



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500004

O. P. No. 20 of 2021

&

I. A. No. 7 of 2021

Dated 01.07.2021

Present

Sri T. Sriranga Rao, Chairman
Sri M. D. Manohar Raju, Member (Technical)
Sri Bandaru Krishnaiah, Member (Finance)

Between:

M/s L&T Metro Rail (Hyderabad) Limited,
Hyderabad Metro Rail Administrative Building,
Uppal Main Road, Nagole, Hyderabad-500 068.

... Petitioner.

AND

1. Southern Power Distribution Company of Telangana Limited,
Corporate Office, # 6-1-50, Mint Compound,
Hyderabad-500 063.

2. Superintending Engineer, Operation, TSSPDCL,
Habsiguda Circle, Uppal, Hyderabad-500 039.

3. Superintending Engineer, Operation, TSSPDCL,
Medchal, Gunrock, Secunderabad-501 401.

... Respondents.

The petition came up for hearing on 11.12.2020, 07.01.2021, 18.01.2021 and 21.01.2021. Sri Avinash Desai, Advocate for petitioner and Sri Mohammad Bande Ali, Law Attaché for respondents have appeared on 11.12.2020, 07.01.2021, 18.01.2021 and 21.01.2021 through video conference, having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. L & T Metro Rail (Hyderabad) Limited (petitioner) has filed a petition under Section 86 of the Electricity Act, 2003 (Act, 2003) seeking appropriate directions from

the Commission to the respondents. The contentions of the petitioner are as hereunder:

- a) This petition is filed challenging the actions of the respondents in levying and demanding the petitioner, electricity charges for the period 01.07.2016 to 31.08.2017 on the basis of the classification of the petitioner under the HT-II (commercial) category rather than HT-V(B) HMR category; and seeking issuance of direction to the respondents to assess the petitioner under the HT-V(B) HMR tariff category for the period 01.07.2016 to 31.08.2017 by revising the electricity bills issued to the petitioner.
- b) that the petitioner is a Special Purpose Vehicle (SPV) incorporated under the Companies Act, 1956, to implement the Hyderabad Metro Rail Project ('HMR project') on Design, Built, Finance, Operate and Transfer (DBFOT) basis on a Public Private Partnership (PPP) model for initial concession period of 35 years, The petitioner is in charge of the day to day operations of the Hyderabad Metro and requires a continuous supply of electricity for the purpose of running the metro trains (traction load) and for activities essential for the functioning of the Hyderabad Metro which include access pathways to the station such as elevators, staircases, escalators and platforms used for boarding the train and enabling areas such as ticket counters, stations office, operation/control rooms, depots and public washrooms.
- c) that the petitioner was awarded the HMR project through a Concession Agreement dated 04.09.2010 entered into between the petitioner and the erstwhile State of Andhra Pradesh (now the State of Telangana). Clause 6.4 of the Concession Agreement provides that the Government shall ensure that the rail system gets priority in the supply of electricity from the grid and that the tariff shall be determined on commercial principles such that the rail system is not required to subsidize any or all other segments of electricity consumers.
- d) that the Special Chief Secretary, Energy (Government of Telangana) (GoTS) issued a letter dated 16.03.2016 granting permission to the respondent No.1 for creation of separate category of electricity tariff for the Hyderabad Metro Rail System ('HMRS') excluding real estate development portion and fixation of the tariff as per clause 6.4 of the Concession

Agreement. The Special Chief Secretary, Energy (Government of Telangana) (GoTS) also issued a letter dated 27.04.2016 informing the Commission that permission had been granted to the respondent No.1 for creation of a separate tariff category for the HMRS.

- e) that the respondent No.1 filed a petition before the Commission for fixing the retail supply tariffs for the year 2016-17 and sought for the creation of separate category for the HMRS. The Commission through its retail tariff order dated 23.06.2016 for 2016-17 ('Retail Tariff Order for 2016-17') classified HMR Project into a separate sub-category which is HT-V(B) HMR and fixed the tariff at Rs.7.00 (Rupees Seven Only) per unit. The retail supply tariff order for FY 2016-17 became effective from 01.07.2016 as per clause 9.1 of retail tariff order for 2016-17. The petitioner has been paying the energy charges to the respondent No.1 based on the aforesaid tariff with effect from 01.07.2016.
- f) that the Commission in the retail tariff order for 2016-17 stated as follows:

[Page 43 Para (2)]

"Hence, the Commission opines HMR is eligible to be classified under separate category as has been done in Delhi. The commercial operation of the HMR is anticipated to be commenced during the year FY 2016 - 17 covering only a limited area of operations and at present its load constitutes construction and commercial loads.

Hence the sub-category HT-V (B) Hyderabad Metro Rail (HMR) under HT-V Railway traction is created as requested by the Discom in its original petition and after considering the facts explained. Categorisation of Metro Rail as a separate category/sub-category has also been allowed by DERC and KERC respectively."

[Page 205 Para (9.1)]

"Applicable with effect from 1st July, 2016 to 31st March, 2017 in respect of the two Licensees in the State of Telangana (i.e. TSSPDCL and TSNPDCL) and also RESCO."

From the above it is evident that the Commission acknowledges the fact that commercial opening of Hyderabad Metro was only anticipated in FY 2016-17. However, the Commission had given applicability of tariff

category HT-V (B) with effect from 1st July 2016 as per the retail tariff order 2016-17 considering various factors.

- g) that the petitioner vide its letter dated 27.06.2016 requested for billing under category HT-V(B) HMR as per the retail tariff order for 2016-17. The respondent No.1 through its letter dated 19.09.2016 without any basis stated that the change of tariff category from HT-II to HT-V(B) would be considered only after the metro rail system operation starts as the supply was being utilized for the testing purpose only. The respondent No.1 has billed the petitioner under HT-II commercial tariff category for the period 01.07.2016 to 31.08.2017 in contravention of the tariff order passed by the Commission. The tariff order does not permit for any distinction between the applicable tariff depending on the date of commencement of operation.
- h) that power supply was not used by the petitioner for testing purpose as the construction and testing works had been completed prior to the granting of approval by Commissioner of Metro Rail Safety ("CMRS"). It is pertinent to mention that all construction and testing activities had been carried out on power either through temporary connections taken by our contractor M/s L&T Construction (Connection No.HDN-1912, HDS-767, LZ011477, G4004384, P1014782 etc.) or through diesel generators. Moreover, prior to commencement of the carriage of passengers, the electric supply was used for carrying out minimal operations of metro rail system and the associated station and depot facilities for ensuring safety and system health before opening it to public. The authorization from Commissioner of Metro Rail Safety for opening first section of HMR for passenger carriage was obtained on 20.04.2016 but the actual passenger carriage could not be started till 29.11.2017 as the State Government decided to get this prestigious project inaugurated by Hon'ble Prime Minister of India.
- i) that due to delay in formal inauguration of the HMR services for reasons beyond the control of the petitioner, petitioner without earning any revenue was paying salaries to its employees and was incurring costs to keep the system healthy which lead to adverse implications on the financial position of the petitioner in the long run. Further in view of lockdown imposed by the Government due to COVID-19, the metro rail services remain closed from 22.03.2020 till date thereby causing severe financial and operation losses to

the petitioner. Also, the petitioner has been facing severe financial difficulties to service the huge financial debts for HMR project amounting to Rs.15646.95 Crores as on 30.06.2020. The financial situation of the petitioner has further worsened as there was absolutely no revenue earned but the petitioner is incurring heavy expenditure to meet the expenses to maintain the system and to pay salaries to its employees, both direct and indirect. The petitioner has incurred a loss of Rs.382 crores in the FY 2019-20 and Rs.458 crores in quarter I alone of FY 2020-21.

- j) that the petitioner submitted a representation dated 01.10.2016 to the respondent No.1 requesting for reconsidering its decision in its letter dated 19.09.2016 and collect tariff under HT-V(B) category. The petitioner addressed another letter dated 26.10.2016 to the Special Chief Secretary, Energy requesting for issuance of directions to the respondent No.1 to comply with the retail tariff order for 2016-17. The Special Chief Secretary, Energy issued directions to the respondent No.1 vide letter dated 06.02-2017 to take necessary action as per the Concession Agreement and the retail tariff order for 2016-17. The petitioner addressed a letter dated 04.04.2017 to the Special Chief Secretary, Energy pointing out that despite its directions, the petitioner was being billed at the HT-II tariff category which is neither in compliance of the retail tariff order for 2016-17 nor in compliance of direction of Special Chief Secretary, Energy, GoTS issued vide letter dated 16.03.2016 granting permission to the respondent No.1 for creation of separate category of electricity tariff for the HMRS.
- k) that the Chief General Manager (Commercial) / TSSPDCL issued a letter dated 06.05.2017 to the petitioner alleging that the supply of electricity was being used for construction and traction testing purposes and requested for payment under the HT-II tariff category. The petitioner addressed a letter dated 12.05.2017 to the Chief General Manager (Commercial)/TSSPDCL informing him that the power supply was being used exclusively for minimal operations of the Metro Rail and associated station/depot for ensuring safety and system health before opening it to public and that the construction and testing had already been completed. Moreover, all construction and testing activities had been carried out on power either through temporary connections taken by their contractor M/s L&T Construction (connection

No.HDN-1912, HDS-767, LZ011477, G4004384, P1014782 etc.) or through diesel generators.

- l) that the petitioner continued to pay electricity charges for supply of electricity to the Uppal RSS & Miyapur RSS for the period 01.07.2016 to 31.08.2017 under the HT-V (B) HMR tariff category rather than the wrongly billed HT- II (commercial) tariff category as the petitioner is/was liable to pay electricity charges under HT-V (B) HMR as per the retail tariff order 2016-17. In fact, the power supply to Miyapur RSS was disconnected on 25.07.2017 by the respondent No.3 by merely giving a five minute telephonic notice. The abrupt disconnection of electricity had severely damaged the operations of the petitioner. However, the electricity was restored by the respondent No.1 after great persuasion by the petitioner.
- m) that on 09.08.2017 a meeting was held between the Chief Secretary, Government of Telangana and the representatives of the petitioner and the respondent No.1 with respect to the issues faced by the petitioner. The Chief Secretary, GoTS directed the respondent No.1 to take note of the request made by the petitioner for billing as per tariff notified by the Commission and run a note for the Government's approval that the arrears being shown are not in accordance with the orders of the Commission. However, this has not been complied by respondent No.1
- n) The Commission had issued the retail tariff order for FY 2017-18 on 26.08.2017 with applicability from 01.09.2017. The tariff for HMR project (HT-V(B) HMR category) was fixed at Rs 3.95 (Rupees Three and Ninety Five Paise only) per unit (energy charges) and Rs.390 (Rupees Three Hundred Ninety only) per kVA per month (demand charges). It is stated that the respondent No.1 implemented tariff category HT-V(B) for the petitioner from 01.09.2017, although Hyderabad Metro was still not operational for public at that point of time, when retail tariff order 2017-18 by the Commission came into force. respondent No.1 having accepted the order and having given relief/effect to the tariff order for the period 01.09.2017 to 29.11.2017 has not given similar relief/effect for the period 01.07.2016 to 31.08.2017 despite clear order from the Commission. This clearly shows that the actions of respondent No.1 for not implementing HT-V (B) category tariff for Hyderabad

Metro from 01.07.2016 to 31.08.2017 is arbitrary and in clear violation of the retail tariff order for FY 2016-17 issued by the Commission.

- o) that the petitioner through its letters dated 14.05.2019 and 31.07.2019 pointed out that the demand with respect to levy of electricity charges under HT-II category for the period 01.07.2016 to 31.08.2017 was not sustainable as the retail tariff order by the Commission clearly required categorization as per HT-V (B) category.
- p) that the respondent No.1 has been constantly threatening to discontinue the supply of electricity to the petitioner based on its illegal and whimsical demands for payment of the arrears for the period from 01.07.2016 to 31.08.2017. The respondent No.1 issued several disconnection notices to the petitioner. The petitioner through its letters dated 17.05.2019 and 19.08.2019 requested for withdrawal of the disconnection notices.
- q) that the petitioner addressed a letter dated 24.01.2020 to the respondent No.1 requesting for withdrawal of the complete demand (including interest) for the period from 01.07.2016 to 31.08.2017 pertaining to the failure to implement the HT-V(B) categorization as per the retail tariff order. The respondent No.1 has failed to reply or to take any action on the request of the petitioner.
- r) that the respondent No.1 has been constantly threatening to discontinue the supply of electricity to the petitioner based on its illegal and whimsical demands for payment of the arrears for the period from 01.07.2016 to 31.08.2017. The respondent No.1 through its latest letters dated 27.05.2020 and 04.07.2020 addressed to the petitioner to disconnect the connections pertaining to Uppal RSS and Miyapur RSS without any further notice to the petitioner.
- s) that the petitioner has filed the present petition challenging the demand for the period 01.07.2016 to 31.08.2017 on the basis of the classification of the petitioner under the HT-II (commercial) category assessed by respondent No-1 instead of HT-V(B) HMR category classified by the Commission. The grounds of challenge are as follows:
 - i) The demand raised by the respondent No.1 for the period 01.07.2016 to 31.08.2017 is based on the arbitrary categorization of the petitioner

under the HT-II tariff category (commercial) rather than the designated specific category for the HMR (HT-V (B)) by the Commission.

- ii) The action of the respondent No.1 is contrary to the retail tariff order issued by the Commission which directs categorization of the load under the HT-V (B) tariff category. The respondent No.1 has acted beyond its jurisdiction by seeking to levy electricity charges de hors the retail tariff order passed by the Commission.
- iii) The ground taken by the respondent No.1 for categorization under the HT-II tariff category is that the HT-V (B) category is applicable only after metro rail operations start as the electricity usage prior to the said date would be for the testing purpose only. The respondent No.1 ought to have seen that the Commission while directing categorization under the HT-V (B) tariff category did not make any distinction between the applicability of the same before or after commercial operations. In fact, the Commission specifically recognized the fact that commercial operations had not yet commenced and directed implementation of its order from 01.07.2016.
- iv) The contention of the respondent No.1 that the electricity was used for testing purpose also loses sight of the fact that the authorization granted by the Commissioner of Rail Safety on 20.04.2016 can only be after the construction and testing activity had been completed for the line.
- v) The respondent No.1 has implemented retail tariff Order for FY 2017-18 from 01.09.2017 onwards under the HT-V (B) tariff category, even though the commercial operations commenced only on 29.11.2017 with inauguration by Hon'ble Prime Minister of India. The respondent No.1 is now estopped from refusing to comply with the order on the ground that the HT-V (B) categorization is applicable only after commencement of commercial operations.
- t) The respondents have been constantly threatening the petitioner with disconnection of the electric supply through phone calls and through disconnection notices on the basis of the above illegal demand towards payment of electricity charges for the period 01.07.2016 to 31.08.2017 on the basis the HT-II category. The petitioner would suffer grave and severe prejudice if the supply of electricity is disconnected as it would bring a halt to

the Hyderabad Metro operations on the concerned line. Post COVID lockdown, the general public that rely on the Hyderabad Metro for its daily commute would be severely affected by any disconnection of the power supply, The disconnection of the power supply to the petitioner would disrupt the daily lives of lakhs of people.

- u) The above actions of the respondents are illegal, beyond the jurisdiction of respondent, contrary to the provisions of the retail tariff order and the Act, 2003 and in violation of the petitioner's rights guaranteed under Articles 14 and 300A of the Constitution of India and the right of its members under Article 19 (1) (g) of the Constitution of India.

2. The petitioner has sought the following main prayer in the petition.

“In light of the above, and the fact that the petitioner is under severe financial stress, it is humbly prayed that this Hon'ble Commission may be pleased to:

Declare the actions of the Respondents in levying electricity charges on the petitioner for supply of electricity to the Uppal RSS and Miyapur RSS for the period 01.07.2016 to 31.08.2017 under the HT-II (commercial) tariff category rather than the HT-V (B) HMR tariff category as being illegal and without jurisdiction and in violation of the retail tariff orders issued by the TSERC and the Electricity Act, 2003 and consequently:

- i. Direct the respondents to assess the petitioner under the HT-V (B) HMR tariff category for the period 01.07.2016 to 31.08.2017 by revising the electricity bills issued to the petitioner.
- ii. Set aside the entire demand (including interest / penalty etc.) towards electricity charges for the Uppal RSS & Miyapur RSS raised by the respondents for the period 01.07.2016 to 31.08.2017 on the basis of the classification of the petitioner under the HT-II tariff category by setting aside letter bearing No. CGM (Fin) / GM (Rev) / SAO (Rev) / AO / AAO HT / D.No.103/16 dated 06.05.2017 issued by the Chief General Manager (Commercial) / TSSPDCL, Lr. No. SE / OP / RRE / SAO / JAO-HT / SA1 / RRE 2851 / D. No. 2022 dated 08.05.2017 issued by the respondent No. 2, letter bearing Lr. No. SE / OP / MCL / SAO / AAO / JAO / HT / D. No. 576 Dt.15.12.2017 issued by the respondent No.3 and letter bearing Lr. No. CGM (Rev) / GM (Rev) / AO (HT) / AAO (HT) /

D.No.146 dated 12.10.2018 issued by the Chief General Manager (Commercial) / TSSPDCL.”

3. The petition has also filed an Interlocutory Application (I.A.) and the contentions of the petitioner in I.A. in brief, other than that were placed in the original petition are as hereunder:

- a) that the instant interlocutory application is filed seeking direction against the respondents not to disconnect electricity supply to the petitioner at the Uppal RSS & Miyapur RSS, pending disposal of the original petition.
- b) that the petitioner has made out a strong prima facie case in its favour for grant of an interim order restraining the respondents as it has shown that the demand raised by the respondents towards HT-II categorization is contrary to the tariff order. The balance of convenience is in favour of the petitioner as the disconnection of supply would severely impact the operations of the petitioner and cause grave inconvenience to the general public. On the contrary, no harm would be caused to the respondents if they are restrained from disconnecting the power supply pending disposal of this petition.
- c) The petitioner has sought the following prayer in the interlocutory application.

“In light of the above, it is humbly prayed that this Hon'ble Commission may be pleased to direct the respondent not to disconnect electricity supply to the petitioner at the Uppal RSS & Miyapur RSS, pending disposal of the Original Petition and pass such other orders as this Commission may deem fit and proper in the interest of justice and equity.”

4. The respondents have filed their counter affidavit and stated as below.

- a) M/s. L&T Metro Rail (Hyderabad) Limited submitted herein is consumer of Southern Power Distribution Company of Telangana Limited.
- b) that the relief sought by the petitioner is misconceived, untenable and hence cannot be considered.
- c) that as admitted by the petitioner, respondent No.1 itself sought for creation of a separate category for the HMRS. Taking the submissions

made by the parties, the Commission has created a separate category HT-V (B) for HMR with specific tariff. The Commission considering the fact of the commercial operation of the HMR in the FY 2016-17 created specific tariff for HMR in its tariff 2016-17 [at page 43]. The relevant finding / observation of the Commission [at page 43 of the tariff order for FY 2016-17] is extracted below:-

"The Commission opined HMR is eligible to be classified under separate category as has been done in Delhi. The commercial operation of the HMR is anticipated to be commenced during the year FY 2016-17 covering only a limited area of operations and at present its load constitutes construction and commercial loads. The Commission observes that the category cost of service cannot be ascertained at this stage and hence a sub-category can be created with lower tariff than that of the Indian Railways to accommodate the unique requirement of this category prior to major commercial operations... "

"Hence, the sub-category HT-V (B) Hyderabad Metro Rail (HMR) under HT-V Railway traction is created as requested by the DISCOM in its original petition and after considering the facts explained. Categorization of Metro Rail as a separate category / sub-category has also been allowed by DERC and KERC respectively"

It thus become very much clear from the above observations of the Commission that the Commission has created separate category HT-V (B) for HMR with specific tariff in the tariff order for the FY 2016-17 anticipating that the commercial operation of HMR would commence during the year 2016-17 only.

Creation of separate category HT-V (B) for HMR with specific tariff in the tariff order for the FY 2016-17 in anticipation of the commercial operation of HMR during the FY 2016-17, does not mean that the said tariff is applicable from the date of application of tariffs for all other categories dealt with in the tariff order for the year 2016-17.

The applicability of the tariff mentioned in paragraph 9.1 / pg 205 that is from 01.07.2016 to 31.03.2017 is in respect of the various tariff dealt with

in the tariff order for the year 2016-17 and the same is not specific to the tariff under category HT-V (B) for HMR.

In view of the specific observation of the Commission regarding commercial operation of HMR, the tariff fixed for the category HT-V(B) for HMR in the tariff order (retail supply tariff) FY 2016-17 cannot be made applicable to the petitioner since the petitioner did not commence its commercial operation during the FY 2016-17.

Therefore, the contention of the petitioner that the tariff fixed category HT-V (B) for HMR is applicable for 01.07.2016 to 31.03.2017 does not merit consideration.

The actual commercial operation of the HMR commenced on 27.11.2017.

TSSPDCL has changed the category of HMR from HT-II to HT-V (B) from 01.09.2017 as the COD has commenced on 27.11.2017 considering the trial run operation of HMR from 01.09.2017.

TSSPDCL has categorized L&T Metro Rail Limited under HT-II up to 31.08.2017 during construction of the project and changed category from HT-II to HT-V (B) from 01.09.2017 onwards considering the trial run operation of HMR from 27.11.2017.

- e) It is stated that as per the tariff order FY 2016-17 [page 43 para 2.36] the Commission recognized the fact that the nature of activity before commencing the commercial generation of the HMR will cover a limited area of operations and the load constitutes constructions and commercial loads in the tariff order FY 2016-17. The Commission view [in para No.2.36] of Tariff Order.

"Hence, the Commission opines that HMR is eligible to be classified under a separate category as has been done in Delhi. The commercial operation of the HMR is anticipated to be commenced during the FY 2016-17 covering only a limited area of operations and at present its load constitutes construction and commercial loads."

The above observations of the Commission in tariff order FY 2016-17 also support the decision taken by the DISCOM in categorizing the

HMR activity under category HT-II before commencing the commercial/ operation HMR activity that is from 01.07.2016 to 31.08.2017.

- f) that the electricity supplied upto the date of commercial operation of HMR was used for carrying out minimal operation of Metro Rail System and the associated station and depot facilities which activities come under HT-II (Other) as per the tariff order FY 2016-17.
- g) that the financial position of the petitioner is nowhere related to the categorization to HMR activity.
- h) that the request for change of tariff category from HT-II category to HT-V (B) category for the period from 01.07.2016 to 31.08.2017 cannot therefore be considered as the supply was used for testing purpose only not for commercial operation that is public transportation. It is further stated that the change of category was considered with effect from 01.09.2017 and accordingly bills were issued by considering the commencement of HMR operation from 27.11.2017.
- i) that the consumer is making payment of CC bills excluding the surcharge amount and the differential tariff amount under category HT-II was not paid for the period from July - 2016 to Aug - 2017. The outstanding due against the service No. MCL - 2719 up to 30.11.2020 is Rs. 3,01,76,294/-. Notice has already been issued to the consumer to pay the outstanding dues.
- j) that, TSSPDCL is implementing the categorization of HMRS as per the tariff order issued by the Commission before and after commercial operation of the HMR. It is stated that TSSPDCL has levied HT-II (Others) category to the HMR services Uppal RSS and Miyapur RSS upto 31.08.2017 and the commercial operation date of HMR has commenced on 27.11.2017. TSSPDCL has changed the category from category HT-II to HT-V (B) from 01.09.2017 onwards and as the C.O.D. has commenced on 27.11.2017 considering the trial run operation of HMR from 01.09.2017.

Hence, the request of HMR to levy electricity charges for supply of electricity to the Uppal RSS and Miyapur RSS for the period from 01.07.2016 to 31.08.2017 under category HT-V (B) cannot be considered.

- k) that since the consumer has to pay the tariff under HT-II from 01.07.2016 to 31.08.2017, the request of HMR to withdraw the demand raised cannot be considered. Further, since the outstanding dues against services are not cleared, notice was issued to HMR for payment of the dues as per the rules and regulations issued by the Commission. Hence, the request of HMR to levy electricity charges for supply of electricity to the Uppal RSS and Miyapur RSS (MCL-2719) for the period from 01.07.2016 to 31.08.2017 under category HT-V (B) cannot be considered
- l) Accordingly, the respondents have sought the following prayer:

“It is respectfully prayed before the Commission to dismiss the aforesaid petition as devoid of any merit as stated in the preceding paras of the instant counter affidavit”

5. The petitioner has filed a rejoinder to the counter affidavit and stated as below.
- a) that all the statements, averments, allegations and submissions made in the counter affidavit filed by the respondent are denied, except the ones that are expressly admitted hereunder. No averment may be deemed to be admitted by the petitioner for want of specific traverse.
- b) that the present petition is maintainable.
- c) that the averment of the respondent that applicability of the tariff from 01.07.2016 to 31.03.2017 is in respect of the various tariffs dealt with in the tariff order for the year 2016-17 and that the same is not specific to the tariff under the HT-V (B) for HMR is denied as misleading, baseless and incorrect. It is stated that the tariff orders are binding regulatory orders which are to be implemented from dates mentioned in the tariff orders unless otherwise mentioned. Evidently, nowhere in the tariff order it is mentioned that tariff order for 2016-17 shall not be applicable for HT-V (B) category from 01.07.2016.
- d) that the CMRS granted sanction for opening the first section of the HMR for passenger carriage on 20.04.2016. As per Section 15 of the Metro Railways (Operation and Maintenance) Act, 2002 (Metro Act), such sanction is given after inspection of the metro railway, track structure, civil works and all other relevant factors. The grant of the sanction

certifies that the metro railway can be opened for public carriage of passengers immediately. The actual passenger carriage could not be started by the petitioner till 29.11.2017 as the State Government had decided to get the project inaugurated by the Hon'ble Prime Minister of India.

- e) After grant of the sanction, the petitioner used the electric supply for carrying out minimal operations of metro rail system and the associated station and depot facilities for ensuring safety and system health before opening it to the public. As part of the minimal operations to ensure system health, the petitioner carried out trial runs since the grant of the sanction for opening the metro railway on 20.04.2016. It is submitted that carrying out such trial runs is essential to the maintenance of the trains. It is stated that the train supplier M/s. Hyundai Rotem, South Korea has given a dynamic storage plan for the HMR that is followed by the petitioner provides for periodic running of the trains to ensure system health. Further, even during the COVID-19 lockdown period when the Hyderabad Metro was not operational for the public, the petitioner consumed substantial units of electricity as it had to keep the trains running to ensure system health. Therefore, it is clear that during the period from 01.07.2016 till 29.11.2017 the petitioner was using the electrical supply for minimal operations of the Metro Rail including that of carrying out trial runs to ensure system health.
- f) The contention of the respondent that HT-V (B) category is made applicable to the petitioner from 01.09.2017 as the COD has commenced on 27.11.2017 and that trial run operations started from 01.09.2017 is finally incorrect and misleading. The commercial operations began on 29.11.2017. The respondent has made a bald assertion that trial runs have started since 01.09.2017 without substantiating the same. In fact, the trial runs have started since the CMRS granted sanction for opening first section of HMR for passenger carriage on 20.04.2016 as such trial runs are essential for the system health and maintenance. The respondent has contended in its counter Affidavit that the HT-V (B) category is applicable since the commencement of trial run operations of the petitioner. Therefore, even

as per the contention of the respondent, implementation of HT-V(B) category ought to have been carried out from 01.07.2016 itself as the petitioner was ready and was doing minimal operations in trial mode and was waiting for the go ahead for starting commercial operations from the Government. Admittedly, the respondent has revised the bills of the petitioner to charge the petitioner under the HT-V (B) category for the months of September and October, 2017, even though the commercial operations of the petitioner commenced on 29.11.2017. Therefore, the respondent has through its conduct admitted that it recognizes that the petitioner is entitled to be charged under the HT-V (B) category from 01.07.2016 onwards and the respondent is estopped from contending otherwise.

- g) The contention of the respondent that the petitioner was using the electricity for construction purposes is false and is without any basis. The construction and testing works had been completed prior to the grant of approval by the CMRS as is evident from the pre-requisites for grant of such sanction prescribed under the Metro Act. Further, all such construction and testing activities had been carried out on power either through temporary connections taken by petitioner's contractor M/s L&T Construction or through diesel generators. The foresaid fact is evident from a few illustrative electricity bills being filed by the petitioner which were raised on the contractor in relation to the separate connections obtained by the contractor for construction of the HMR across the city.
- h) that respondent ought to have seen that the Commission while directing categorization under the HT-V(B) tariff category did not make any distinction between the applicability of the same before or after commercial operations. In fact, the Commission specifically recognized the fact that commercial operations had not yet commenced and directed implementation of its order from 01.07.2016. Hence, the respondent are required to assess the petitioner under HT-V (B) HMR category for the period 01.07.2016 to 31.08.2017 by revising the electricity bills issued to the petitioner.
- i) that the averment that financial position of the petitioner is nowhere related to the categorization to HMR activity is denied as incorrect.

Showing such huge amounts which are being demanded by the respondent as contingent liability in the books of accounts of the petitioner affects the financial position of the petitioner and its ability to run the public transport smoothly.

- j) that the connection numbers mentioned by the respondent are incorrect and the connection numbers of Uppal RSS and Miyapur RSS are HBG 2851 and MCL 2718, respectively.
- k) In light of the above, the Commission may be pleased to allow the above petition as prayed for.

6. The Commission heard the counsel for the petitioner and the representative of the respondent. All the material placed on record has been examined. The relevant submissions made by the parties on different dates extracted for being considered in the finding of the case.

Record of Proceedings dated 11.12.2020

“.....The counsel for the petitioner stated that the issue in this petition is with regard to levy of charges for the power supply availed by the petitioner at three places for the period 01.07.2016 to 31.08.2017 contrary to the tariff order of the Commission for the year 2016-17. By the tariff order, the Commission had treated metro rail as separate category under HT-V(B). Instead of billing, the petitioner under said category, the respondents had billed it under HT-II category. Even though, they have corrected the bills for the months of September and October, 2017, they have not given the benefit of the same for the earlier period. Also, the Commission issued notice as regards the maintainability of the case. However, the Commission had itself accepted the maintainability of the case in the earlier proceedings in the case of the petitioner itself in the order dated 19.10.2020 in O.P.No.27 of 2020. It had also placed on record in that case, the various decisions regarding the maintainability. Now there is threat of disconnection of power supply by the licensee, as such an interlocutory application is filed for suitable orders.

The representative of the respondents stated that the representative needs further time of four weeks for filing counter affidavit in the matter. Also, it is stated that the licensee would not resort to disconnection of the power supply immediately and the Commission may take it as an undertaking. In the

circumstances, the matter is adjourned duly recording the undertaking that the licensee shall not effect disconnection of power supply to the petitioner. The respondents shall file the counter affidavit by 30.12.2020 duly forwarding a copy of it to the counsel for petitioner.”

Record of Proceedings dated 07.01.2021

“.....The counsel for the petitioner stated while reiterating the submissions made earlier sought time to file rejoinder in the matter, as the counter affidavit is received only yesterday. The representative of the respondents stated that the counter affidavit has been filed and the same has been sent to the petitioner by mail. Accordingly, the petitioner is allowed to file the rejoinder duly serving a copy of it to the respondents by email or post. The matter stands adjourned.”

Record of Proceedings dated 18.01.2021

“....The counsel for the petitioner stated that the issue is with regard to giving effect to the tariff order dated 23.06.2016. He had set forth the dates of operation of the Metro Rail including the permission. The representative of the DISCOM sought time stating that rejoinder is not received by them.

The Commission directed the petitioner to furnish a copy of the rejoinder to the respondents immediately as it was stated that the physical copy as also email were sent to the DISCOM on 16.01.2021.”

Record of Proceedings dated 21.01.2021

“.....The counsel for the petitioner stated that the issue is with regard to giving effect to the tariff order dated 23.06.2016. He had set forth the dates of operation of the Metro Rail including the permission. The petitioner was ready to operate the rail network as early as 20.04.2016 on commercial basis, but it was not allowed to do so as the state government postponed the inauguration of the same. Though, it was not allowed to operate commercially, it was required to run the operations owing to the conditions imposed by the equipment and rolling stock manufacturers to maintain its efficiency, as otherwise the same will tend to deteriorate. The petitioner was required to run the rakes every three to seven days. Even in COVID-19 period also the same exercise was undertaken as the government had directed to shutdown of the metro services.

The consumption of power supply during both the periods is similar. The respondents have given effect to the tariff category in the year 2017, whereas

the Commission had notified the tariff category of HT-V (B) in the year 2016 itself. The issue is with regard to the period from 01.07.2016 to 31.08.2017 wherein the billing has to be done under HT-category V (B) instead of HT-category-II commercial, which the respondents have resorted to without giving effect to the tariff order of the Commission. In fact, even in the year 2017 also after the tariff order dated 23.08.2017, the tariff was not given effect to, however, subsequently the respondents themselves have corrected the categorization and gave effect to the order of the Commission.

The counsel for the petitioner sought to highlight the contentions in the counter affidavit that the respondents did not give effect to the tariff order in the year 2016 as the petitioner was yet to run the rail system on commercial basis. The supply was availed for rail system separately and for construction as well as advertisement activities separately. The issue in this petition is with regard to rail system only and it has no issues now before the Commission with regard to construction and advertisement consumption. The interpretation that the rail system was under construction activity only in the year 2016-17 as no commercial operation was taken up, is misplaced. The commercial activity of running trains has nothing to do with availing power supply, which is specific to that activity and as the Commission had already identified the category on the proposal of the licensee, the same cannot be denied to the petitioner.

The representative of the respondents stated that though the Commission had identified the category and fixed the tariff in the year 2016, the petitioner was yet to commercialise the operation of the metro rail, the same was billed under HT-commercial category treating it as under construction. He sought to defend the contentions raised in the counter affidavit, stating that as long as commercial activity or running the trains on commercial basis did not take place, the licensee is not bound to give effect to the categorization as approved by the Commission.

The counsel for the petitioner also placed his reliance on the concession agreement entered by the government for establishing the metro rail network wherein it was agreed that the state government would make available the power supply required for operation of metro rail. Pursuant to such concession only, the licensee had approached the Commission seeking specific categorization of metro rail operations for undertaking power supply.

Accordingly, the Commission may consider directing the licensee to give effect to the order of the Commission. ...”

7. In the light of the submissions of the parties and upon perusal of the record the following question arises for consideration.

‘Whether the tariff category approved by the Commission has to be given effect to from 01.07.2016?’

8. Before advertng to the rival contentions, it is felt necessary to recapitulate the order passed by the Commission in the year 2016 and all other relevant orders and regulations:

A) Tariff Order 2016-17 dated 23.06.2016 in O.P.Nos.06 and 07 of 2016

“2.36 Hyderabad Metro Rail

a. Comparison between HT-V(A)-Railway traction and HT-V(B) HMR:

In the proposed tariff of 2016-17, HT-V category is separated in to two parts as HT-V (A) for Railway traction and HT-V(B) for HMR traction.

The proposed railway traction tariff of INR. 7.48 per unit is higher than the HT-V (B) HMR traction by 18 paise despite the fact that both are availing of supply at same voltage level and for the same purpose of public transportation.

b. High CoS determined for HMR

As per the directive from the government, on the basis of Article 6.4 of the Concession Agreement and clause 8.9 of the Detailed Project report of Hyderabad Metro Rail, the Licensee has filed an addendum to the submitted ARR filing. In the addendum, it is recommended to have a separate category for HMR Loads as HT-IX with CoS at INR. 7.07 per unit (Addendum). The details of the CoS furnished made available in the addendum are furnished hereunder:

<i>Voltage level</i>	<i>Category</i>	<i>MVA</i>	<i>MU</i>
<i>132 kV</i>	<i>HMR V(B) Traction</i>	<i>17.5</i>	<i>37.4</i>
<i>132 kV</i>	<i>HT--III: Airports, Bus Stations and Railway stations</i>	<i>7.5</i>	<i>16.0</i>
<i>Total</i>		<i>25.0</i>	<i>53.4</i>

The objector having been aggrieved by this determination of CoS at INR. 7.07/unit has requested the Hon'ble Commission for correction of the same.

c. **Treating Metro Rail Service as distinct class of consumer**

The Metro Rail Service has been classified as a distinct class of consumer across other regions of the nation on a cost of supply tariff. There is a set precedence of Delhi Metro Rail Corporation, which has allocated separate category on cost of supply tariff.

d. **Cost of T&D infrastructure and facilities for HMR**

It is submitted that unlike other consumers all infrastructure and facilities after the point of interconnection with transmission/distribution system are established, maintained and operated by the HMR at its own cost and the TRANSCO/DISCOM do not incur any dedicated expense for supply to Hyderabad Metro Rail. HMR has established four receiving sub-stations at various locations in proximity to Metro Rail System at its own cost. These will receive power at 132 kV. The onward distribution within the Traction system and the Depots/stations is done by HMR, thus absorbing all the losses (if any) incurred in the course of distribution.

e. **Approach followed to arrive at CoS for HMR**

The provisions of the Electricity Act 2003, and the National Tariff Policy do not permit the Distribution Company to determine the CoS on marginal cost. In particular the National Tariff Policy requires determination of CoS on average cost basis. It is further brought to notice of the Commission that TSSPDCL and its predecessor has been using the embedded cost approach for determining the cost of service. However in the case of HMR, TSSPDCL has followed the marginal cost approach which is discriminatory. It is also relevant to highlight that no state within the country determines CoS on marginal cost approach. In the addendum filed by the Licensee, HT-IX category has been projected to have a load of 25 MVA with a consumption of 53.4 MU. The break-up of HMR load across the various categories and the Cost of Service for each category is provided hereunder:

Category	Consumption	Cost of Service (INR/kWh)	
Stations	16.0 MU	5.32	CoS for HT-III category in ARR
Traction	37.4 MU	5.49	CoS for HT-V category in ARR

On a simplistic weighted average basis, the CoS for HT-IX would therefore amount to INR.5.43 per unit.

Reply from Licensees

- a. *The HMR is designed to be a mass rapid transit system which would substantially contribute in reducing vehicular traffic, congestion during peak hours and thereby improving convenience to the end user. In order to account for the above, the licensee has proposed a slight reduction in the tariff of HMR compared to Railway Traction. Similar such charging principle is prevalent in other metros such as Delhi Metro.*
- b. *As the Licensee with addition of HMR loads is tend to procure power from marginal stations which is otherwise can be avoided. Hence, it is sensible to fix the CoS based on the marginal cost as this is the actual costs incurred by the licensee to supply power to HMR @ INR. 7.07 per unit.*
- c. *The licensee in the addendum filing has created a separate sub-category for Hyderabad Metro Rail (HT-IX- HMR) and proposed tariff to meet the Cost of Supply (CoS) considering marginal power purchase cost, network costs and retail supply costs and doesn't include any cross subsidy component.*
- d. *The Licensee has considered transmission losses and external losses incurred for the energy purchased from outside State periphery viz. CGS, Market purchases and losses up to the voltage of supply of electricity to the HMR.*
- e. *Hence, it is sensible to fix the CoS based on the marginal cost as this is the actual costs incurred by the licensee to supply power to HMR.*

Commission's view

TSSPDCL in its filings had proposed the sub category of HT-V(B) Hyderabad Metro Rail (HMR). Through an addendum petition dated 21/03/2016, TSSPDCL had requested the Commission to consider Hyderabad Metro Rail as a distinct

specific tariff category called HT-IX: HMR. During the public hearing, objection was raised against the proposal of creating a separate category since the nature of business of HMR is similar to that of Indian Railways.

The Commission has examined the proposal for creating a separate category or subcategory to an existing category and presents its reasoning as below:

- HMR will be engaged in the activities of providing mass rapid transit system for Hyderabad and is a public utility and a social sector project having many social benefits which would be bestowed upon a section of traveling public.
- Section 61 and 62 of the Electricity Act allow for differentiation on the basis of geographical positioning and the purpose for which supply is required. The nature of service provided, geographical area and purpose of HMR are different from that of the Indian Railways and hence qualify for separation.
- With regard to load factor of the service, as the HMR becomes fully operational, the movement of trains will be more frequent in the given limited area of operations and thus the load factor will be higher than that of the Railways.
- Further the HMR provides only passenger services unlike the Railways which carry goods and earn additional revenue from such services.

Hence, the Commission opines that HMR is eligible to be classified under a separate category as has been done in Delhi. The commercial operation of the HMR is anticipated to be commenced during the year FY2016-17 covering only a limited area of operations and at present its load constitutes construction and commercial loads. The Commission observes that the category cost of service cannot be ascertained at this stage and hence a sub-category can be created with lower tariff than that of the Indian Railways to accommodate the unique requirement of this category prior to major commercial operations. **Meanwhile the Commission directs TSSPDCL to study the consumption pattern for the portion of the commercial operation to commence during the year FY 2016-17 and propose the Category CoS for the subsequent year.**

Hence the sub-category HT-V (B) Hyderabad Metro Rail (HMR) under HT-V Railway traction is created as requested by the DISCOM in its original petition

and after considering the facts explained. Categorization of Metro Rail as a separate category/sub-category has also been allowed by DERC and KERC respectively.

Applicability

9.104 This tariff is also applicable to Hyderabad Metro Rail traction load.

Category	Demand Charge* (INR/month)		Energy Charge (INR/kVAh)
	Unit	Rate	
HT-V(B) HMR			7.00
*Demand charge is calculated at INR/kVA/month of the billing demand”			

B) Tariff order 2017-2018 dated 26.08.2017 in O.P.Nos.22 and 23 of 2016

“2.6 CONSUMER CATEGORISATION

2.6.1 Stakeholders submitted the following

.....

- **Hyderabad Metro Rail (HMR):** The Commission vide its Tariff Order dated 23.06.2016 for FY 2016-17 categorised HMR as a separate category. The Commission is requested to direct the Licensee to charge the tariff at Rs.7.00 / kVAh for the entire rail system including traction, stations, depots and other systems associated with metro rail operations w.e.f. 01.07.2016 as per the tariff order dated 23.06.2016 till be issue of the tariff order.

Replies of Licensees

.....

2.6.12 **Hyderabad Metro Rail (HMR):** HT-V (B) category approved by the Commission is applicable for Hyderabad Metro Rail Traction load only. The station auxiliary load (including lighting, air conditioners and escalators, etc.) falls under HT-III (Airports, railway stations and bus stations) category and station retail load (shops, malls, theatres and other stores) falls under HT-II others category as per the definitions of HT categories provided in the tariff order 2016-17.....

HT-V: Railway traction

.....

HT-V (B): Hyderabad Metro Rail

Applicability

8.109 This tariff is available for HMR to run its operations (other than construction projects) to the extent of following:

- a. Traction load.
- b. Access pathways to the station such as elevators, staircases (including escalators) and platforms used for the purposes of boarding the train.
- c. Enabling areas such as ticket counters, station office, operation / control rooms, depots and public washrooms located within the station premises (excluding areas allotted for vehicle parking).

Category	Demand Charge *		Energy Charge (INR / kVAh)
	Unit	Rate	
HT-V(B) HMR	kVA	390	3.95
*Demand charge is calculated at INR/kVA/month of the billing demand			

Explanation: The commercial load (other than that in the above clause) at HMR stations and other HMR premises including any retail counters that are set up under the Telangana Shops and Establishments Act, 1988 shall be metered and billed separately as per the relevant tariff category.

C) Clauses in Concession Agreement

“6.4 Obligations relating to supply of electricity

The Government shall procure that the rail system gets priority in the supply of electricity from the grid and the tariff thereof shall be determined on commercial principles such that the rail system is not required to subsidise any or all other segments of electricity consumers. The Government shall further procure that in the event the concessionaire receives a supply of electricity from any source other than the area distribution company, it shall be

deemed to be a supply from a captive power station under and in accordance with the provisions of Sections 9 and 42 of the Electricity Act, 2003. For the avoidance of doubt, this clause 6.4 is not applicable to real estate development.”

D) Provisions of the Electricity Act, 2003

“62 Determination of Tariff

.....

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

.....

E) Provisions of General Terms and Conditions of Supply (GTCS)

“3.3 Classification of consumer Categories

The classification of consumers under different categories both under LT supply and HT supply shall be as specified by the Commission in the Tariff Orders issued from time to time or by any other order of the Commission

3.4 Reclassification of consumer Category

3.4.1 Where a consumer has been classified under a particular category and is billed accordingly and it is subsequently found that the classification is not correct (subject to the condition that the consumer does not alter the category/purpose of usage of the premises without prior intimation to the Designated Officer of the Company), the consumer will be informed through a notice, of the proposed reclassification, duly giving him an opportunity to file any objection within a period of 15 days. The Company after due consideration of the consumer's reply if any, may alter the classification and suitably revise the bills if necessary even with retrospective effect, the assessment shall be made for the entire period during which such reclassification is needed, however, the

period during which such reclassification is needed cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

3.4.2 *If a consumer makes a written request for reclassification of his service connection (change of category) the company shall comply with the request within the time frame specified in the APERC (Licensees' Standards of Performance) Regulation, 2004 (No.7 of 2004)."*

F) Sections 14 and 15 Metro Railways (Operation and Maintenance) Act, 2002

"14 Sanction of Central Government to the opening of metro railway: *The metro railway in the (National Capital Region, metropolitan city and metropolitan area) shall not be opened for the public carriage of passengers except with the previous sanction of the Central Government.*

15. Formalities to be complied with before giving sanction to the opening of metro railway:

(1) *The Central Government shall, before giving its sanction to the opening of the metro railway under section 14, obtain a report from the Commissioner that –*

(a) *he has made a careful inspection of the metro railway and the rolling stock that may be used thereon;*

(b) *the moving and fixed dimensions as laid down by the Central Government have not been infringed;*

(c) *the track structure, strength of bridges, standards of signalling system, traction system, general structural character of civil works and the size of, and maximum gross load upon, the axles of any rolling stock, comply with the requirements laid down by the Central Government; and*

(d) *in his opinion, metro railway can be opened for the public carriage of passengers without any danger to the public using it.*

- (2) *If the Commissioner is of the opinion that the metro railway cannot be opened without any danger to the public using it, he shall, in his report, state the grounds therefor, as also the requirements which, in his opinion, are to be complied with before sanction is given by the Central Government.*
- (3) *The Central Government, after considering the report of the Commissioner, may sanction the opening of the metro railway under section 14 as such or subject to such conditions as may be considered necessary by it for the safety of the public.”*

9. Prima facie the issue rests on the directions of the Commission. The Commission approved the proposal of categorisation at the behest of the Respondent No.1 in its Aggregate Revenue Requirement (ARR) and Filings for Proposed Tariff (FPT) filings for Retail Supply Tariffs for FY 2016-17. The licensee made the proposal based on the communication received by it from the Government of Telangana State (GoTS) requiring it to create separate category in so far as petition is concerned. Further the GoTS had also written to the Commission requiring it to consider the proposal of the TSSPDCL for a separate category in so far as petitioner is concerned. In this regard the GoTS had relied upon clause 6.4 of the Concession Agreement as extracted above. The Commission reproduces the letter addressed to it on 27.04.2016.

“I am to inform that the Managing Director, Hyderabad Metro Rail Limited (HMRL) vide his letter first cited has requested the government to create a separate category for the Hyderabad Metro Rail System (excluding real estate development portion) and fix the tariff on “cost to serve” basis as per the clause 6.4 of the concession agreement entered with the GoAP which stipulates that “the government shall procure that the rail system gets priority in the supply of electricity from the grid and the tariff thereof shall be determined on commercial principles such that the rail system is not required to subsidize any or all other segments of electricity consumers”.

After careful consideration of the matter, government, vide letter 2nd cited has accorded permission to TSSPDCL for creation of separate category for the

Hyderabad Metro Rail System (excluding Real Estate Development portion) and fixation of the tariff as per the clause 6.4 of the Concession Agreement.”

10. As seen from the above the GoTS has committed itself to provide power supply to the metro rail system. Keeping in view the said condition only the GoTS had required licensee to provide separate category and also required the Commission to ensure creation of separate category of tariff. The Commission having considered the proposals had while determining the tariff for various categories of consumers by order dated 23.06.2016 had specifically notified the tariff in respect of the petitioner as it provides only passenger services unlike Railways. The relevant observations are already extracted above.

11. Further, the Commission opined that the commercial operation of the HMR is anticipated to be commenced during the FY 2016-17 covering only a limited area of operations and at present its load constitutes construction and commercial loads. The order of the Commission is clear that the loads of the HMR before commercial operation of the HMR is of nature and constitutes construction and commercial loads. As such, the HT-V (B) HMR category tariff is applicable from the commercial operation of HMR.

12. The Commission hereby clarifies that specified expression “*Applicable with effect from 1st July, 2016 to 31st March, 2017 in respect of the two licensees in the State of Telangana (i.e. TSSPDCL and TSNPDCL and also RESCO)*” in the Retail Supply Tariffs order dated 23.06.2016 for FY 2016-17 is in general and is applicable to all the categories of retail supply and includes HT-Others and HT-V (B) HMR, which implies that they are effective prospectively and not retrospectively. In fact, HMR Metro Rail category is in jurisdiction of the TSSPDCL only and not in TSNPDCL and RESCO.

13. The petitioner raised an issue of non-implementation of the order of the Commission while determining the Retail Supply Tariffs for FY 2016-17. In ordinary course of business and the day to day functioning of the licensee, identifying the category of the consumer or reclassifying it are within the domain of the licensee only as per General Terms and Conditions of Supply (GTCS). Also, it is relevant to point out that the terms and conditions of supply as approved by the Commission did not

undergo any modification in so far so classification or reclassification of the consumers by virtue of the tariff order mentioned above.

14. The Commission therefore relies on the observations and findings as extracted above in so far as tariff to the petitioner is concerned for the financial year 2016-17 and 2017-18.

15. It has been submitted that the petitioner did not commence the operations in the relevant financial year 2016-17 and as such the findings of the Commission in retail supply tariff could not be given effect to. The licensee cannot jump to any particular conclusion in the absence of the findings of the Commission in that regard. The licensee is bound to bring the difficulty before the Commission as expeditiously as possible and get the order clarified or modified.

16. One other contention has been raised by the licensee that the power supply is used for construction and allied activities and not for commercial operation, therefore, the licensee continued to bill the petitioner under commercial category only and not the specific category approved by the Commission. The petitioner vehemently denied the same and stated that all the construction activity was undertaken on the supply availed by the contractor or diesel generators. The power supplied by the respondent, according to its submissions has been used minimally only for testing and operational purpose before actual commercial operation began on 29.11.2017.

17. The Commission notices the fact that the Commissioner of Metro Railway Safety (CMRS) had accorded its permission by letter dated 20.04.2016. This is pursuant to and in compliance of section 14 and 15 of Metro Railways (O&M) Act, 2002 This permission would be the basis for commencing commercial operation by the petitioner. Whereas the Chapter VI '**SANCTION OF OPEN METRO RAILWAY FOR PUBLIC CARRIAGE OF PASSENGERS**' of Opening of Metro Railways for Public Carriage of Passengers Rules, 2013 stipulates that –

22. Opening of a metro railway by the Commissioner –

- (1) *The Commissioner may sanction opening of the metro railway or a portion thereof, as the case may be, for public carriage of passengers and introduction of electric traction, subject to such conditions as he may impose in the interest of the passengers.*

While giving sanction to the opening of metro railway, he will forward his inspection report to the Central Government.

- (2) *After receiving the sanction, the Chief Executive Officer shall publish the date of opening of the metro railway or a portion thereof for public carriage of passengers in the local newspapers in English, Hindi and local languages.*

23. **Sanction to open metro railway** – *The Central Government may, after considering the inspection report submitted by the Commissioner under rule 22(1), confirm, modify or cancel the sanction given by the Commissioner, while exercising powers under section 14 of the Act [the Metro Railways (Operation and Maintenance) Act, 2002 (No.60 of 2002)].*

18. The Commission is of considered view that the tariff under HT-V(B) HMR category is applicable from the Commercial operations of the HMR and which shall be of the following events, whichever is later:

- a) The date of Commissioner of Metro Railway Safety (CMRS) sanction by the Commissioner of Metro Railway Safety (CMRS) for opening of the metro railway (HMR) or a portion thereof, as the case may be, for public carriage of passengers and introduction of electric traction, subject to such conditions as he may impose in the interest of the passengers;
- b) The date of opening of the metro railway or a portion thereof for public carriage of passengers, as published by HMR in the local newspapers in English, Hindi and local languages.
- c) The date of confirmation accorded by the Central Government on the sanction given by the Commissioner.

19. The petitioner sought to portray the situation regarding its finances due to COVID-19 situations and consequent stoppage of operations in so far as its finances are concerned. The COVID-19 situation is an event subsequent to the period for which tariff order of 2016-17 is sought to be enforced. As such the said situation has nothing to do with the issue raised in the petition. It is also appropriate to state that the petitioner approached the Commission in the year 2020 regarding non implementation of the order of the Commission passed in the year 2016. Suffice it to state the petitioner

would succeed in the petition but not on the basis of the financial position arising out of the COVID-19 situation.

20. The petitioner has invoked Section 86 of the Electricity Act, 2003 which is not applicable to the petitioner as it is not a dispute between a licensee and generator, the parties being neither of them nor it does not also involve any issue relating to tariff of a generator. Plainly said it is a consumer grievance for which the Commission is not the appropriate forum.

21. The petitioner has also sought interim orders in I.A.(SR) No.29 of 2020 for not disconnecting the power supply. The representative of respondent stated during the hearing on 11.12.2020 that the licensee would not resort to disconnection of power supply immediately and the Commission may take it as an undertaking. Since the original petition is itself being disposed of, there is no necessity for passing any orders in I.A. and accordingly the said I.A. is closed.

22. In the circumstances and the forgoing reasons, the petition is disposed of with no costs.

23. Office is directed to number the original petition and interlocutory application before communicating this order.

This order is corrected and signed on this the 1st day of July, 2021.

Sd/- (BANDARU KRISHNAIAH) MEMBER	Sd/- (M.D.MANO HAR RAJU) MEMBER	Sd/- (T.SRIRANGA RAO) CHAIRMAN
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