

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

Petition No. 77 of 2022
Date of Order: 03.01.2024

Exemption of Bank Guarantee against future installation of 66 kV Sub-station.

AND

In the Matter of: M/s Ritesh Properties and Industries Lt, Hampton Court Business Part-NH-05 Ludhiana-Chandigarh-Road Ludhiana.

.....Petitioner

Versus

1. Chief Engineer/Commercial, PSPCL the Mall, Patiala.
2. ASE-op-Focal Point Spl. Division PSPCL, Ludhiana.

.....Respondent

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

Petitioner: Sh. Vaneet Gupta
Sh. Parvesh Chadha

PSPCL: Sh. Ajay Bansal Dy.CE/TR-II
Sh. Harjeet Singh, ASE
Sh. Rajiv Kapur, Dy.CE/Regulation

ORDER

The petitioner is having a single point supply connection in the name of Ritesh Properties and Industries Ltd. and has filed the present petition for exemption of bank guarantee against future installation of 66 kVA Sub-station.

1.0 The petitioner submitted as under:-

- (i) An industrial housing project is under development and PSPCL has given the single point supply connection with

a sanctioned load/CD of 1793 kW/1950 kVA. The maximum demand recorded was 1650 kVA whereas, average demand for the last 12 months was 1412 kVA.

(ii) The application for extension in load/demand of 500 kVA was submitted along with layout plan approved by PUDA. PSPCL calculated the total load as 5910 kVA but at this stage this load is not required and full load may not be required in the near future either. The implementation of the project shall be taken up in phases.

(iii) Since the total calculated load is more than 4000 kVA which is to be released on 66 kV, so the petitioner has to install a 66 kV Sub-station at its cost.

(iv) Chief Engineer/Commercial, PSPCL, Patiala vide letter dated 26.04.2023 directed the petitioner to furnish the requisite undertaking on the new format and also to furnish a bank guarantee for the 66 kV Sub-station. The petitioner pleaded that as and when the load reaches 4000 kVA, he shall install the 66 kV Sub-station and he is ready to furnish the requisite undertaking/corporate guarantee. The condition to furnish a bank guarantee shall lead to an unnecessary freeze of the cash flow which could be used for business.

Accordingly, the petitioner has prayed that PSPCL may be directed to release the extension in load/demand of 500 kVA from its existing sanctioned load/demand of 1793 kW/1950 kVA at 11 kV without insisting on the bank guarantee.

2.0 The petition was taken up for hearing on admission on 08.02.2023. After hearing the representative appearing for

the petitioner vide order dated 10.02.2023, a notice was issued to PSPCL with the direction to file its reply on admission within three weeks with a copy to the petitioner.

3.0 PSPCL filed its reply vide memo no.5650 dated 27.03.2023 and submitted as under:-

- (i) Original NOC to Ritesh Properties & Industries Limited was issued by PSPCL vide letter dated 07.01.2015 under Regulation 6.6.2 of the Supply Code, for an 17.67 Acres Industrial Park. In the original NOC, the estimated load of the project was approved as 1492 kW/1658 kVA, for which 1900 kVA Transformer capacity was approved in the LD system.
- (ii) On 06.02.2019, the petitioner applied for revised NOC but the developer did not consider the load as per the approved layout plan and the case was referred back to the developer. Instead of revising the load sheet as per the approved layout plan, the developer intimated that the Maximum Demand of its project is 1450 kVA and requested for an increase in the Contract Demand from 1450 kVA to 1950 kVA. Since the layout plan of the project was under revision, PSPCL vide memo no. 317-318 dated 12.06.2019 allowed an increase in the CD to 1950 kVA subject to the condition that no new connection shall be released in the areas/plots which have been included in the revised layout plan and are yet to be modified/ approved by the CTP, Punjab.
- (iii) On 04.03.2022, the petitioner applied for a revised NOC with its layout plan revised from 17.67 Acres to 40 Acres. While checking the documents, PSPCL vide

letter dated 26.04.2022 intimated the petitioner that the total estimated load of the project seems to be more than 4000 kVA, which mandates the erection of a 66 kV Grid as per Regulation 4.2A of the Supply Code. Accordingly, if the total estimated load exceeds 4000 kVA, the site for the 66 KV Sub-station must be marked in the layout plan. In case the developer does not erect the 66 KV Sub-station, then the developer can get the partial load released after grant of NOC by PSPCL against submission of 105% Bank Guarantee for balance work of the LD system including the 66 KV Sub Station.

- (iv) For availing the sanctioned load/demand in phases the condition of Bank Guarantee is as per Regulation 8.4.3 of Supply Code, which reads as under:-

“In case of residential colonies/commercial complexes/industrial estates covered under regulation 6.6.1 & 6.6.2, phase wise development of the load/demand as per requirement may be permitted by the licensee. However, in case an HT/EHT consumer requests for release of partial load/demand at voltage lower than the specified voltage, such request may be accepted by the licensee subject to deposit of cost of works for supply at the lower voltage and furnishing a Bank Guarantee (BG valid for 3 years) from any bank registered and regulated by RBI equivalent to the estimated cost of HT/EHT sub-station, HT/EHT line along with associated equipment and the cost of incomplete LD system prevailing at the time of allowing connectivity, 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. The amount of Bank Guarantee shall keep on reducing with the completion of remaining works of the sub-station/line & L.D system. After the consumer shifts to the specified voltage at a later stage, no credit of the works carried out for supply at lower voltage shall be given to the consumer.”

- (v) The petitioner vide letter dated 30.08.2022 submitted documents regarding partial completion of the project and again requested to sanction demand of 500 kVA with a revised NOC. On 07.02.2023, the developer has uploaded documents by considering the total load of the project by including cost of 66 kV Sub-station in the estimate of LD system. The online single window response was referred back to the developer to attend to the observations raised by this office, which is yet to be replied by the developer.
- (vi) The petitioner has submitted that their approved layout plan pertains to the entire project site, however its implementation will be done in a phased manner. Further, the petitioner has submitted that although their estimated load is more than 4000 kVA, however currently their projects maximum demand is just 1650 kVA and, at present the entire estimated load (which is above 4000 kVA) is not required as they do not plan to implement the entire project ,as depicted in the layout plan, immediately. Accordingly, the developer requested that an undertaking be taken from them that they will install the 66 KV Sub-station when the load of their project crosses 4000 kVA. The developer has also prayed for relaxation toward deposit of Bank

Guarantee against the 66 KV Sub-station, which is mandatory for an estimated load exceeding 4000kVA as per Regulation 8.4.3 of the Supply Code.

- (vii) After issue of the 11th Amendment in the Supply Code, 2014, there is no parity regarding applicability of System Loading Charges (SLC) between a Single Point Supply under Regulation 6.6.2 and Supply to colonies under Regulation 6.7 of the Supply Code. At present, under Regulation 6.7.1, SLC are leviable for load less than 4000 kVA. However, for projects under Regulation 6.6.2; there is no such provision regarding applicability of SLC for load less than 4000 kVA and the developer has to erect the 66 KV Sub-station if the estimated load of the project exceeds 4000 kVA.
- (viii) For projects under Regulation 6.6.2, the developers mostly take partial load (which is less than 4000 kVA) and take many years to build up their full estimated load beyond 4000 kVA. The provision of taking a Bank Guarantee against 66 KV Sub-station is creating a financial burden on such projects as this Bank Guarantee is to be kept valid till the projects build up to the load beyond 4000 kVA. To mitigate the problem for such projects, PSPCL is deliberating upon a proposal for levying the SLC for new NOC cases for projects under Regulation 6.6.2 also, which is being sent separately to the Commission.
- (ix) In the instant petition and other similarly placed cases where the revised NOC is being sought for projects already operating under Regulation 6.6.2, it is

proposed that SLC be recovered from the developer for the total load. In the instant case this load will be 2450 kVA (1950+500). In future, whenever additional demand for load will be raised by the developer, SLC for the same shall be levied till the load reaches 4000 kVA. Beyond 4000 kVA, developer is bound to erect a 66 KV Sub-station and an undertaking shall be taken from him that he will install 66 KV Sub-station when the load of the project crosses 4000 kVA. To mitigate the problem of the developers regarding submission of Bank Guarantee against 66KV Sub-station, the present Regulation 8.4.3 of Supply Code regarding Bank Guarantee against the estimated cost of the Sub-station & lines needs to be reviewed and amended.

PSPCL requested the Commission to consider this amendment along with the above mentioned proposal of PSPCL for levying SLC against the total released/demanded load, which in the instant case is 2450 KVA.

- 4.0 After hearing the parties on 17.05.2023, the petition was admitted. The Commission vide Order dated 29.05.2023 directed PSPCL to file a detailed reply within three weeks with a copy to the petitioner and the petitioner to file a rejoinder thereto within one week thereafter.
- 5.0 PSPCL vide letter dated 25.07.2023 informed that the proposals for amending Regulation 6.6.2 of the Supply Code was discussed in the meeting of Supply Code Review panel held on 28.04.2023 and PSPCL was advised to submit a comprehensive proposal for formulating the terms and conditions of franchisee agreement. Since, it is an extensive

exercise, PSPCL requested a time of 2 months for submitting the proposal.

6.0 PSPCL vide letter dated 21.09.2023 further sought another 2 months for submitting the proposal in view of their officers being busy in implementing of the Commission's order in Petition No. 07 of 2021. The Commission after considering the matter granted an additional one months time to PSPCL and the petition was adjourned to 25.10.2023.

7.0 PSPCL submitted a comprehensive proposal for amendment of Regulation 6.6.2 of the Supply Code, 2014 vide memo no 7377 dated 20.10.2023. While giving a detailed back ground of the matter regarding single point supply under Regulation 6.6.2 of the Supply Code, 2014, PSPCL in its proposal suggested that system loading charges (SLC) should be applicable for all the loads similar to the provisions of SLC under Regulation 6.7. Further, it was submitted that for the revised NOC cases under Regulation 6.6.2, SLC may be recovered from the developer for the total load availed by the developer up to 4000 KVA beyond which the developer would be bound to erect 66 KV Substation and an undertaking be taken from the developer to install 66 KV Substation when the load crosses 4000 KVA.

8.0 During the hearing on 25.10.2023, the petitioner informed that he has not received a copy of the proposal. The Commission vide order dated 27.10.2023 directed PSPCL to supply a copy to the petitioner and directed the petitioner to file its rejoinder within two weeks.

9.0 The petitioner vide letter dated 07.12.2023 submitted its reply to the proposal of PSPCL and informed that PSPCL has issued a fresh NOC under Regulation 6.6.2 on 20.10.2023 as per the present instructions. The petitioner further submitted that the decision of the Commission to the new proposal of PSPCL will be acceptable to the petitioner and it is ready to sign the Model Franchisee agreement-2021 for domestic consumers to resolve the issue of Punjab Governments subsidy. The petitioner requested the Commission to direct PSPCL to release the extension to the sanctioned load of 1793 kW/1950 kVA upto 2293kW/2450 kVA at 11 kV without insisting on furnishing of Bank Guarantee and without insisting on erection of 66 kV grid substation for the time being. The petitioner submitted that it is ready to furnish an undertaking/corporate guarantee if so required.

10.0 After hearing the parties on 13.12.2023, the order was reserved.

Commission's Findings and Order

11.0 Single Point Supply to developers of Residential Colonies, Shopping Malls/Commercial Complexes, Industrial Estates/Complexes etc. was allowed in the 'Conditions of Supply' approved by the Commission which came in to force w.e.f 01.04.2010. The developer was responsible for erecting and, maintaining all electrical infrastructure inside the colony and to provide meters to all the residents. The developer was also responsible for individual metering, billing, collection of charges from the individual users and payment to PSPCL. In

lieu of these services, a rebate was allowed to the developers.

The Hon'ble Appellate Tribunal of Electricity in its Judgment dated 11th July, 2011 in Appeal No. 155 of 2010 and Appeal No. 156 of 2010 (K. Raheja Corporation Pvt. Ltd. V/s MERC) held that the term consumer cannot be interpreted in a manner to justify a situation where a number of end users, each living separately in a building and connected to a owner of the building, are conjoined together and treated as a single consumer. Sub-distribution and sale of electricity to the occupants of a building by the owner or consumer of such building is unlawful and contrary to Sections 12 and 14 of the Electricity Act, 2003. A consumer receives electricity only "for his own use" and this excludes a situation where a person can, on receipt of electrical energy, sell a part of that energy or the entire energy itself to different people for their respective consumption. A consumer cannot have his own distribution system for distribution of electrical energy in turn to his tenants/occupiers/users etc.

Further as per the Electricity (Removal of difficulties) Eighth Order, 2005, issued by the Central Government vide S.O 798(E) dated 9th June, 2005 under section 183 of the Act, single point supply is permissible only to a Co-operative Group Housing Society for residential purposes and to a person for making electricity available to his employees residing in the same premises for residential purposes on such terms and conditions as may be specified by the State Commission

The Supply Code, 2014 was notified vide notification dated 05.11.2014 and came in to force w.e.f. 01.01.2015. With the notification of the Supply Code, 2014, the Conditions of Supply was repealed. In view of the Hon'ble APTEL judgment quoted above, necessary provisions for Single Point Supply were specified in Regulation 6.6.1 and 6.6.2 of the Supply Code, 2014, which reads as under;

“6.6 Single Point Supply

6.6.1 The distribution licensee shall provide Single Point Supply for residential purposes including common services on an application by a Cooperative Group Housing Society/Employer which owns the premises for making electricity available to the members of such society or employees of the employer residing in the same premises as per PSERC (Single Point Supply to Group Housing Societies/ Employers) Regulations, 2008, as amended from time to time.

6.6.2 Notwithstanding anything contained in Regulation 6.6.1, the licensee may appoint a franchisee for a particular area in its area of supply as per 7th proviso to section 14 of the Act. The licensee may provide single point supply on an application by the franchisee for making electricity available within the particular area to the following categories:

- (i) residential colonies*
- (ii) commercial complexes*
- (iii) industrial complexes*
- (iv) IT parks*
- (v) other single point supply consumers.”*

Further, the Commission vide order dated 09.06.2015 in Suo-Moto Petition No. 61 of 2014 gave directions to PSPCL to draft a Model Distribution Franchisee Agreement and get it signed from the existing single point supply

consumers who have been released connections under repealed Conditions of Supply. In compliance, PSPCL circulated the model franchises agreement vide circular dated 14.12.2016 and got it signed from the single point supply consumers/developers. In order to resolve various issues faced by the residents, PSPCL, from time to time, amended certain terms & conditions of the franchisee agreement. Since the franchisee agreement was a bilateral agreement, as per mutually agreed terms and conditions, it was not approved by the Commission.

However, over a period of time, the distribution franchisees reported various problems being faced on account of billing and denial of rebate etc. The residents/occupiers of such colonies/complexes also reported harassment due to non issuance of bills as per tariff order, inclusion of common area charges in electricity bills by the developers etc. The residents also lodged complaints regarding denial of subsidy to domestic consumers as per Punjab Governments decision. The facility of net metering for Rooftop SPV systems is also being denied to the residents/occupiers of these complexes by the developers. Despite carrying out various amendments in the franchisee agreement, PSPCL has failed to address these issues in these franchisee areas. The Commission in its order dated 09.06.2015, in Suo-Moto Petition No. 61 of 2014, had in Para 10.5 clearly held that PSPCL shall ensure 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 the distribution licensee.

The bank guarantee, in case a developer opts to avail the facility of phase wise development of the project, is as per the provisions of Regulation 8.4.3 of the Supply Code, 2014. The prayer of the petitioner to direct PSPCL to waive off the condition of bank guarantee and accept an undertaking/corporate guarantee is actually the petitioner's proposal for an amendment in the Supply Code, 2014. However, as brought out above, there are numerous other issues relating to the colonies/complexes under single point supply which are required to be addressed and resolved to streamline the single point supply in colonies/complexes covered under Regulation 6.6.2 of the Supply Code, 2014. Since the matter had previously been discussed in the meeting of the Supply Code Review Panel held on 28.04.2023, it is therefore appropriate that the Panel should comprehensively examine the proposal now submitted by PSPCL and submit their recommendations within 3 months so that the Supply Code may be amended appropriately after following the procedure as laid down in the Act.

The Petition is disposed of accordingly.

(Paramjeet Singh)
Member

(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: **03.01.2024**