

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

Thiru M.Chandrasekar Chairman
Dr.T.PrabhakaraRao Member
and
ThiruK.Venkatasamy Member (Legal)

R.A.No.4of 2020
in
M.P.No.3 of 2016

Chennai Metro Rail Limited
Rep. by its Managing Director
CMRL Depot, Admin Building
Koyambedu, Chennai – 600 107.

... Petitioner
(ThiruJayesh B Dolia, Senior Advocate
Counsel forPetitioner)

Versus

Tamil Nadu Generation and Distribution
Corporation Ltd.
NPKRR Maligai
144, Anna Salai
Chennai – 600 002.
..... Respondents

(ThiruM.Gopinathan
Standing Counsel for TANGEDCO)

Dates of hearing : **02-06-2020; 14-07-2020; 21-07-2020;
28-07-2020; 04-08-2020 and 18-08-2020**

Date of Order : **10-11-2020**

The M.P.No.3 of 2016 came up for final hearing on 18-08-2020. The Commission upon perusal of the petition and connected records and after hearing the submissions of the petitioner hereby makes the following:-

ORDER

1. Prayer of the Petitioner in M.P.No.3 of 2016:-

The prayer of the petitioner in M.P. No.3 of 2016 is to fix the Railway Traction Tariff for CMRL for the period of trial operation from July 2013 to June 2015 and to include CMRL as a special category consumer and provide tariff during revenue operation based upon the actual cost of supply at 110 KV level excluding both the subsidy and cross-subsidy elements in line with National Tariff Policy and on par with DMRC / BMRCL.

2. Facts of the Case:-

This petition has been filed seeking permission to fix the Railway Traction Tariff for CMRL for the period of trial operation from July 2013 to June 2015 and to include CMRL as a special category consumer and provide tariff during revenue operation based upon the actual cost of supply at 110 KV level excluding both the subsidy and cross-subsidy elements in line with National Tariff Policy and on par with DMRC / BMRCL.

3. Contentions of the Petitioner:-

3.1. The Chennai Metro Rail Project is being executed based on the growing traffic of Chennai city which is increasing at rapid rate. The aim of the project is to provide a safe, fast, reliable, accessible, convenient, comfortable, efficient and

affordable public transport service. It is an essential public utility and social sector green field project with a view to improve the mobility of commuters and to reduce tariff congestion and pollution level on roads and faster travel at affordable rates, for which electricity is the only source of energy for operation of metro system. The energy cost contributes to about 1/3rd of operation and maintenance cost.

3.2. The 4. CMRL Phase I consist of two corridors:

- (i) Corridor 1: Washermenpet to Airport(23.1kms)
- ii) Corridor II: ChennaiCentral to St. Thomas Mount (22.0Kms)

Among this, CMRL has planned for commissioning of the project in three stages,

- a. Stage-1 From Koyambedu to Alandur Elevated Route has been commissioned by the Hon'ble Chief Minister of Tamil Nadu Government on 29.06.2015 and the revenue operation is going on.
- b. Stage-1A: From Little Mount to Chennai Airport (7.7 Kms)and Alandur to St.Thomas Mount by July 2016.
- c. Stage -2FromKoyambedu to Egmore (UG) - by December -2016.
- d. The remaining length by December-2017.

3.3. The power supply requirement for the project is in the order of 30 million units in 2015 and is expected to be 200 million units in 2026.

3.4. The CMRL receives power from Koyambedu, Alandur& Chennai Central 230/110KV GIS TANTRANSCO Sub-Stations at the Voltage level of 110KV at the respective receiving Sub-Station (RSS). The 110 KV grid supply has been stepped down to 25KV Single Phase and supplied for traction through Catenary and 33KV

for Ring Main distribution through cable network along the route to provide power supply at Depot, Operation Control Centre and stations for auxiliary systems.

3.5. At every station, it is being further stepped down from 33 kV to 415 kV three phase for running of the passenger facilities and safety services viz, Lifts, Escalators, Air-Conditioning arrangements with platform screen doors (for energy conservation) Lighting, Water pumps, Fire detection & suppression system, Signaling etc. The above amenities need to be provided especially in all Under Ground stations for benefit of commuters and to ensure ventilation inside tunnels. This will certainly increase the energy consumption.

3.6 CMRL is a new category of consumer to TANGEDCO Ltd to avail power for the purpose of Urban Transport. CMRL had availed power supply for a maximum demand of 5 MVA from TANTRANSCO 230/110KV GIS Sub-Station at Koyambedu (vide HTS.C.No.1843) for commissioning activities and trial operations from 26.07.2013 and also CMRL had availed power supply for a maximum demand of 5 MVA from TANTRANSCO 230/110 KV GIS Sub-Station at Alandur (vide HTS.C. No.965) for commissioning of Stage-I operation, and the demand, will subsequently rise.

3.7 .From July 2013, HT commercial tariff (III) has been fixed by TANGEDCO at the rate of 700paise / unit with a fixed Demand Charges of Rs.300/ KVA/month, and it is subsequently revised & billed as 800Paise/unit and demand charge is Rs.350.00/kVA for the Traction and Utilities of CMRL.

3.8. In the DPR prepared by Delhi Metro Rail Corporation (DMRC) for CMRL, it was stated that the cost of energy was considered as Rs.300 Paise/unit for all the calculations on consumption charges. Based on which further calculations were worked out for evaluating the operational cost including repayment of loan, else the escalated cost of energy may lead to financial burden on CMRL.

3.9 Already DMRC is considered as a special category with a lower tariff from the inception of operation. Initially in the DERC Tariff order for the FY 2001-2002, Tariff was fixed to DMRC as 340paise/unit with a Fixed Demand Charges of Rs.150/KVA.

3.10 In the latest MYT order for the FY2015-16 also DMRC is considered as special category and tariff was fixed at the rate of 610 paise/ unit with a fixed Demand Charge of Rs.125/KVA .whereas for Railways it was fixed as 680paise/unit with a Fixed Demand Charge of Rs.150/KVA. Further BMRCL is also classified as special category in the KERC Tariff order for FY 2015-16 with tariff at the rate of 540paise per unit for energy consumption and fixed Demand charges of Rs.180/- per KVA / month.

3.11 For kind consideration for fixation of special tariff to CMRL during revenue operation on par with DMRC and BMRCL and on cost to serve basis to run Metro Rail as on - commercial mode of public transport as detailed below:

- a. CMRL reiterates that it is a public oriented passenger service and not at all a profit sector like Railways as the latter handles the commercial freight

operation in addition to providing commuter service and cross subsidises the passenger cost. Further urban transport does not generally make any fixation.

- b. CMRL should be in a position to provide reliable, economical and speedy weaning away public from personal (polluting) transport, since roads also are unable to take the huge spurt in cars, two wheelers etc. CMRL is involved in reducing the load on the transport system of the Chennai City.
- c. There is no subsidy or cross-subsidy to CMRL in any manner to meet the operational cost.
- d. CMRL is taking various measures to reduce Aggregate Technical and operational cost.
 - (i) CMRL is receiving power at three locations in the voltage level of 110KV and distributing by its own network, so that line losses in Traction & Distribution network are not attributed to TANGEDCO Ltd.
 - (ii) CMRL utilises the latest energy efficient technology to operate trains with regeneration facility and also in auxiliary equipments like ventilation and Air-Conditioning system etc and at the same time to provide other basic amenities to commuters.
 - (iii) CMRL will also be utilising some solar energy by installations on roof tops.
- (e) The CMRL will form a base load for TANGEDCO Ltd., and it will not exceed its demand under normal conditions. In addition to the above, the required maximum demand itself is not at all a continuous load with feature like regeneration during train operation.

- (f) Net annual energy consumption for both traction and auxiliaries will be about 30 million units in the year 2015 and it will raise to 200 million units in 2026 depending upon the headway operation. This will impact operational cost of CMRL, if tariff is not fixed on par with DMRC/BMRCL.
- (g) Further CMRL has the commitment to pay back the loan from JICA in time.
- (h) Already DMRC and BMRCL were considered as a special category and energy tariff was fixed on cost to serve due to the fact that they are public oriented service and there is no subsidy and cross subsidy from commercial freight operation as in Railways.
- (i) KERC has already approved the proposal to charge the average cost of supply to 3 RCL. This means the Tariff would cover the complete cost of the supply based approved ARR of BESCOM for the financial year.
- (j) Moreover, all the Metro Rail Corporations have availed separate special Metro Tariff from their Respective State Regulatory Commissions.
- (k) As per MOU between GoI, GOTN and CMRL dated 15.02.2011, electric power is to be made available to CMRL on a no-profit-no-loss basis, subject to the approval of TNERC.

4. Written Submission filed on behalf of the Petitioner:-

4.1 Vide order dated 01.08.2016, this Commission gave the benefit of the order for HT Tariff 1 (B) for all the connected load of CMRL. The other loads like Kiosks, Stalls, ATM, hotels, etc. shall be separately metered and charged under miscellaneous category and the above consumption shall be deducted from the main energy consumption metered at the CMRL's point of supply. This Commission directed that the order shall take effect from the date of this order i.e. from 01-08-

2016. Aggrieved by the said order, CMRL filed Appeal No. 262 of 2016 before the Appellate Tribunal for Electricity (APTEL).

4.2. The APTEL, vide order dated 02.03.2020, without expressing any opinion on the issue as to whether CMRL is entitled to the special category status and also on the claim that the tariff, to be levied against it would exclude it from the burden of subsidy or cross-subsidy. While remanding the matter back, the Appellate Tribunal also took conscious note of the fact that CMRL is in service of public necessarily catering to the commuting passengers so as to provide reliable, faster, economical and eco-friendly transport services in the city of Chennai. While taking into account the above aspect, the State Commission should also keep in mind the legislative intent and public policy adopted by the State.

4.3 The APTEL also stated the expectation that the tariff determination exercise would progressively reflect the cost of supply of electricity and also reduce cross-subsidy and also that, in such determination, the Electricity Regulatory Commission may differentiate upon considerations also of the nature of supply and the purposes of such supply.

4.4. The APTEL was also conscious of the fact that, there was an MOU dated 15.02.2011 between the three entities namely the State, the Centre and the CMRL, under which, it was stated in clause 12.7 that electric power would be made available to the project and on “no-profit no-loss” basis, subject to the applicable law and orders of the State Electricity Regulatory Commission. Thus, the Commission was directed to consider the said MOU and determine appropriate

tariff in respect of Chennai Metro Rail Project in the light of decision thus taken by passing a fresh order. The matter that has to be decided is as to what would also be the Tariff that is to be made applicable for the period from the year 2013 to 2016.

4.5. The Chennai Metro Rail Limited (CMRL) was established to provide safe, fast, reliable accessible, convenient, comfortable, efficient and affordable public transport service. It is an essential public utility and social sector green field project with a view to improve the mobility of commuters and reduce traffic congestion and pollution level on roads and faster travel at affordable rates, for which electricity is the only source of energy for operation of metro system. The energy cost contribute to about 50% of operation and maintenance cost.

4.6. The CMRL Phase-I consists of two corridors viz. Corridor-I from Washermenpet to Airport (23.1 Kms) and Corridor-II from ChennaiCentral to St. Thomas Mount (22.0 Kms). The project was to take off in 3 stages.

4.7. The power supply requirement for the project in the year 2015 was around 30 million units and it is expected to reach 200 million units in the year 2026. From July 2013, HT Commercial Tariff III was fixed by TANGEDCO at the rate of 700 paise/unit with a fixed Demand Charges of Rs.300 / KVA / month and it was subsequently revised and billed as 800 paise/unit and demand charges at Rs.350.00/KVA for the traction and utilities of CMRL. In the Project Report for CMRL, the cost of energy was considered at 300 paise per unit for all the calculations, based on which further calculations were worked out for evaluating the

operational cost including repayment of loan. The cost escalation of energy will lead to financial burden on CMRL.

4.8. Insofar as DMRC is concerned, in the year 2001-2002, the tariff was fixed to MRC at 340/unit with fixed Demand Charges of Rs.150/KVA. In the MYT order for the financial year 2015-16, the rate was fixed at 610 paise/unit with a fixed Demand Charges of Rs.125/KVA, whereas for Railways it was fixed as 680 paise/unit with a fixed Demand Charges of Rs.150 / KVA.

4.9. For Bangalore Metro Rail Corporation Limited (BMRCL), which was also classified as special category in the KERC Tariff order for the financial year 2015-16, the tariff was at the rate of 520 paise/unit and fixed Demand Charges of RS.180/KVA/month. Thus, TNERG could consider for fixation of special tariff to CMRL for the trial operation period from 2013 to 2016 and also during revenue operation on par with DMRC and BMRCL in line with National Tariff Policy and as adopted to DMRC/BMRC.

4.10. The grounds raised by CMRL may be considered for fixing the tariff for the trial period from July 2013 to June 2016 and also fix the tariff based on actual cost of supply at 110 KV level excluding both with regeneration facility and also in auxiliary equipments like ventilation and air-conditioning system, etc.

4.11. The CMRL submitted an Application under Tariff I-B Railway traction category hoping that it will get special tariff to be notified by the Commission on par with other Metros and also based on the MOD with the Government of Tamil Nadu

and Govt. of India on 'no-profit no-loss' basis. TANGECO did not give any room for negotiation, but forced upon CMRL to accept the offer given by them as the project was about to take off, however, CMRL has been making payment to TANGEDCO under protest.

4.12. The CMRL's revenue is not sufficient to meet the electricity bills as on date. The public at large are not willing for any increase in the tariff and added to the above owes CMRL will have to repay the loan with interest to JICA.

4.13. The TANGEDCO preferred Review Petition against the order dated 01.08.2016, however, did not move it forward for reasons best known to them and neither did they challenge the earlier order by preferring an appeal to APTEL. The order of the Appellate Authority dated 13.03.2007 in Appeal No.268 of 2006, relevant extract of tariff order dated 31.07.2013 for the financial year 2013-14 passed by DMRC for BSES Rajdhani Power Limited and the extract of tariff order dated 14-05-.2018 for the year 2018-19 passed by the Karnataka Electricity Regulatory Commission for Bangalore Electricity Supply Company Ltd.

4.14. The relief sought for may be granted as prayed for with effect from the date of commissioning of the project.

5. Counter Affidavit filed on behalf of the Respondent:-

5.1. The Chennai Metro Rail Corporation Limited (CMRL) filed an appeal petition No. 262 of 2016 before the Hon'ble Appellate Tribunal for Electricity, New Delhi against the TNERC order in M.P.No.3 of 2016 and the same was remanded to this

Commission by the APTEL vide order dated 02.03.2020 with a prayer to fix the Tariff for Chennai Metro Rail Ltd. (CMRL) for the period of trial operation from July 2013 to June 2016 and to include CMRL as a special category consumer and provide tariff during revenue operation based upon the actual cost of supply at 110 KV level excluding both the subsidy and cross-subsidy elements in line with National Tariff Policy and on par with DMRC / BMRCL.

5.2. The MOU between GOI, GOTN and CMRL in respect of electric power supply tariff is subject to the approval of TNERC. The TNERC has not approved a separate tariff classification to CMRL and hence it has been brought under approved classification which is traction load, under Railway traction category and other than traction load, under miscellaneous category. TANGEDCO is levying the charges for CMRL under the category in which it has been classified in the present tariff order.

5.3. The tariff rate could not be determined retrospectively and also during the operation period of a tariff order. If it has been classified either retrospectively or during the operation period of a tariff order, it will give a negative impact on the recovery of ARR for the operational year. Hence, the request of the CMRL could be taken up only during the next tariff revision process time so that the recovery of ARR will be adjusted accordingly.

5.4. TANGEDCO is not receiving any subsidy for operational cost. The cross-subsidy already exists to recover the Annual Revenue Requirement (ARR) only. The existence of cross-subsidy does not contribute anything more than that of

ARR. It is further respectively submitted that the tariff of TANGEDCO is fixed based on the cost escalation incurred by TANGEDCO year on year only and the cost considered in the DPR of the petitioner does not have relevance.

5.5. The Delhi Metro Rail Corporation was classified under separate category for the usage of Railway Traction load and other than traction load is not included in Metro Rail Tariff but it is classified under non-domestic (Commercial) category. The Bangalore Metro Rail Corporation was classified under separate category. The petitioner CMRL has started commercial operation during June 2016. To create a separate category other than Railway Traction need a detailed study about consumption pattern, usage of load and power factor etc. At the time of next tariff petition, the petitioner may approach the Commission with the above mentioned details. During the operational period of the Tariff order creation of separate category at a tariff rate lower than the existing tariff rate will affect the financial position of TANGEDCO and the projected revenue in the tariff order could not be reached.

5.6. Section 62(3) of the Electricity Act 2003 provides that 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. Accordingly, the Commission determined the tariff by classifying the CMRL usage under Railway Traction tariff, to recover the ARR of TANGEDCO.

TANGEDCO is charging the petitioner at the rate fixed by the Commission only and no additional amount is recovered from the petitioner.

5.7. The HT service connection to CMRL is being utilized not only for the traction purpose but also for other than traction purposes. TANGEDCO requested the CMRL to segregate the non-traction load to extend Railway traction tariff (HT tariff I B) to traction use and to extend residual tariff (HT Tariff III) to non-traction load such as administrative block, station use and other commercial use. The petitioner was also informed that till segregation of load the CMRL will be billed under residual tariff. The mixed load usage automatically comes under residual category. Hence, the usage of mixed load of railway traction and other miscellaneous activities by CMRL has to be classified under HT Tariff III only. Even for Railways also, the load relating the railway traction is covered under HT I (8) and the other loads relating to Railway Stations, Railway office, cargo handling, elevators, etc. have been covered only with Miscellaneous Category/Commercial. If the segregation is done the load connected with the Escalators, Elevators, Air conditioners and Lightings for admin building and Escalators, Elevators, Air conditioners and Lighting for cargo building has to be necessarily billed under Commercial/ Miscellaneous category as the same is not covered under any other tariff category in respect of CMRL.

5.8. The consumer(CMRL) has to segregate the loads for traction and for other activities including the Escalators, Elevators, Air conditioners and Lightings for admin building and Escalators, Elevators, Air conditioners and Lighting for station use. The load for traction only can be categorized under HT Tariff I (8) as

categorized in the cases of Railways and MRTS. The loads for other activities other than traction shall be categorized only under HT Tariff III. Until the consumer identifies separate load for traction and for other purposes, usage of load for mixed purposes including traction shall be categorized under HT Tariff III only and not in HT Tariff I (B).

5.9. HT Tariff I (B) is meant for the usage of energy for Railway Traction purpose only and no other purposes of Railways or any other utilities. There is no question of usage of traction load for freight operation and traction load for passenger operation. There is no provision in the tariff order that the electricity consumed in administrative block and station usage of passenger train service provider can be considered as traction load. Hence, the consumption of traction load alone shall be categorised under HT Tariff I (B).

5.10 TANGEDCO has also filed a Review Petition. In the meantime, pending disposal of Review petition, the Commission has issued Tariff Order No.1 of 2017 dated 11-08-2017 without considering the prayer of TANGEDCO in the Review Petition and the petitioner CMRL also filed appeal before the Hon'ble APTEL. Hence TANGEDCO could not proceed further.

5.11. In the case filed before the Commission by M/s.Orchid Chemicals & Pharmaceuticals Limited Vs TANGEDCO & others (M.P.No.27 of 2012, Order dated 04.06.2013) in which findings of the Commission is,

"Para 10: The above matter was heard on 30th January 2013. During the hearing the petitioner argued that the laboratory is a R & D institute

recognized by the Central Government and funded by the Central Government since 1998 and the latest recognition issued by the Central Government is valid upto 2015. To a specific query from the Commission as to whether grant of recognition would amount to Government control, Learned Counsel for the petitioner stated that they can never resort to commercial exploitation of their R & D activities. In response to the question of the Commission as to whether control would amount to ownership by Central, State Government or local bodies etc. the petitioner requested for consideration as a special case for charging the petitioner under Tariff II A. Seeking concession is a different issue and can be argued only prospectively during future tariff settings and cannot be invoked for re-classification. The existing order is to be interpreted as such for arriving at a conclusion”

5.12. Based on the above, this Commission has decided that any categorisation of new tariff will be prospectively only and revision of tariff will be in the next tariff order. Hence separate category for CMRL need not be considered at this stage and its activity is similar to Indian Railways so the traction load may be considered under Tariff IB as per the prevailing tariff order. By considering the submissions made above, the Commission may dismiss the petition.

6. Rejoinder filed on behalf of the Petitioner:-

6.1. TANGEDCO is making an attempt to equate CMRL with the Railways. It was established earlier as well as before APTEL that Metro is completely different from Railways. The Railways have many commercial operations incidental to

operation revenue whereas Metro is only for the benefit of passengers and support infrastructure such as escalators, lifts, TV's, etc., are integral part of metros and these facilities do not fetch extra revenue on usage. Therefore in addition to traction, our support infrastructure at stations such as escalators, lifts, TV's, etc, are also integral part of operations only.

6.2. The respondent admits and accepts the MOU between Government of India, Government of Tamil Nadu and CMRL. The said MOU is valid and legal in law and sanctity has to be provided to the same. TANGEDCO is the limb of State Government and therefore is bound by the undertaking provided in the MOU. Therefore CMRL has to be treated as a special category in respect of power supply and is entitled to tariff on par with DMRC/BMRCL/Kochi/Hyderabad and it cannot be brought under traction load under railway traction category. The power should be supplied on "No loss-No profit' basis as per the understanding between the governments.

6.3. The CMRL has been making a request for tariff under HT Tariff I (B) and it cannot be considered under HT Tariff III> This request is pending since inception of Metro Rail and MOU is also dated 15.02.2011 and therefore it cannot be said that the tariff cannot be fixed retrospectively. The intention of the MOU should be given effect to as CMRL is also part of the Government, Central as well as State and thus the tariff has to be fixed with retrospective effect. The fixation of tariff for CMRL cannot be co-related with the recovery of ARR with TANGEDCO. In this juncture TANGEDCO may not claim its negative impact recovery of ARR for the operation year. It is an expected revenue requirement from CMRL. Even the Hon'bleAppellate

Tribunal has directed the state commission to consider the said request, and determine appropriate tariff in respect of CMRL in light of decision thus taken, by passing a fresh order.

6.4. The power supply requirement for the project in the year 20 5 was around 30 million units and it is expected to reach 200 million units in the year 2026. From July 2013, HT Commercial Tariff III was fixed by TANGEDCO at the rate of 700 paise / unit with a fix Demand Charges of Rs.300/KVA/month and it was subsequently revised and billed as 800 paise/unit and demand charges at Rs.350.00/KVA for the traction and utilities of CMRL. In the Detailed Project Report for CMRL, the cost of energy was considered at 300 paise per unit for all the calculations, based on which further calculations were worked out for evaluating the operational cost including repayment of loan. The cost escalation of energy will lead to additional financial burden on CMRL.

6.5. The Chennai Metro Rail Limited was established to provide safe, fast, reliable accessible, convenient, comfortable, efficient and affordable public transport service. It is an essential public utility and social sector green field project with a view to improve the mobility of commuters and reduce traffic congestion and pollution level on roads and faster travel at affordable rates, for which electricity is the only source of energy for operation of metro system. The energy cost contribute to about 50% of operation and maintenance cost.

6.6. The CMRL Phase-I consists of two corridors viz. Corridor-I from Washermenpet to Airport (23.1 kms) and Corridor-II from Chennai Central to St. Thomas Mount (22. 0 kms). The project was to take off in 3 stages.

6.7. The DMRL was classified under separate category for use of railway traction load and other than traction load is not included in the Metro Rail tariff and classified under non domestic category is incorrect. Same is in the case of BMRL. The entire power supply from TANGEDCO is through a single line and would be monitored from the CMRL yard by machines, instruments, man power of CMRL and there is no need for check and occasionally measure by staff of TANGEDCO. Therefore there is no need for additional overheads for the above.

6.8. The contention of TANGEDCO that if low tariff is considered for CMRL, it may affect the financial position of TANGEDCO is not a tenable contention. The same is contrary to the undertaking given by the respective governments. Similarly the averment of the counter is also untenable in law. The TNERC while fixing the tariff for CMRL has to take into account the undertaking by both the Governments to provide electricity on "no loss no profit basis" and also the order of APTEL. As the order of the Commission was not in consonance with the tariff which the CMRL is entitled to and as per the MOU between the State and Central Governments, the APTEL rightly remanded the matter by directing fixation of tariff for CMRL by considering as a special category consumer during revenue operations based upon the actual cost of supply at 110 KV level. Therefore the respondent cannot say that the order dated 01.08.2016 still holds good.

6.9. Insofar as DMRC is concerned, in the year 2001-2002, the tariff was fixed to DMRC at 340 paise/unit with fixed Demand charges of Rs.150/KVA. In the MYT order for the financial year 2015-16, the rate was fixed at 610 paise/unit with a fixed demand charges of Rs.125/KVA, whereas for Railways it was fixed as 680 paise/unit with a fixed demand charges of Rs.150/KVA.

6.10. It is further submitted that, for Bangalore Metro Rail Corporation Limited, which was also classified as special category in the KERC Tariff order for the financial year 2015-16, the tariff was at the rate of 520 paise/unit and fixed Demand Charges of Rs.180/KVA/month. Thus, TNERC could consider for fixation of special tariff to CMRL for the trial operation period from 2013 to 2015 and also during revenue operation on par with DMRC and BMRC in line with National Tariff Policy and implemented to DMRC/BMRC.

6.11. CMRL procures power from TANGEDCO at 110kv level. Thereafter the power is stepped down and utilized for traction and non-traction load with CMRL own equipment including day-to-day operation and maintenance unlike railways, because railways procures electricity from the different modes for different purpose. Therefore, TANGEDCO has no overhead cost for supplying and maintaining below 110 kv level. Also the station loads consists of signalling, telecommunication, traction equipment and such other loads which are part and parcel for train operation. It is not technically feasible to segregate load at each and every station and building. Such common tariff for train running as well as associated loads at Stations and Building has been fixed by respective regulatory commission for other metros viz. DMRC, BMRCL, Kochi, Hyderabad etc. In a nutshell there is a common

tariff for both traction and non-traction in metro rail organizations. CMRL agreed to pay the commercial rate based on actual use, if used for non-passenger purpose.

6.12. The grounds raised by CMRL may be considered for fixing the tariff for the trial period from July 2013 to June 2015 and also fix the tariff based on actual cost of supply at 110 KV level excluding both with regeneration facility and also in auxiliary equipments like ventilation and air-conditioning system etc.

6.13. The CMRL submitted an Application under Tariff I-B Railway traction category hoping that it will get special tariff to be notified by the Commission on par with other Metros and also based on the MOU with the Government of Tamil Nadu and Government of India on 'non-profit no loss' basis. TANGEDCO did not give any room for negotiation; however, CMRL has been making payment to TANGEDCO under protest.

6.14. The CMRL's revenue is not sufficient to meet the electricity bills as on date. The public at large are not willing for any increase in the tariff and added to the above woes, CMRL will have to repay the loan with interest to JICA.

6.15. The MOU does not distinguish between railway traction purpose and other purposes. It only states that power should be provided on 'no loss no profit' basis.

6.16. TANGEDCO preferred Review Petition against the order dated 01.08.2016 however did neither move it forward for reasons best known to them and nor did they challenge the earlier order by preferring an appeal to APTEL. The order of the

Appellate Authority dated 13-03-2007 in Appeal No.268 of 2006, relevant extract of Tariff Order dated 31-07-2013 for the financial year 2018-14 passed by DMRC for BSES Rajdhani Power Limited and the extract of Tariff Order dated 14-05-2018 for the year 2018-19 passed by the Karnataka Electricity Regulatory Commission for Bangalore Electricity Supply Company Ltd. has already been produced for proper appreciation.

6.17. Each cases may be decided by the Commission in a different way which cannot be precedented to this case. Further, the Hon'ble APTEL directed to consider the request of CMRL as special category status and determine the appropriate tariff to CMRL.

7. Findings of the Commission:-

7.1. The present Remand Application has been taken on file consequent to the orders of the Hon'ble Appellate Tribunal for Electricity in Appeal No.262 of 2016 dated 02-03-2020 filed by the Appellant Chennai Metro Rail Limited (CMRL) challenging this Commission's Order in M.P. No.3 of 2016,dated 01-08-2016.Before proceeding to discuss the prayer of the Petitioner in the M.P.no.3 of 2016, it is made clear that, the scope of the R.A. is limited to the extent of the remand by the Hon'ble APTEL in the above Appeal under Para 15 and the observations made in Paras 13 and 14.

7.2. It is seen from Para 15 of judgment of Hon'ble APTEL that Commission has been directed to take a clear decision as to whether CMRL is entitled to the special

category status and also on the claim that the tariff to be levied against it would exclude it from the burden of subsidy or cross-subsidy.

7.3. We have heard the submissions of both sides. The scope of remand is whether to include the CMRL as a special category consumer and provide tariff based on the actual cost of supply excluding both the subsidy and cross subsidy elements. The Commission has consciously postponed the request of CMRL for special category in the M.P. No.3 of 2016, to study the request at the time of tariff revision exercise with reference to the Section 62 (3) of the Electricity Act, 2003, which reads as follows, "*The Appropriate Commission shall not, while determining the tariff under this Act show undue preference to any of the 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*", and needless to say that the Railways and CMRL require energy for the same purpose and hence, when the tariff of Railways has inbuilt cross subsidy, any grant of exclusion of cross subsidy to CMRL would amount to discrimination especially when TANGEDCO objects to the same. It was for this reason that the Commission thought it fit to postpone the issue to the tariff revision. Further, even according to the request of the petitioner, certain basic details are required, such as average cost of supply. If the Commission desires to arrive the cost of supply, the details such as the components of cost incurred to supply the energy, load factor, consumption pattern, etc., are further required; moreover arriving voltage wise cost of supply for one consumer category alone is not possible in the mid-course of operation. Without

having necessary data, arriving voltage wise cost of supply is not possible. These were the practical constraints in considering the request of the Petitioner. Further, the Petitioner has a mixed load, i.e., Traction load and non-traction load, the non-traction load in the normal circumstances are to be billed under HT-III. Though the CMRL has mixed load of railway traction and other loads in respect of miscellaneous activities incidental to the main service, the Commission decided in its earlier orders to classify the CMRL under HT Tariff I-B for all its connected load, and other loads like, ATM, Kiosks, stalls, hotels, etc., shall be separately metered and charged under miscellaneous category and the above consumption shall be deducted from the main energy consumption metered at the CMRL's point of supply. Though the petitioner/respondent did not provide any data on load factor, power factor, voltage, total consumption of electricity at a specified period/time, the Commission decided to treat the CMRL under HT I-B already classified for Railway Traction which carries almost similar business, but with a special inclusion to bring all the connected load into this category excluding the miscellaneous loads. Thus CMRL has been enjoying a concession more than Railways.

7.4. In the Tariff Order in T.P.1 of 2017 dated 11-08-2017, the Commission was not inclined to create any special category as the matter was sub-judice. Though the stand of the petitioner is that it is to be granted a special category, in effect it was already allowed a special concessional tariff of HT I-B for its all connected loads including the (i) Escalators for admin building; (ii) Elevators for admin building; (iii) Air conditioners for admin building; (iv) Lightings for admin building; (v) Escalators for cargo building; (vi) Elevators for cargo building; (vii) Air conditioners for cargo building; (viii) Lightings for cargo building etc., only with the exclusion of

other loads like, ATM, Kiosks, stalls, hotels, etc., It is for this reason that the Commission felt that there was no urgent necessity to consider the request of the Petitioner for special category on the basis of actual cost of supply and such consideration for special category could wait until the next tariff revision. Now that the Hon'ble APTEL has directed the Commission to consider the request immediately, it has become necessary to examine the issue further.

7.5. It is seen that the Petitioner has prayed for fixation of a special category based on actual cost of supply on par with Delhi Metro Rail Corporation (DMRC) and Bangalore Metro Rail Corporation Limited (BMRCL). But, the Respondent TANGEDCO on the other hand, has contended that, Delhi ERC has fixed a special category tariff for DMRC for the usage of Railway Traction load and other than traction load is not included in Metro Rail Tariff and it is classified under non-domestic (Commercial) category. We have also referred the tariff structure prevailing in other States.

The prevailing demand and energy charges for Metro Rail in various ERC's orders are as below:-

Charges	TNERC	DERC	KA ERC	MahaERC
Demand Charges	Rs.300/ KVA	Rs.250/ KVA	Rs.220/ KVA	Rs. 411/ KVA
Energy Charges	Rs. 6.35/Kwhr	Rs. 6.25/KVAh	Rs. 5.20/Kwhr	Rs. 6.76+0.57 /KVAh

It can be seen that the Energy charges levied by other States (except Karnataka) as compared to Tamil Nadu is almost similar & even higher. Therefore the Chennai Metro Rail Ltd is already enjoying a special treatment than the Southern Railways.

7.6. It is to be noted that the DERC which the Petitioner says has accorded special category to Metro Rail, at the same time has classified the DMRC under special category - only for its traction operation. Even while classifying the special category, the DERC had taken due consideration of DMRC's Load factor, Consumption factors, etc., in its Tariff Order and specified the category of tariff in its Order. But subsequently, the DERC in the Tariff Order dated 28-03-2018 in the Petition No.68 of 2017, merged the categories such as Delhi Jal Board, Railway Traction, DMRC and public lighting and has created new Category namely "Public Utilities" which provide public services. No special category status for Metro Rail Corporations is in force thereafter.

7.7. Therefore, it is to be observed that DMRC's traction load alone is classified under special category and that too has already been merged subsequently by the DERC in the Tariff order dated 28-03-2018. Hence, the reliance placed on the DERC tariff structure for Metro Rail does not help the Petitioner's case at present.

7.8. Moreover, it is noted that, the clause 12.7 of MoU which is relied upon by the Petitioner is an understanding between the Government of India, Government of Tamil Nadu and the petitioner for no-loss-no-profit basis. The TANGEDCO being a stranger to the said MoU, cannot be called upon to enforce the same as there

exists no privity of contract. The Hon'ble APTEL in its findings observed to bear this on legislative intent and public policy adopted by the State; and expected to determine the tariff to progressively reflect the cost of supply of electricity. Hence, we find it appropriate to examine the issue considering the public interest involved as directed by APTEL. Accordingly we examined the issue with reference to the policy of Government of Tamil Nadu. We find that the Government of Tamil Nadu has already taken a principled stand on the request of the petitioner that it cannot discriminate between Railways and CMRL.

7.9. The Commission in its Order dated 01-08-2016 classified the Petitioner with the special treatment by permitting the CMRL to connect its all connected load under the tariff HT I-B which was earlier classified exclusively for Railways' Traction alone. Only other loads like ATM, Kiosks, stalls, hotels, etc., are allowed to be charged under miscellaneous category. The CMRL's entire load including Escalators, Air conditioners of Admin/Cargo building are classified under HT-IB as such it is deemed to be a concessional tariff. But in the case of Railways, its Traction load alone considered under this HT - IB tariff.

7.10. From the submissions of Aggregate Revenue Requirement for the year 2018-2019 made by TANGEDCO, the Commission finds initially that Average cost of Supply would be around Rs.8.15 per Unit whereas the average billing rate of CMRL considering under HT tariff I-B (i.e., Energy charges at Rs.6.35/unit and the Demand charges at Rs.300/KVA), is around Rs.7.03 per unit.

7.11. We find it from the submission of Respondent that, during CMRL project's trial run period i.e., from July 2013 to June 2016, petitioner's HT service was billed under HT-III (Commercial and residual category) but not categorized under HT-V applicable for construction under temporary supply category.

7.12. Considering, the clause agreed to in the MoU and APTEL's decision, if we look into that on cost of supply whether it is to be brought to no-cost-no-profit level, we find that the Petitioner (CMRL) is supplied power at around Rs.7.03 / unit which is much lesser than the Average cost of supply prevailed during the period from 2016-17 to 2018-19 i.e., Rs.7.11 / unit to Rs.8.15 / unit. Here the petitioner would appreciate that the petitioner has not only availed the benefit of the rate of cost of supply but also availed this benefit to all its connected load including commercial loads and non-traction loadviz, Lifts, escalators, lights, fans, Air conditioners , etc.

Moreover, we find from the tariff categorization adopted by other State ERCs like Delhi ERC, Maharashtra ERC and Kerala ERC that the traction load of the Metro rail alone have been specialized that too along with Railways category leaving the rest of the load under common category. However, we have ordered to connect CMRL's entire load under HT I-B. It cannot be denied by the CMRL that it is in fact enjoying the benefit.

The CMRL has required more than 60% of power from the Respondent to meet its non-traction load and only less than 40% of its total demand is sought for traction purpose. At this juncture, it would be pertinent that Commission can consider the Metro rail's traction load under a special category on par with Delhi

ERC, Maharashtra ERC and Kerala ERC; and we think CMRL also will not deny it. And if the petitioner's more than 60% of load which amounts to non-traction load had to be classified under HT-III as referred in the case of DERC by the petitioner and CMRL has to bear the Average billing rate of Rs.8.71 / unit. But this Commission, taking into account of the clause 12 of MoU and public interest, classified the CMRL for all its connected load under HT – IB which is a concessional tariff specially classified to the Railway traction. Though the above special consideration is done by the Commission based on the grounds of benefit to the public convenience, appropriate tariff can be decided only based on actual demand, consumption pattern, power factor, etc.,

At this juncture, we are unable to extend special category to this mixed load pattern of CMRL on par with Delhi or other ERCs which were considered the Metro rail's traction load alone.

7.13. Thus, we would consolidate the benefits being enjoyed by the CMRL has as below, viz.,

- (a) Lesser tariff than the Average cost of supply of TANGEDCO
- (b) Lesser tariff during its trial run period (as per TANGEDCO)
- (c) CMRL was permitted to connect its entire load under HT I-B , i.e., Traction and non traction loads (with deduction of consumption recorded in other load like ATM, Kiosks, stalls, hotels, etc.,).

7.14. From all the above, we conclude that the petitioner is already availing the benefit of lesser tariff than the Average cost of supply of the TANGEDCO; and the petitioner has also been permitted to connect all its loads under HT I-B unlike

“Railways” which is not permitted to connect any other load under this tariff category. In view of the above, the petitioner’s claim to fix the Railway Traction Tariff for CMRL for the period of trial operation from July 2013 to June 2015 and to include CMRL as a Special Category of consumer and provide tariff for the revenue operation based upon actual cost of supply at 110 kV excluding subsidy and CS element cannot be accepted. Hence the petition is disposed of with the above direction.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(Dr.T.PrabhakaraRao)
Member

(Sd.....)
(M.Chandrasekar)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission