# PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

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

Petition No. 17 of 2018 (Suo-Motu)

Date of hearing: 02.09.2020

Date of Order: 18.09.2020

Regarding Excess Charges for Consumption of Energy Supply/ Cost of Meter and Security etc. from the residents of OMAXE Township situated at New Chandigarh (Distt. SAS Nagar Mohali) by Omaxe Chandigarh Extension Developers Private Limited.

#### And

In the matter of:

- Punjab State Power Corporation Limited, The Mall, Patiala through its Chairman-cum-Managing Director.
- Omaxe Chandigarh Extension Developers Pvt. Ltd. Corporate Office, 10 LSC, Kalkaji, New Delhi. – 110 019
- The Omaxe Residents Welfare Association, New Chandigarh.

Present:

Ms. Kusumjit Sidhu, Chairperson

Sh. S.S. Sarna, Member

Ms. Anjuli Chandra, Member

### **ORDER**

The Commission received a complaint dated 30.05.2017 from the residents of Omaxe Township, New Chandigarh, SAS Nagar, Mohali alleging that they were compelled by the builder (Omaxe Chandigarh Extension Developer Pvt. Ltd.) to purchase electric meters from them at a cost of Rs. 26,000/- to 35,000/- per unit whereas similar electric meter is available for Rs. 5000/- per unit in the local market. The rate of domestic power supply in the State of Punjab is around Rs. 04 to 06 per unit subject to usage and as per the slab system, whereas they are being forced to pay charges for domestic power supply at the flat rate of Rs. 07 per unit by the builder/maintenance agency. The residents prayed for refund of the amount charged in excess on account of cost of meter and consumption of power supply from the date of occupying the unit and power may be

supplied by PSPCL on domestic supply rates directly to individual flat/plot owners of the township by installing individual electric-meters. Meanwhile more complaints were received from some other residents and PSPCL was directed to conduct an enquiry and submit an action taken report. From the enquiry reports received from PSPCL, it was prima facie established that the distribution licensee has failed to enforce the provisions of the Act, the Regulations framed under the Act and the Orders of the Commission. Accordingly, the Commission took suo-motu cognizance of the complaint and issued notice to PSPCL on 24.04.2018 and directed PSPCL to appear on 02.05.2018 with the complete case file regarding release of load to M/s OMAXE Township along with investigation reports and action taken on the issue.

2. An I.A. for impleading Omaxe Residents Welfare Association, New Chandigarh as a necessary party was filed which was allowed by the Commission. All the parties were heard on various date(s) of hearing and reply(s) / additional submissions / documents submitted by the parties were taken on record. On 02.09.2020 final arguments rendered by the parties has been heard and order was reserved. After the Order was reserved, an I.A. was received for impleading M/s Omaxe Cassia Welfare Association as a necessary party but the same could not be entertained at this stage.

## **Commission's Findings and Order**

 The Commission received a complaint from the residents of OMAXE Township situated at New Chandigarh, Mohali (hereinafter referred as developer) and PSPCL was directed to

conduct an inquiry and submit action taken report. PSPCL, in its report submitted on 06.07.2017, reported that only a No Objection Certificate (NOC) for the electrification of residential colony has been issued to the developer by PSPCL. A temporary connection for a sanctioned load/demand 441kW/490kVA was released to the developer for carrying out construction activities but the developer has extended this temporary supply to feed the residents for their domestic use in an unauthorized manner. It was also pointed out that the demand recorded on the date of checking i.e on 21.06.2017 was 1027.38 kVA against the sanctioned contract demand of 490 kVA. Thus it was evident that the developer was not only running unauthorized load but was also using this temporary connection in an unauthorized manner. It was also stated in the report that in view of large area involved and ongoing paddy/summer season, joint checking by flying squads at later stage shall be carried out and detailed report would be supplied later on. The Commission observed that although gross misuse of temporary connection has been detected but no action has been initiated by PSPCL against the developer for violation of the provisions of the Act and the Supply Code Regulations. Meanwhile more complaints were received by the Commission from some other residents. Therefore, the Commission directed the Chairman cum Managing Director, PSPCL vide D.O letter dated 18.12.2017 to order a comprehensive inquiry in the matter and submit an action taken report within a month. Failing to receive any response, reminders were issued to the Chairman-cum-Managing Director, PSPCL. After about three months, the Commission received a letter dated 01.03.2018

from Director/Distribution, PSPCL Patiala wherein it was submitted that a temporary connection in the name of M/S Omaxe Chandigarh Extension Developers Pvt. Ltd. with a sanctioned load/demand of 1350 kW/1500 kVA was checked by the Enforcement Wing and a total running load of 2577.035 kW was detected. The temporary connection was provided for construction purpose which was extended for residential purposes in an unauthorized manner by the developer and accordingly the consumer has been charged for Unauthorized Usage of Electricity (UUE) and has been served with a provisional notice of Rs. 90,25,299.00. It was further mentioned that the per unit cost charged to OMAXE on the temporary supply is on the higher side as compared to the normal domestic tariff allowed by the Commission.

The Commission observed that despite repeated directions, PSPCL has failed to take appropriate timely action against the unlawful activities being carried out by the developer and the misuse of temporary connection by the developer was allowed to continue thus contravening the provisions of the Act/Supply Code. PSPCL also failed to address the issues of the residents regarding charging tariff higher than the tariff fixed by the Commission, excess cost of electricity meters charged to the consumers, testing of the meters etc.

From the enquiry reports received from PSPCL, it was established prima facie that the distribution licensee has failed to enforce the provisions of the Act, the Regulations framed under the Act and the Orders of the Commission. Accordingly, the Commission took Suo-Motu cognizance of the complaint

and issued a notice to PSPCL on 24.04.2018 and directed PSPCL to appear on 02.05.2018 with complete case file regarding release of load to M/s OMAXE Township along with investigation reports and action taken on the issue.

PSPCL submitted some documents and after perusal of these documents, PSPCL was asked to submit the Maximum Demand Indication (MDI) record of the temporary connection released to the developer and copies of the A&A form along with test report allowing extension in load to the developer. From the scrutiny of the documents, it was observed that the application submitted online by the developer for extension in load mentioned that temporary connection may be allowed to be used for construction and domestic purpose. The developer through a separate letter dated 17.07.2017 also requested PSPCL to allow extended load to be used for construction and for domestic purpose since 900 families had shifted in the colony. This was refused by PSPCL. However, the detail of the load mentioned in the A&A form and the test report clearly indicated that large part of extension in load is meant for domestic purpose but even then the extension in load was sanctioned without any verification.

Further, in compliance to the Order dated 07.05.2018, PSPCL submitted the MDI record of the temporary connection released to the developer. From the scrutiny of the MDI record it was found that the developer has been exceeding his sanctioned contract demand since May, 2015 and during the summer of 2017, the recorded MDI was double the sanctioned contract demand. PSPCL failed to produce any document to

show that any cognizance of such blatant misuse of supply by the developer, other than levy of demand surcharge was ever taken by the distribution licensee. Thus the misuse of temporary supply by the developer was in the knowledge of the officers of PSPCL but no action was taken by any authority to check this violation of the Act and the Regulations. The developer was illegally selling electricity without any authorization in violation of the Act and PSPCL allowed this irregularity to continue.

The Commission also found that as per the enquiry report, the developer Omaxe Township, Mohali was indulging in UUE since 2015 but UUE charges were assessed for only one year. The Commission through Order dated 22.11.2018 directed PSPCL to review the assessment as per Regulations.

During hearing on 09.01.2019, PSPCL informed the Commission that three permanent connections have been released after submission of bank guarantee by the developer as per the provisions of the Supply Code, 2014. It was further submitted that after the release of permanent connections, no resident of the colony is being fed from the temporary connections released to the developer. All these findings clearly established that gross irregularities were allowed to continue by PSPCL affecting not only the revenue of the distribution licensee but also jeopardizing the safety of the consumers due to supply of power from an unapproved LD system.

It also transpired during hearing that a similar irregularity may be happening in other colonies too. The Commission vide Order dated 25.07.2018 directed PSPCL to investigate whether the temporary connections given for construction purposes are being misused for residential purposes by developers in other parts of the State. During the checking of 79 colonies carried out by Enforcement wing and Technical Wing of PSPCL, 14 colonies were found using temporary supply to cater to residential load.

PSPCL, despite the fact that misuse of temporary supply by various developers across the State was in its notice, did not take prompt action to control this menace. It was only after intervention of the Commission that action under Section 126 of the Act read with Regulation 36 of the Supply Code, 2014 was initiated against the defaulters.

PSPCL must ensure that a temporary supply connection released to a developer is used only for the purpose for which it has been granted and such supply is not misused to feed any resident of the colony. PSPCL needs to revise its policy/guidelines in this regard and clearly lay down responsibility levels in case any misuse is detected. PSPCL is directed to frame comprehensive guidelines for release of temporary connections to the colonies being developed under the by-laws/rules of the State Government and get the same approved from the Commission within one month of the issue of this order.

4. During the course of the proceedings, another violation of the Orders of the Commission has been noticed that PSPCL has failed to get the agreements signed on the prescribed A&A forms from the residents of the colonies catered by the franchisees thus denying the residents the benefits bestowed

on the consumers by the Act and the Regulations framed under the Act.

The Commission in its Order dated 09.06.2015 in Petition No. 61 of 2014 (Suo-moto) has held as under:

"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

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.------- 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 and Ombudsman) Regulations, (Forum 2007. 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

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

In compliance to above mentioned order of the Commission, PSPCL framed the Model Franchisee Agreement after following the due procedure. PSPCL, during proceedings on 02.06.2017 in Petition No. 76 of 2016, confirmed that Franchisee agreements have been signed with all 67 developers covered under single point supply arrangement. Thereafter, PSPCL signed franchisee agreements from time to time with other developers under Regulation 6.6.2 of the Supply

authorized to take necessary action as per provisions of

the Act. [emphasis added]"

Code, 2014, as amended from time to time. In para (3) of the franchisee agreement, it has been provided that connections to the consumers in the franchisee area shall be released after executing the A&A forms prescribed by PSPCL. It has further been provided in para (8) of the franchisee agreement that copy of such A&A forms signed with the occupants shall be submitted in the local office of PSPCL so that all consumers of the colony have same rights and obligations as that of other consumers of distribution licensee.

proceedings, it was found that During such agreements on prescribed A&A forms have been signed with the consumers of these colonies which is again a gross violation of the orders of the Commission. The Commission vide Order dated 10.07.2019 directed PSPCL to file status of getting A&A forms signed by individual consumers in the colonies where Franchise agreements have been executed between PSPCL and the Developers. PSPCL filed the status report and it was observed that in most of the cases, the A & A forms have yet not been signed. PSPCL was directed vide order dated 07.02.2020 to ensure the completion of signing of the A & A forms without any further delay. PSPCL was directed to get the notices to individual residents issued to sign A&A forms within stipulated time falling which action as per the law may be taken against the defaulter. PSPCL informed the Commission vide letter dated 01.09.2020 that out of 8589 consumers in the 82 colonies served by franchisees, 7867 consumers have signed and connections of remaining 722 consumers have been disconnected.

Therefore, it is amply clear that PSPCL failed to implement the Orders of the Commission dated 09.06.2015 in Petition No. 61 of 2014 and allowed the franchisees throughout the State to supply electricity to the residents of these colonies without these residents being consumers of the distribution licensee thereby violating the provisions of the Act.

5. Another allegation of the residents was that the developer is forcing the residents to purchase electric meters from him at a cost of Rs.26,000/- to Rs.35,000/- per meter whereas similar electric meters are available in the local market at a price of Rs.5000/- per meter. The developer denied that the dual energy meters installed at the premises of the residents are available in the market at Rs. 5000/- per meter. The developer claimed that these meters are priced at approx. Rs. 40000/- per unit in the market but he had bought these in bulk so they have charged Rs. 30,000/- per unit.

As per the facts on record, it appears that the developer entered into a supply arrangement with the residents including supply of backup power by installing dual energy meters for which he was not authorized. The supply of power by the developer to the residents of the colony by misusing the temporary connection released by the distribution licensee was totally illegal *ab initio* and the distribution licensee allowed this irregularity to continue in his area of supply, as discussed in para 3 above. Accordingly, installing any metering to record the consumption was also illegal per se.

As per the documents/information submitted by PSPCL, NOC was issued to OMAXE Township in April, 2015 on the basis of electrical layout plan submitted by Chief Town Planner, Punjab and single point supply was approved to the developer for a load 49.646 MW/55.166 MVA to be fed from two 66 kV Sub-Stations. The developer applied for release of a partial load/demand of 3 MW/3.333 MVA in 2016, but did not pay the charges of Rs. 26,07,84,436/- raised by PSPCL vide Demand Notice dated 22.04.2016. The developer got the validity of demand notice extended twice i.e. till 21.04.2017. Meanwhile the developer obtained a temporary connection, which was illegally extended to feed residents/occupants without getting permanent supply from PSPCL.

issued PSPCL to A revised NOC has been bv M/s. Omaxe, Chandigarh Extension Developers on 17.09.2018. As per the revised NOC, the main electrical scheme has been approved by PSPCL under Regulation 6.7.1 of Supply Code, 2014 for release of individual connections to residents except for six sites under Single Point Supply through franchisee agreement as per Regulation 6.6.2 of Supply Code, 2014 (Group Housing 1, 2, commercial site 1, 2, 5 and community centre). PSPCL also informed that internal LD system had already been laid by the developer in 3 sites on single point supply system, which as per revised NOC, are now covered under Regulation 6.7.1 of the Supply Code, 2014. Presently, the PSPCL's and DG supply is being fed through a single cable from the transformer. The developer has installed about 1200 dual energy meters to record the consumption of residents.

Since the developer needs time to segregate the PSPCL and DG supply so a period of two and half years has been allowed to convert the single point supply to multiple connections by PSPCL. Meanwhile franchisee agreement valid for this period has been signed for these three sites to allow single point supply. According to the arrangement finalized by the distribution licensee, during this period, PSPCL will install its own meters at the premises of consumers and the developer may remove its dual supply metering equipment. PSPCL also submitted that consumers shall be liable to pay rentals and the refund of any amount recovered from consumers for dual supply meters shall be settled by both the parties. The developer was directed to file its response regarding refund of the amount recovered for dual meters after the same are replaced by PSPCL. The developer submitted that these dual supply meters can be used for back up supply after getting it tested from PSPCL in pursuance of Commission Order dated 9.6.2015.

The Commission in para 10.8 of its Order dated 09.06.2015 in Petition No. 61 of 2014 has held that:

"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."

The backup supply arrangement is a bilateral agreement between developer and the residents of the colony. It is outside the scope of Regulations framed by the Commission.

In this case since residents have already paid for the dual meters, the Commission reiterates its interim order dated 07.02.2020 that in such case no cost or rental of the meter installed by PSPCL shall be recovered from the residents and the developer shall pay the cost of meter to PSPCL.

Another allegation against the developer was that whereas the rate of domestic power supply in Punjab is around Rs.4 to Rs.6 per unit, depending upon the usage as per slab system, but they are being forced to pay charges for domestic power supply at the flat rate of Rs.7 per unit.

In the investigation report dated 27.06.2017 submitted by PSPCL, it was stated that the issue of developer charging a flat rate of Rs.7 per unit does not come under the purview of PSPCL which shows the callous attitude of the officers of PSPCL. A distribution licensee is duty bound to follow all the provisions of the Act, the Rules/Regulations framed under the Act and Orders of the Commission and also get it implemented from all the agencies/consumers in his area of supply.

The complaint of the residents was forwarded to PSPCL for enquiry in June, 2017 and the first enquiry report was

submitted to the Commission in July, 2017 wherein it was established that developer is using temporary supply to feed residents and he is charging Rs. 7 per unit. The supply of power by the developer to the residents of the colony by using temporary connection and recovery of electricity charges at any rate was illegal and PSPCL failed to stop this malpractice for a long period of time. Although, a case for unauthorized use of electricity has been instituted by PSPCL but this was done only after the initiation of the proceedings in this petition under Section 142 by the Commission.

The developer in its reply dated 18.12.2018 submitted that he has been trying to get permanent connection and 66 kV Sub-Station of the developer is also ready but due to inaction by GMADA, PSPCL failed to erect the 66 kV lines for which he has paid External Development Charges (EDC). Thus he was constrained to use temporary connections to supply electricity to the residents for which he is paying higher tariff. PSPCL in its letter dated 01.08.2019 submitted that the developer is charging flat rate of Rs.7 per unit, which is not as per schedule of the Tariff and the same has been intimated to the developer vide memo dated 24.06.2019 and 29.07.2019.

PSPCL signed the franchisee agreements with the developer on 19.11.2018 for the three sites where families were already residing. Three permanent connections were released to the developer in March, 2019. After repeated directions of the Commission to both the developer and the residents to enter into a valid agreement by signing A&A form prescribed by the distribution licensee, the counsel for the developer during

hearing on 2.9.2020 confirmed that most of the residents have signed the A&A form and the connections of remaining residents have been disconnected.

PSPCL in its letter dated 01.09.2020 has also confirmed that residents of 81 out of 82 franchisee areas have signed the A&A forms and the connections of defaulter franchisee and residents have been disconnected.

OMAXE was also directed by the Commission vide Order dated 6.9.2019 to ensure that electricity bills issued to the consumers of his colony are as per format approved by the Commission and as per the tariff order for the relevant year. Further, no other charges should be included in the electricity bills issued to the consumers by the developer.

The Commission reiterates the directions to PSPCL that electricity bills issued to the consumers of the colonies falling under franchisee model should be as per format approved by the Commission and as per the tariff order for the relevant year. Further, no other charges should be included in the electricity bills issued to the consumers by the developer/franchisee. PSPCL is directed to carry out random checking of the bills of the residents of all such colonies in the State and submit report within three months.

After signing of A&A forms, the residents become the consumers of PSPCL and enjoy all the rights available to the consumers as per the provisions of the Act and the Regulations framed under the Act. In case any consumer has any grievance regarding metering, billing or any other

related matter, he/she can approach the appropriate authority for resolution of his/her grievance as per PSERC (Forum & Ombudsman) Regulations, 2016.

### 7. Conclusion

During the proceedings, it was found that many irregularities are taking place in the colonies developed by various developers throughout the State including colonies covered under the franchisee model as per Regulation 6.6.2 of the Supply Code, 2014. PSPCL has taken no tangible action to check and stop these irregularities till notice was issued to it on 24.04.2018 and proceedings in this Petition No. 17 of 2018 were initiated.

Section 2 (27) of the Electricity Act, 2003 defines 'Franchisee' as a person authorized by the 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 Electricity Act, 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":[Emphasis added]

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 but legally the distribution licensee continues to remain responsible and accountable in all respects for its area of supply. Thus for violation of the provisions of the Act or the Regulations or the Orders of the Commission by the franchisee appointed by the distribution licensee, the accountability remains that of the distribution licensee.

It has been established beyond doubt that PSPCL, as distribution licensee, has contravened the Orders of the Commission and various provisions of the Act/Regulations and deserves to be punished under Section 142 of the Act on the following grounds:

- i) PSPCL failed to check and control the misuse of temporary supply connections allowed to the developers for construction purposes to illegally feed the residents for domestic purpose through a LD system not approved by the distribution licensee and the Chief Electrical Inspector thus violating Regulation 8.3 of the Supply Code, 2014. It was only after repeated directions through various Orders issued by the Commission in this petition that PSPCL indentified such defaulters and initiated action under Section 126 of the Act.
- ii) PSPCL allowed the developers to supply electricity to the residents of the colonies without these residents being consumers of the distribution licensee thus contravening the Orders of the Commission and provisions of the Act. The residents of the colonies situated in the area of distribution of a licensee and getting electricity, even through a franchisee

appointed by a distribution licensee, are consumers of the distribution licensee. It was again only after repeated directions issued by the Commission during the proceedings in this petition that agreements on prescribed A&A forms were signed with the consumers. Thus, PSPCL has failed to implement the Orders of the Commission dated 09.06.2015 in Petition No. 61 of 2014 & provisions of the Act and allowed the franchisees throughout the State to supply electricity to the residents of these colonies without these residents being consumers of the distribution licensee as they had not signed the A&A forms.

iii) PSPCL failed to ensure that consumers of the colonies covered under franchisee model are issued electricity bills as per the format approved by the Commission and as per the tariff order for the relevant year thus violating provisions of Section 62(6) of the Act.

Section 142 of the Act vests powers in the Commission to impose penalty on any person contravening the provisions of the Act or Rules or Regulations or directions issued by the Commission. Section 142 reads as under:

Section 142. Punishment for non-compliance of directions by Appropriate Commission: In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable

under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction."

As discussed above, both the developer and PSPCL violated the provisions of the Act, the Regulations framed under the Act and Orders of the Commission. Action under Section 126 of the Electricity Act, 2003 has already been initiated against the developers for UUE. In case, the consumers of the colonies have any complaint regarding over-charging by the developers, they may approach the appropriate authority under PSERC (Forum & Ombudsman) Regulations, 2016.

Whereas, PSPCL as distribution licensee is concerned, the Commission after considering all the submissions, documents, explanations and arguments of PSPCL, decides to impose a penalty of Rs. One lakh on PSPCL under Section 142 of the Act for its failure for contravention of the Orders of the Commission dated 09.06.2015 in Petition No. 61 of 2014 and various provisions of the Act/Regulations.

The petition is disposed of accordingly.

Sd/- Sd/- Sd/- (Anjuli Chandra) (S.S. Sarna) (Kusumjit Sidhu)
Member Member Chairperson

Chandigarh

Dated: 18.09.2020