

No.N/182/2019

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.

Dated:09.08.2021

Present

Shri Shambhu Dayal Meena	: Chairman
Shri H.M. Manjunatha	: Member
Shri M.D. Ravi	: Member

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BETWEEN:

Bangalore Metro Rail Corporation Limited

... **PETITIONER**

[Represented by Sri Srikant Kulkarni, Law Officer
and Sri Balakrishna, General Manager (Law), BMRCL]

AND:

1. Bangalore Electricity Supply Company Limited and

2. Karnataka Power Transmission Corporation Limited.**RESPONDENTS**

[Respondent No.1 & 2 represented by
Sri Shabaaz Hussain for M/s Precinct Legal,
Advocates, Bangalore]

ORDERS

1. The present petition is filed under KERC Regulations read with the
Electricity Act 2003 for the following reliefs,

- a) "Clause 2 (b) of the Power Supply Agreement - "Drawal of
Electrical Energy by the consumer from its another RSS, in

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the event of failure of both the KPTCL's feeders to any of BMRCL's RSS, shall not be construed as prejudicial to the licensee and consequently the consumer shall not be liable to pay penal charges for exceeding the Contract Demand. The consumer shall also not be liable for prosecution under the Electricity Act, 2003 and any other Law for the time being in force and the installation shall not be liable for disconnection.

- b) To either refund the penalty of Rs.1,80,17,760 levied on and collected from BMRCL under various demand bills pertaining to the Power Supply Agreements or to adjust the above amount in future consumption bills.
- c) Grant such other reliefs which under the circumstances of the case this Commission finds it just and proper to award to the petitioner".

Brief facts of the case:

2. The Petitioner namely; Bangalore Metro Rail Corporation Limited, herein after referred to as BMRCL, is a Company incorporated under the Companies Act, 1956, to establish, operate and maintain a Rapid Rail Transit System through construction of circular Railway lines in and around the Metropolitan City of Bangalore, so as to meet the Urban Transport needs of Bangalore. The other objective of the petitioner is to carry on business of Railway Transport. The petitioner is governed by the Metro Railway (Operation and Maintenance) Act, 2002. The Metro Train is to be run with the help of Electric Power.

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3. The BMRCL has filed this petition seeking amendment to relevant Clause of Conditions of Supply (CoS) of Electricity of Distribution Licensees in the State of Karnataka and insertion of new Clause 2 (b) (but, it is the modification of the existing Clause in Power Supply Agreement) in the Power Supply Agreement specifically applicable to BMRCL and waiver of the penalty of Rs.1,80,17,760 levied by the Respondent No 1, BESCOM for exceeding the Contract Demand. Further, seeks amendment to Power Supply Agreement format applicable to BMRCL.

4. The Petitioner has entered into following Power Supply Agreements (PSA) with the 1st Respondent – Bangalore Electricity Supply Company Ltd., herein after referred to as BESCOM. In all the cases, power is being supplied by KPTCL (2nd Respondent) at 66 kV reference, the billing is being done by the licensee namely, BESCOM (1st Respondent).
 - (i) The Agreement dated 18.09.2017 to supply 8000 kVA of power for the purpose of Operation and Maintenance of Bangalore Metro Rail in Reach-1 i.e., from Byappanahalli Metro Station up to Nadaprabhu Kempegowda Metro Station (Majestic). This was increased to 10000 kVA w.e.f. 15.04.2019 under separate agreement. 66 kV power was to be supplied/drawn from KPTCL's Hoodi Sub-Station or from KPTCL's HAL Sub-Station to BMRCL's Byappanahalli Receiving Sub-Station (RSS).

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- (ii) The Agreement dated, 19.11.2015 to supply 4000 kVA electric power for the purpose of Operation and Maintenance of Bangalore Metro Rail in Reach-2 i.e., from Mysore Road Metro Station up to Sangollirayanna Metro Station (City Railway Station). For this purpose, 66 kV power was to be supplied/drawn from KPTCL's REMCO Sub-Station or from KPTCL's Vrushabhavathi Sub-Station to BMRCL's Mysore Road Receiving Sub-Station (RSS).
- (iii) To supply 5000 kVA of power for the purpose of Operation and Maintenance of Bangalore Metro Rail in Reach-3 i.e., from Nagasandra Metro Station up to Mantri Square Metro Station. Later it was increased to 8000 kVA w.e.f. 21.05.2019 under the separate agreement. The power at 66 kV was to be supplied / drawn from KPTCL's SRS Sub-Station or from KPTCL's Welcast Sub-Station to BMRCL's Peenya Receiving Sub-Station (RSS).
- (iv) The Agreement dated, 01.09.2017 to supply 5000 kVA power for the purpose of Operation and Maintenance of Bangalore Metro Rail in Reach-4, i.e., from Puttenahalli Metro Station up to Chickapet Metro Station. For this purpose, the 66 kV power was to be supplied/drawn from KPTCL's Subramanyapura Sub-Station or from KPTCL's Khoday Sub-Station to BMRCL's Puttenahalli / Yelechenahalli Receiving Sub-Station (RSS).

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5. The Petitioner has submitted the Electrical Single Line Diagram and BMRCL Route map showing the location of BMRCL RSS's and KPTCL Sub-Stations. In case of power failure from any one of the sources there will be automatic transfer of required load/power from another source through the logic control device for both the lines at Kempegowda /Majestic Metro Station. The total contract demand in respect of all RSS's at present is 27000 kVA.

6. The Petitioner further stated that, in respect of the Line -1, Purple line (Byappanahalli Metro Station to Mysore Road Metro Station), the electrical equipment installed at BMRCL's Byappanahalli RSS and Mysore Road RSS are each capable of taking the entire electrical power load of purple line in case of failure of both KPTCL's 66 kV feeders to Byappanahalli RSS and/or to Mysore Road RSS, so that the required power could be drawn from other RSS and there will be continuous operation of Metro Train Services in the said line and commuters are not inconvenienced. Further, work is in progress to extend the Purple line on Reach-1 (East side) from Byappanahalli to Whitefield and on Reach-2 (West side) from Mysore Road to Kengeri. In the extended stretch, another two more RSS's of BMRCL's viz., Kadugodi RSS and Challagatta RSS are coming up to take care of power needs of extension phase. The Electrical equipment to be installed in these upcoming BMRCL's RSS are also capable of feeding the electrical power load requirement of purple line in case of failure of both the KPTCL 66 kV feeders to other BMRCL's RSS's viz., Byappanahalli or Mysore Road RSS.

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7. The Petitioner also stated that, in respect of the Green line (Nagasandra Metro Station to Puttenahalli Metro Station), the electrical equipment's installed at BMRCL's Peenya RSS and Puttenahalli RSS are each capable of taking entire electric power load of green line in case of failure of both KPTCL's 66 kV feeders to Peenya RSS and/or to Puttenahalli RSS, so that the required power could be drawn from other RSS and there will be continuous operation of Metro Train Services in the said line and commuters are not inconvenienced. Further, the work is in progress to extend the Green line on Reach-3 (North side) from Nagasandra to BIEC and on Reach-4 (South side) from Puttenahalli/Yelachenahalli to Anjanapura. In the extended stretch, one more RSS of BMRCL's viz., Anjanapura RSS is coming up to take care of power needs of extension phase. The electrical equipment to be installed in these upcoming BMRCL's RSS are also capable of feeding the electrical power load requirement of green line in case of failure of both the KPTCL 66 kV feeders to other BMRCL's Puttenahalli/Yelachenahalli RSS.
8. Under the respective power supply agreements with the petitioner BMRCL, the Respondent No.1, BESCO (licensee) was required to take all reasonable precautions to ensure continuity of power supply to BMRCL (consumer) at the point of commencement of supply, unless the interruption in power supply was due to damage caused to the equipment of the licensee during war, mutiny, riot, strike or by earthquake, hurricane, tempest or any accident or causes beyond the control of the licensee. In the present

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case the interruption in the power supply is being caused on various occasions for no fault or act of the consumer. Consequently, BMRCL used to draw the required power from the other feeders in the respective lines referred to above, in order to maintain continuity of Metro Train Services to the commuters/public.

9. The Petitioner stated that, the Respondent No.1, BESCOM has imposed penalty on the petitioner for over drawl of electric power and exceeding the Contract Demand, during the periods when there was failure of both KPTCL's feeders pertaining to the respective BMRCL's RSS. The Petitioner has paid the imposed penalties under protest. The amount of penalty imposed by Respondent No.1 on BMRCL for the period from December 2017 to September 2019 is Rs.1,80,17,760.
10. The Petitioner has submitted that, in the facts and circumstances of the case, there is need for continuous supply of power for smooth running of Metro Services, and when there is failure of supply from one source, it becomes necessary to draw power from other source resulting in over drawl of power from the other source. Therefore, such over drawl of power cannot be treated as exceeding the Contract Demand (CD) as per the Conditions of Supply (CoS.). At any given time, the petitioner has not over drawn the power exceeding the total contract demand from all RSS's. It is submitted that in the event this Commission feels that the over drawal of power at one RSS during the failure of power from other RSS attracts the penalty, the

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petitioner requests for suitable amendment to the CoS. The Managing Director as well as concerned officers of Petitioner Company addressed various letters to the licensee (BESCOM) requesting not to impose penalty and for refunding the penalty already collected.

11. In the Statement of Objections filed on 10.03.2020 the Respondent No.1 (BESCOM), states as follows:

- (i) The Petitioner has filed this petition seeking amendment to the Power Supply Agreement (PPA) executed between the Petitioner and the Respondent No.1 and refund of penalty of Rs 1,80,17,760 levied by the Respondent No.1.
- (ii) The Petitioner is a Government company incorporated with the objective of establishment, operating and maintaining a Rapid Rail Transit System by the construction of circular or other type of Railway lines in and around the city of Bangalore. In order to operate and maintain the said infrastructure, the Petitioner has entered into following power supply agreements with the Respondent no.1 for supply of power as per the conditions stated therein:
 - a) Power Supply Agreement dated 19.11.2015 for supply of 4000 kVA for Mysore Road Receiving Sub-Station (RSS);
 - b) Power Supply Agreement executed in February 2017 for supply of 5000 kVA for Peenya RSS;

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- c) Power Supply Agreement dated 01.09.2017 for supply of 5000 kVA for Yelachenahalli/Puttenahalli RSS;
- d) Power Supply Agreement executed in 15.11.2017 for supply of 8000 kVA for Byappanahalli RSS;
- e) Power Supply Agreement executed in September, 2018 for supply of 10000 kVA for Byappanahalli RSS;
- f) Power Supply Agreement executed in August, 2018 for supply of 8000 kVA for Peenya RSS.

(iii) The aforementioned agreements allow the Petitioner to draw the power up to the quantum as indicated in each of the agreement therein. The total quantum of all these agreements is 27000 kVA.

(iv) Clause 2(a) of all the agreements stipulates the respective maximum Contract Demand (CD); thereby restricting the drawl of the power by the Petitioner to the stated CD.

(v) The Petitioner has exceeded the contract at various RSS at various points from March, 2018 to September, 2019, the details of which have been furnished in the petition at page No.42, (Annexure B).

(vi) Clause 42.03 (a) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (COS) governs the transactions where the contract demand has been exceeded and the extract of the same is as hereunder:

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“Clause No 42.03 Unauthorized Increase in Maximum Demand,

(a) If at any time, the Maximum Demand recorded exceeds the Contract Demand or the Demand Entitlement during the periods of power cut in case of HT Installations and sectioned load in case of LT installation the Consumer shall pay for the quantum of excess demand at two times.”

(vii) Accordingly, the Respondent No.1 (BESCOM) has acted in accordance with clause 42.03 of the Conditions of Supply in levying the two times penalty on the excess drawal by the Petitioner.

(viii) The Petitioner has also sought for amendment of Conditions of Supply and consequential amendment of the agreement of power supply in order to allow the Petitioner to draw power from another RSS in the event of failure of supply from one RSS. The Respondent No 1, under the law is required to act in accordance with the Conditions of Supply and there is no enabling provision in the Conditions of Supply as on the date, to affect such amendment to the Power Supply Agreement. In so far as the amendment to the Conditions of Supply, the same shall be guided by separate proceedings involving public hearing and comments from all the stakeholders.

(ix) In light of the above submission, the Petitioner has prayed this Commission to pass necessary orders as it deems fit in the interest of justice and equity.

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12. Subsequently the Petitioner and the Respondent No.1 have filed a joint Memo before this Commission on 06.01.2021 along with a Special Power Supply Agreement for supply of High Tension/Extra High Tension Electrical energy, in terms of Clause 3.05 of the CoS requesting the Commission to approve the special Power Supply Agreement. The special Power Supply Agreement envisages enabling the Petitioner to draw power from any other source when there is failure of power supply from any one source.

13. The learned Counsel for Respondent No.1 has filed an additional written submission on 20.04.2021 before the Commission highlighting the need to treat the Petitioner (BMRCL) differently than the other consumers, since BMRCL is operating a public conveyance using electricity. Reiterating some of the common points in paras 1–4 which were already submitted in the statement of objections filed by BESCO on 10.03.2020, it submits that the proposed agreement to be executed with the Petitioner without extending similar benefits to other customers, is not violative of the principle of equality under Article-14 of the Constitution of India. The Commission has already treated BMRCL which is a public utility and not being a commercial organisation differently and approved a reduced tariff for the Petitioner under Section 62 (3) of the Electricity Act, 2003.

14. The Petitioner requires supply of power from each of the RSS at all times to ensure smooth operation of the Metro. Wherefore, the power supply arrangement between the Petitioner and the Respondent No 1 has been

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worked in a manner that allows the Petitioner to draw power from another RSS in the event of interruptions in a given RSS and a total contract demand of 27000 kVA has been considered. However, it has been agreed that the withdrawal of power from all the RSS together in any case shall not rise above the figure of 27000 kVA.

15. Subsequent to filing of statement of objections, the petitioner and the respondents held meetings to sort out the issue at their level and thereafter a draft special agreement submitted before the Commission seeking relaxation in Contract Demand to the installations of the petitioner for its approval. The extract of the special Power Supply Agreement is as hereunder:

a) "CONDITIONS OF SUPPLY:

The Licensee shall supply electrical energy to the premises of the Consumer from its distributing main at high tension / extra high tension as specified in the "Conditions of Supply" under classification of supply and the Consumer shall take from the Licensee electricity required for the purpose herein above recited at the single point of supply up to the maximum of 27000 kVA, being the contracted demand".

b) "PENALTY CLAUSE FOR EXCEEDING MAXIMUM DEMAND:

At any point of time, the Maximum Demand recorded in the energy meter of the consumer exceeds the Contract Demand and is within twice the Contract Demand aroused from failure of

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incoming source / system constraints / forced outages within a period of 24 hours or till the time the constraint is removed by the supplier then no penal charges will be applicable as per clause 42.01 of the "Conditions of Supply".

- c) "Consumer has to intimate the concerned Sub-Divisional Officer in writing along with the relevant details and documents within 24 hours of exceeding the Maximum Demand (MD). Sub divisional officer has to establish the cause of increase in MD is due to failure of incoming source / system constraints / forced outages within a period of 24 hours or till the time the constraint is removed by the supplier and seek approval from the competent authority for waiver of penal charges. Penalty clause 42.01 will be applicable when the Maximum Demand recorded in the energy meter exceeds the Contract Demand other than the reasons stated above".

16. The Respondent No.1, submitted that the above Clauses state that the total Contract Demand of 27000 kVA has to be considered for the purpose of Clause 42.01 and that the Petitioner shall not be penalized if the excess drawal stems from system constraints.
17. Clause 42 of the CoS stipulates penalty in the event the consumer exceeds the Contract Demand for a given installation for the purpose of levying penalty. Wherefore, the proposed special agreement between the parties submitted before this Commission for its approval and whereby a cumulative Contract Demand of 27000 kVA has been provided for. This

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being the case, it is prayed that the Commission be pleased to issue necessary direction and suitable order in this matter.

18. In the light of the above submissions, the Respondent has prayed that this Commission may pass appropriate orders and the Respondent will abide by the same.

19. The Commission heard the Counsels for both the parties in the matter and they reiterated the issue made out in the petition, statement of objections and written submissions. During the course of hearing the Commission asked both the Parties to resolve the issue within the framework of the provisions of the Conditions of Supply of Electricity of Distributions Licensees in the State of Karnataka. However, the parties could not resolve this issue at their level and submitted joint Memo along with a Draft Agreement and requested this Commission to examine the terms and conditions of the draft of the Special Power Supply Agreement for supply of High Tension / Extra High Tension Electrical Energy to the installations of the Petitioner BMRCL and submitted that they will abide by the decision of the Commission.

20. After hearing the parties and examining the materials placed before us and from the pleadings and submissions made by the parties, the Commission has framed the following issues for considerations:

Issue No.1: Whether the request of the Petitioner to amend the Clause-2(b) of the Power Supply agreement and to refund Rs.1,80,17,760 collected towards the penalty imposed for exceeding the

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Contract Demand as per Clause 42.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka is legally sustainable?

Issue No.2: Whether the request of the Petitioner to consider the Contract Demand of all the installations put together while imposing the penalty for exceeding the Contract Demand is permissible without the Amendment of CoS?

Issue No.3: Whether the automatic transfer of required load / power (changeover of power supply) from one Installation (source) to another Installation (source) in case of failure of power is technically feasible and is permissible under the existing provisions of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka?

Issue No.4: Which relief the Petitioner is entitled to?

Issue No.5: What Order?

21. Issue No.1: Whether the request of the Petitioner to amend the Clause-2(b) of the Power Supply agreement and to refund Rs.1,80,17,760 collected towards the penalty imposed for exceeding the Contract Demand as per Clause 42.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka is legally sustainable?

a) The Petitioner has prayed for amending Clause No 2(b) of the Power Supply Agreement which was entered into between BMRCL and BESCOM on different dates for different installations of BMRCL depending

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upon the power supply requirement at different locations. Clause 2 (b) of the Power Supply Agreements is reproduced below:

“Electrical energy supplied to the premises shall not be utilized by the Consumer in any manner prejudicial to the Licensee and all usage must be according to such method or methods approved by the Licensee. The use of power must be confined to such places as shall have been previously approved in writing by the Licensee. In case prejudicial use of power is detected, the Consumer shall pay penal charges in accordance with the provisions of the “Conditions of Supply” as in force from time to time. Besides, for dishonest abstraction / use / consumption of electricity or interference with the metering equipment or accessories, the Consumer shall also be liable for prosecution under the Act and any other law for the time being in force, and the installation shall be liable for disconnection”.

b) The provision in respect of 'Unauthorised Increase in Maximum Demand' has been defined in Clause 42.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which is reproduced as hereunder:

“Clause No 42.03 - Unauthorised Increase in Maximum Demand:

If at any time, the maximum demand recorded exceeds the Contract Demand or the Demand Entitlement during the periods of power cut in case of HT Installation and sanctioned load in case of LT installation the Consumer shall pay for the quantum of excess demand at two times the Tariff applicable per kVA / HP per month as penal charges as per Amendment vide Notification No. K.E.R.C./COS/D/07/08 Dated: 14.3.2008 published in Karnataka Gazette dated: 20.3.2008.”

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- i) For the excess demand drawn in any month the installation shall be liable for disconnection for a period as noted here under at the discretion of the Licensee, besides payment of penal charges as per Clause 42.03 (a) above.

Above 25% excess demand drawn over the permitted Demand or Contract Demand in HT / Sanctioned load in case LT installations opted for Demand based Tariff .

- ii) In the instant case, the Petitioner, has submitted the Electrical Single Line Diagram and the Route Map showing the location of the RSS of BMRCL and KPTCL Sub-stations for proper understanding of the arrangement. In para (6) of the original petition of the Petitioner, it is also submitted that, in case of power failure from any of the sources, there will be automatic transfer of required load / power from another source through the logic located for both the lines at Kempegowda/Majestic Metro Station. The Petitioner, in para (7) of the original petition has submitted the details of power transfer arrangements made for operation of its Purple line, between its installations located at Byappanahalli RSS and Mysore Road RSS. On the same grounds, in para (8) of the original petition, petitioner submits the details of power supply arrangements made for operation of its Green line, between its installations located at Peenya RSS and Puttenahalli RSS. All these locations have different

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sources of power from KPTCL Sub-stations as detailed in para (3) of this Order. Due to such power supply arrangements made by the Petitioner and as the Petitioner also admits, the Maximum Demand recorded in the Energy Meters have exceeded the Contract Demand attracting the penalty as per Clause 42.03 of the CoS.

iii) It may be noted that, being independent installations and having entered into independent power supply agreements, the Petitioner is to abide by various clauses of the PSA is now seeking to amend the clauses and for refund of penalties already collected for exceeding the Contract Demand, in terms of Clause 42.03 of the CoS. It is evident from these facts that the Petitioner has agreed to abide by the above clauses and the Respondent No 1 has rightly collected the penalties in terms of the clauses of CoS. The claim of the Petitioner to amend the clauses now and to claim refund of penalties already claimed and paid for by it amounts to claiming the benefits with retrospective date even before the approval of the proposed amendments to the Clauses of the Power Supply Agreement. Thus, the claim for amendment to Clause No 42.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and giving retrospective effect for waiver and refund of penalties for exceeding the contract demand, is not legally tenable as prayed by the petitioner. Therefore, we hold that the prayer for refund of

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penalty Rs.1,80,17,760 imposed by the Respondent No 1 cannot be considered as it is a violation of the provisions of Clause 42.03 of the CoS and Clause 2 (b) of the power supply agreements entered on dates, 15.04.2019, 19.11.2015, 21.05.2019 and 01.09.2017 as stated in paras 2 to 5 of the petition, entered between the parties. However, the Petitioner has not submitted the power supply agreements dated 15.04.2019 and 21.05.2019 with this petition. In view of the observations made above the relief sought in the petition and for refund of penalty is rejected. We hold issue No 1 in the negative.

22. Issue No.2: Whether the request of the Petitioner to consider the Contract Demand of all the installations put together while imposing the penalty for exceeding the Contract Demand is permissible without the Amendment of CoS?

a) The Petitioner in para (6) of its petition has submitted that the total Contract Demand of all RSSs is 27000 kVA. Before going into the facts of such a request for considering total Contract Demand of all the installations of BMRCL for levying any penalty for exceeding Contract Demand, it is necessary to peruse the following definitions provided in Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

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b) To examine the averments made by the petitioner, it would be appropriate to refer the following definitions in the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka:

- i) Clause No 2.19 - "CONTRACTED DEMAND" means the Load in kilovolt amperes (kVA) / kW, mutually agreed to between the Licensee and Consumer as entered in the Agreement.
- ii) Clause No.2.35 - "INSTALLATION" means the whole of the electric wires, fittings, motors and apparatus installed and wired by or on behalf of the Consumer in one and the same premises starting from the point of commencement of supply;
- iii) Clause No 2.51 - "POINT OF COMMENCEMENT OF SUPPLY" means the outgoing terminals of the Licensee's metering system fixed in the premises of the Consumer in case of LT installations and the outgoing terminals of the Licensee's Metering cubicle placed before any Consumer's apparatus in case of HT installations. In the absence of any metering cubicle or the metering being on the LT side in case of HT installations, the point of commencement of supply shall be the incoming terminals of the Consumer's main switchgear;
- iv) Clause No 2.53 - "PREMISES" includes any land, building or structure;
- v) Clause No 2.38 - "MAXIMUM DEMAND" means the average amount of kilowatts or kilovolt amperes, as the case may be, delivered at the point of supply of the Consumer and recorded during a thirty-minute period of maximum use in the month, however, subject to the Licensee reserving the right to shorten

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this period in the case of special classes of Consumers, if necessary, with the approval of the Commission.

- c) The above definitions make it clear that the use of electricity by one installation shall be confined to the same premises of an installation starting from the point of commencement of supply and the Contract Demand agreed to between the consumer and the supplier shall be confined to one installation only. It is also pertinent to note that each of the installations is provided with independent Trivector Energy meter to measure the Maximum Demand, energy consumption, Power Factor etc., The Maximum Demand (MD) recorded in each of the meters depends on the individual unique load at different points of time and the MD recorded in different installations cannot be expected to occur at the same point of time. In the light of these facts, combining the Contract Demand and Maximum Demand of more than one installation is technically not possible. Hence, the request of the Petitioner to consider the Contract Demand of all the installations put together for not imposing the penalty for exceeding the Contract demand is not technically possible and also not permissible under the provisions of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Hence the request for combining the CD of more than one installation is not permissible as it violates the

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provisions of CoS. Therefore, it is liable to be rejected. Hence, we answer issue No 2 in negative.

23. Issue No.3: Whether the automatic transfer of required load/power (changeover of power supply) from one Installation (source) to another Installation (source) in case of failure of power is technically feasible and is permissible under the existing Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka?

- a) It is necessary to narrate the procedure being followed by the Distribution Licensees before sanctioning power supply to any HT/EHT installation. It is required to study the technical feasibility and if it is found feasible then the power supply is sanctioned. The Technical feasibility is the study of the capability of the infrastructure to cater to the requisitioned load in addition to the existing load in a particular distribution system of the area with a margin of extra load to meet the contingencies.
- b) During the hearings, the Petitioner BMRCL has submitted that with a view to ensure continuity of supply, transfer of load/power (changeover of load) from one installation to another installation takes place in case of failure of power from any one of the installations. Due to such arrangement of transfer (change over) of load/power, the Maximum Demand (MD) of the installation along with the additional load due to changeover exceeds the Contract Demand of that installation, thereby

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attracting the penalty. The transfer/changeover of the load affects the Distribution system of the area. There is no such provision in the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka for such transfer/changeover of load as prayed for by the Petitioner-BMRCL. If there is unauthorised sudden increase in load on a distribution system/power transformer, there is every possibility of collapse of the distribution system, resulting in interruption in power supply affecting other consumers who are supplied power from the same distribution network.

- c) Such arrangements of transfer of load/power as required by the Petitioner from another source (installation) through any means of equipment, symbolizes Unauthorised Extension of Power Supply from one installation. It would be appropriate to note the relevant provisions under the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka as provided under Clause 42.05, which is produced as hereunder:

Clause No 42.05 – “Unauthorised Extension of Supply (Applicable to both HT and LT Installations);

If at any time, energy supplied to a Consumer/premises is found extended unauthorizedly to some other person/premises, the installation shall be disconnected forthwith. The installation shall be reconnected only after unauthorized extension of supply is removed and reported by

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the Consumer. Further, the Assessing Officer, shall assess the quantum of energy and excess load so extended and charge for that quantum for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection at two times the Tariff applicable for the purpose for which the energy is so extended.

Such amount shall be paid within thirty days from the date of final order, failing which, the installation shall be disconnected, and such amount shall be deemed to be arrears of electricity charges.

Note: If the Assessing officer arrives at the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection".

- d) It is pertinent to note that the Petitioner in para 6, 7 & 8 of the petition has submitted that, there will be transfer of required load/power from another source through the logic located at Kempegowda/Majestic Metro Station in case of failure of power from any one of the installations. This violates the provisions of Clause 42.05 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which

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attracts penal action. We are of the opinion that the prayer of the Petitioner looks like a request to regularise the exceeded Contract Demand in contrary to the provisions of the CoS. We also note that, in the event of the continued default by the consumer / petitioner, the installation is liable for disconnection apart from levying penalty. Since, the Petitioner is a public organisation dealing with mass public transport, the first Respondent perhaps has not taken any punitive action against the Petitioner.

- e) With the above observations we have noticed that instead of initiating action for violation of the provisions of Clause 42.05 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, Respondent No.1 has signed the Special Power Supply Agreement without looking into the implications of the provisions of CoS and has submitted the joint memo along with the Petitioner under the provisions of Clause No 3.05 of the CoS as a special case. There is a general and Standard Power Supply Agreement format made available to all the consumers of the State. The Petitioner and the Respondent No 1 have already entered into such PSA. Hence, it is inappropriate at this juncture to examine the draft Special Power Supply Agreement. Any agreement entered into contrary to the provisions of law is void and unenforceable. Hence, the answer to issue No 3 is negative with the observation as above.

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24. Issue No.4: Which relief the Petitioner is entitled to?

The Commission has examined the pleadings, documents on both sides and arrived to the conclusion that in so far as the Special Agreement proposed entered between the parties under Clause 3.05 of the CoS is considered, it needs to be examined separately as there is a procedure established under the law for amendment of the CoS. In the present case, the facts and the circumstance doesn't warrant for consideration without the proper procedure being adopted as established under the law. Hence the Petitioner is not entitled for any relief and ordered accordingly.

25. Issue No.5. What Orders?

On the basis of findings and reasons given on each issue framed by this Commission in the above mentioned paras, we proceed to pass the following Orders.

ORDER

For the reasons stated above, the Petition is disposed as observed above.

Sd/-
(SHAMBHU DAYAL MEENA)
Chairman

Sd/-
(H.M. MANJUNATHA)
Member

Sd/-
(M.D. RAVI)
Member