity in a colony/complex, the general rule is 'one connection in one premises' and the premises means the colony/complex which has a separate entry and is appropriately partitioned from the neighbouring premises.

In the site report submitted by field office of the licensee and annexed with its reply, it has also been mentioned that Green City, Green City-1&2, Green city phase 3 and Kanhiya Green City colonies are interconnected and the first three colonies has only one entry gate from Green City Colony. PSPCL also referred

to a common advertisement of Green City, Green City Part-1 & 2, Green City Phase-III in its reply. As per the report of the high powered committee, the plot numbers starting from Green city to Kanhiya Green city are continuous, common houses are being constructed having plot area in Kanhiya Green city as well as in Green city Phase III and the symbolic partition between these two colonies have been broken. Further, Shop nos. 1-8 are in Green City Phase-III and Shop number 9-17 are in Kanhiya Green City with common roof without any distinction or boundary wall. All these facts establish beyond doubt that all the four colonies are contiguous, interconnected and have common facilities and overlapping structures.

As per the provisions of Punjab Apartment and Property Regulations Act 1995 (PAPRA 1995) read with conditions of licence, the developer of a colony is required to obtain an NOC from PSPCL and provide electrical infrastructure as per the sketch approved by the licensee. The Commission, in exercise of the powers conferred under section 181 read with various other sections of the Electricity Act, 2003, has notified PSERC (Electricity Supply Code & related matters) Regulations, 2014 (hereinafter referred as Supply Code, 2014). Regulation 6.7 of the Supply Code, 2014 specifies the terms and conditions for supply of electricity to consumers in the Residential Colonies/Multi-Storey Residential Complexes developed under bye-laws/rules of the State Govt. The developer submits the complete lay out plan of the electrical network proposed to be erected in the colony and obtains the NOC from the licensee. The estimated load of the colony is worked out as per the norms approved by the Commission and the layout plan of the electrical network is approved by the distribution licensee. After approval, it is the liability of the developer to construct the Local Distribution (LD) system either himself or get it executed from the

distribution licensee by depositing the estimated cost of the LD system. The competent authority of the distribution licensee also approves the plan for connectivity of the colony with the distribution system of the licensee as per the estimated load of the colony. The developer is liable to deposit expenditure for providing connectivity as per the cost data approved by the Commission. For connecting the Local Distribution system of a colony to the network of the licensee for supply of electricity, the distribution licensee is required not only to make provision for 11 kV feeding line(s) but also to ensure matching availability of capacity at the feeding grid sub-station which includes transformation as well as transmission line capacity to feed the load. The intent is to ensure development of an integrated local distribution network with matching transmission capacity to provide reliable supply to the residents. The distribution licensee incurs expenditure to create this distribution and transmission system and is entitled to recover the amount as specified in the Regulations framed by the State Commission. The Supply Voltage of 11 kV is permissible for DS/NRS loads upto 4000 KVA as per regulation 4.2 of the Supply Code, 2014. For DS/NRS loads exceeding 4000 kVA and upto 20 MVA, the Supply Voltage is 33/66 kV. As per clause (d) of regulation 6.7.1 of the Supply Code, 2014, if the total estimated demand of the colony/project exceeds 4000 KVA, PSPCL is entitled to recover System Loading Charges from the developer in lieu of creation of 33/66 kV system. The clause (d) of the Regulation 6.7.1 reads as under;

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

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

In the present case, the total estimated demand of the colonies is over 9 MVA and to feed this demand the distribution licensee has to create capacity at Grid sub-station along with upstream transmission system which involves huge expenditure. In case the proportionate cost is not recovered from the developer through System Loading Charges, the burden of such expenses incurred by the distribution licensee shall pass on to the other consumers of the State. The petitioners appear to have distributed the total load between four entities to avoid the system loading charges. However, as discussed in the order above, the colonies are not distinct but contiguous, inter-connected and integrated. The decision referred to above has dealt with this specific issue and has held that the distribution licensee is within its right and is justified in clubbing the loads to calculate the effective total load for which system loading charges are to be recovered from the developer.

In view of the above, we find no infirmity in the decision of the distribution licensee to club the load of the four colonies by treating it as one project to establish distribution and transmission system for catering the load of these colonies. As per clause (d) of the Regulation 6.7.1 of the Supply Code, 2014, the petitioners are liable to pay System Loading Charges as per the cost data approved by the Commission.

The petition alongwith IA No. 17 of 2021 & IA No. 06 of 2022 is disposed of accordingly.

Sd/-

Sd/-

Sd/-

(Paramjeet Singh)
Member

(Anjuli Chandra)
Member

(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 22.03.2022

