

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION  
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

**Case No. HERC/RA-6 of 2021**

**Date of Hearing : 14.07.2021**  
**Date of Order : 20.07.2021**

**In the Matter of**

Petition under section 94 of the Electricity Act, 2003 read with Regulation 57 (1) and (2) of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 as amended from time to time, seeking review of Tariff Order dated 30.03.2021 passed by the Haryana Electricity Regulatory Commission in Case Nos. HERC/PRO-77 of 2020 & HERC/PRO-78 of 2020 for 'True- Up for the FY 2019-20, Annual (mid-year) Performance Review for the FY 2020-21, Aggregate Revenue Requirement of UHBVNL and DHBVNL and distribution & retail supply tariff for the FY 2021-22

**Petitioner**

Delhi Metro Rail Corporation Limited (DMRC)

**Respondents**

Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) – R1  
Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) – R2

**Present On behalf of the Petitioner**

(Gp Cap.) Sh. Sanjay V Kute (Retd.), GM Legal, DMRC  
Sh. Pankaj Gupta, GM, Electrical, DMRC  
Sh. Vijay Kumar, Section Officer, Legal, DMRC

**Present On behalf of the Respondents**

SE/RA- UHBVNL

**Quorum**

**Shri R.K. Pachnanda**  
**Shri Pravindra Singh Chauhan**  
**Shri Naresh Sardana**

**Chairman**  
**Member**  
**Member**

**ORDER**

**Facts of the Case:**

1. The Petitioner herein i.e. Delhi Metro Rail Corporation Limited (DMRC) has filed the present review petition on 12.05.2021 seeking review of the Tariff Order dated 30.03.2021 passed by the Commission in Case Nos. HERC/PRO-77 of 2020 & HERC/PRO-78 of 2020.
2. **The petitioner has submitted as under:**
  1. That the Haryana Electricity Regulatory Commission (HERC), in exercise of the powers vested in it, under the Electricity Act, 2003 passed the Impugned Tariff Order

dated 30.03.2021 for 'True- Up for the FY 2019-20, Annual (mid-year) Performance Review for the FY 2020-21, Aggregate Revenue Requirement of UHBVNL and DHBVN and distribution & retail supply tariff for the FY 2021-22'.

1.1 That the petitioner i.e. DMRC has taken electricity supply connection of 14 MVA from DHBVN for operation of Metro trains and auxiliary loads of station in Gurugram & 7.78 MVA in Faridabad and electricity connection of 7.8 MVA from UHBVN for operation of Metro trains and auxiliary loads of station in Bahadurgarh. DMRC's yearly consumption had been approx. 47.39 Million Units with energy bill of Rs. 34.48 crores for its Gurgaon Receiving substation (RSS), approx 27.85 Million Units with energy bill of Rs. 20.93 crores for its Faridabad RSS and approx 4.11 Million Units with energy bill of Rs. 2.85 crores for its Bahadurgarh RSS in the FY 2019-20.

1.2 The Commission, vide its impugned Tariff Order dated 30.03.2021 has increased the existing Tariff of DMRC as under:

Charges	Tariff as per existing tariff order of HERC for DMRC (FY 2020-21)	Tariff as per new tariff order of HERC (FY 2021-22) for DMRC
Unit tariff	₹6.25/kVAh	₹6.45/kVAh
Contract Demand charges	₹160/kVA/month	₹165/kVA/month

That increase in unit (energy) and fixed charges have resulted in annual financial repercussions to DMRC to the tune of Rs. 1,71,44,196/- and Rs. 11,91,933/- (approx) respectively. Hence, total Annual Financial Repercussion due to change in Tariff Order is Rs. 1.83 cores (approx).

2. **Issues for Review:** That the petitioners would like to take up, through this review petition, the following issues for review:

- Fixing of Tariff for DMRC in line with the principle agreement between DMRC & Govt of Haryana (GoH) and tariff to be fixed lower than the Indian Railways and HT Industry (above 50 kW).
- Review of tariff for DMRC in tariff order for FY 2021-22 being purchase cost of DHBVN & UHBVN lower than from FY 2020-21.
- Relaxation in Tariff of DMRC considering COVID-19 pandemic.
- Issue directives – Regarding differential payment to DHBVN & UHBVN on the same line as directed by this Commission in its tariff order dated 01.06.2020 for the FY 2020-2021.
- Till a decision given in the present review petition; the revision of tariff for the FY 2021-22 qua DMRC may be held in abeyance / stayed and the excess

payment already made may be adjusted in the forthcoming electricity bills of DMRC.

- 2.1 Fixing of Tariff for DMRC in line with the principal agreement between DMRC & Govt of Haryana (GoH) and tariff to be fixed lower than that of the Indian Railways and HT Industry (above 50 kW).

The Commission in its Tariff Order has enhanced the DMRC Tariff from Rs. 6.25 KVAh to Rs. 6.45 KVAh which has resulted in severe financial impacts to DMRC.

In this regard, the review petitioner would like to invite the attention of the Hon'ble Commission to the para 3.0 of the Agreement dated 17.11.2006 executed between DMRC & Govt. of Haryana for Gurugram. The Para 3.0 of the Agreement stipulates as under: -

*".....Government of Haryana shall also arrange to provide electricity on cost price from Transco under open access system. Delhi Metro Corporation Limited shall pay wheeling charges as decided by Haryana state Electricity regulatory Authority as applicable from time to time."*

- 2.2 It is further submitted that DMRC has been given a special category due to its unique nature by the Commission *in para 2.7 of the Tariff Order for FY 2010-11 under head "Tariff for sale of power to DMRC" which inter-alia stipulated:*

*"As per the proposed terms of Agreement DHBVNL has decided to provide electricity connection to DMRC on 66 KV. The Cost of supply (CoS) based on FY 2009-10 ARR has been worked out by DHBVNL as 397 Paisa/Unit. On the basis of CoS DHBVNL has proposed a separate tariff category for DMRC."*

*".....As per DHBVNL's proposed term of Agreement, DMRC shall be provided connection at 66KV. DMRC shall construct 66KV sub-station and will directly draw power from HVPNL sub-station. It will construct 66 KV line from these sub stations to the main substation and from there the power will be distributed to the metro station and metro rail through separate lines. DHBVNL has proposed for recognition of DMRC as separate category of consumer and fixation of its tariff on the basis of actual cost of supply without affecting the subsidy or cross-subsidy elements."*

Further, in the tariff order for FY 2011-12 & 2012-13, similar viewpoints were taken by the Commission while fixing tariff for DMRC. The Hon'ble

Commission's stand as separate category for DMRC was maintained till tariff order for FY 2014-15.

- 2.3 It is further submitted that the para 4.0 and 5.0 of the agreements between DMRC and Govt of Haryana (GoH) for Faridabad and Bahadurgarh respectively stipulates that Government of Haryana shall provide electricity at no profit/no loss basis to DMRC. The para 4.0 and 5.0 of the respective agreement is reproduced as under:-

*“Government of Haryana shall provide electricity and water at no profit/no loss basis to DMRC”.*

The agreements for Gurugram, Faridabad and Bahadurgarh are the guiding principle at which tariff for DMRC should have been fixed.

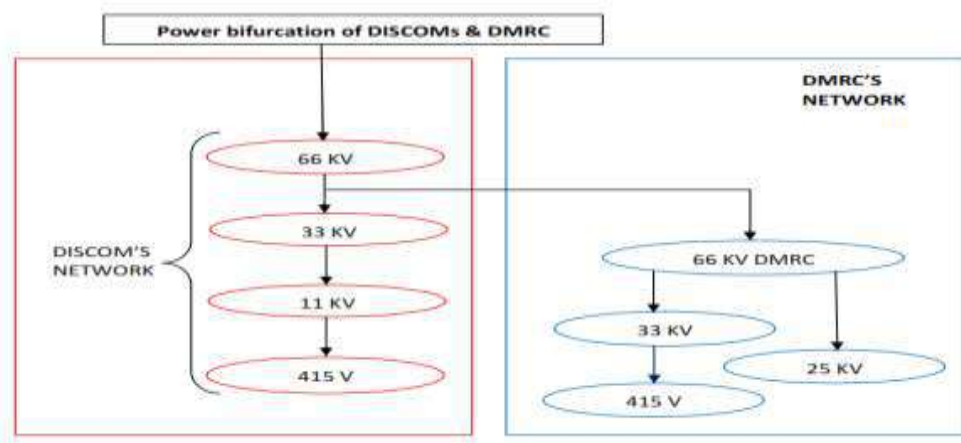
- 2.4 It has been further submitted that DMRC has invested large amount of money for building its own power distribution network for voltage levels below 66 kV. This needs to be seen in accordance with the Electricity Act, 2003 wherein Section 62 (3), stipulates that the Commission may differentiate consumers according to consumer's load factor, power factor, voltage, total consumption of electricity during any specified time or geographical position of any area, nature of supply and purpose for which supply required etc. The extract of Section 62(3) of the Electricity Act, 2003 is reproduced as under:

*Section 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.*

- 2.5 That in this connection, discussion on various aspects are as under:

- 2.5.1 Voltage Level - DMRC takes electricity at extra high voltage level i.e. 66kV. It does not contribute to the losses of DISCOMs below 66 kV at all. All losses within DMRC's network are borne by DMRC itself.



The above diagram shows very clearly that DMRC network is separated from the network of DISCOMs at 66 kV itself, hence it does not contribute in the losses of DISCOMs.

- 2.5.2 Load Factor - DMRC's load factor (24 hrs. basis) is moderately high and is 57% on the 24 hours scale. DMRC being a MRTS, the services are restricted to 0600 hrs to 2400 hrs. & therefore, no services are there in night hours. The load factor for the working hours as mentioned above is 76%.
- 2.5.3 Regeneration of power - DMRC has contributed tremendously on the environment front by becoming the first ever railway project in the world to claim carbon credits for regenerative Braking. DMRC has also been certified by the United Nations (UN) as the first Metro Rail and Rail Based system in the world to get carbon Credits for reducing Green House gas Emissions as it has helped to reduce pollution levels in the city.
- 2.5.4 Power factor - DMRC has adopted most energy efficient technologies in designing its system since conceptual stage & therefore it's Power Factor is close to unity and best among all.
- 2.5.5 Geographical Area - DMRC's network is passing through most congested areas of Delhi and ease out traffic problems of the capital city of India.
- 2.5.6 Nature of Supply—The power supply gets separated at periphery level i.e. 66 KV details of which has been explained under the head Voltage levels above (2.5.1).
- 2.5.7 Purpose of Supply - DMRC is engaged in the activity of providing Mass Rapid Transit System for National Capital Region of Delhi

including Gurugram and Faridabad and is performing a public utility function having social benefits. In connection with the above activities, DMRC requires electricity to run the Metro systems. Being the most energy efficient mode of transport, it is also contributing to help the environment by reducing greenhouse emissions. DMRC is also providing subsidized fares and reduction in financial burden upon the commuters. If DMRC does not cater to requirement of Delhi & NCR, then public would use other means of transport which are not as energy efficient as Metro system and thus would result in degradation of environment.

2.5.8 Energy conservation policy of DMRC is in place and DMRC has consumed 596.7 MVAH in 2012-13 and 1185.96 MVAH in 2019-20. Even though the energy consumption has increased, however, through energy conservation measures, per passenger energy consumption has been reduced.

Hence, DMRC tariff should be fixed after considering the huge investment made by DMRC in meeting the requirement of Electricity Act and being efficient consumer of Electricity.

2.6 It is further mentioned that owing to distinct nature of DMRC, its tariff was fixed at lower side as compared to Indian Railways till FY 2014-15. But w.e.f tariff order for FY 2015-16, DMRC's tariff was raised and made equal to Indian Railways but in FY 2018-19 it was again reduced considering the request / submissions of the DMRC. Whereas, the Commission in its Tariff Order for FY 2021-22 revised the Tariff of DMRC and fixed it at par with HT Industry and Indian Railways. In this regard, it is once again submitted that HT Industry as well as Indian Railways are not comparable to DMRC (MRTS) in view of the following: -

2.6.1 As DMRC operates in National Capital Region, its energy requirement is 0.05kVAh/passenger KM which is one of the least amongst Rail based transport.

2.6.2 Since MRTS requirement is not there during the night, its working hours are restricted to 0600 hrs. to 2400 hrs. and DMRC does not carry any freight, therefore it does not have any option to make up for the short fall in its revenue from passenger fare. The above view point has already been endorsed by Hon'ble commission in its tariff order for FY 2010-11, FY 2011-12 & FY 2012-13.

2.6.3 Metro system decongest the roads of the National Capital Territory Region and provide environment friendly transportation system along with being energy efficient and pollution free system, thereby causing benefit to the nation.

2.6.4 It is pertinent to note that energy cost has significant impact on DMRC's operating cost and thereby affecting the metro fares.

In view of above, the review petitioner / DMRC may be treated as a special category of consumer whose tariff ought to be based on actual cost of supply.

2.7 Since the inception, the rates of Railways versus DMRC are tabulated as under:

Comparison of tariff of Railways & DMRC

	HT Industry (above 50 KW) (at 66 KV)	RAILWAYS (at 66 KV)	DMRC (at 66 KV)
F.Y.	Energy Charges (Paissa / kWh or/ kVAh)	Energy Charges (Paissa / kWh or/ kVAh)	Energy Charges (Paissa / kWh or/ kVAh)
2021-22	645/kVAh		
2020-21	645/kVAh	635/kVAh	625/kVAh
2019-20	645/kVAh	635/kVAh	625/kVAh
2018-19	645/kVAh	635/kVAh	625/kVAh
2017-18	645/kVAh	635/kVAh	635/kVAh
2016-17	595/kVAh	590/kVAh	590/kVAh
2015-16	595/kVAh	590/kVAh	590/kVAh
2014-15	560/kVAh	560/kVAh	530/kVAh
2013-14	510/kVAh	510/kVAh	480/kVAh
2012-13	450/kVAh	510/kVAh	450/kVAh
2011-12	391/kVAh	431/kVAh	395/kVAh
2010-11	391/kVAh	431/kVAh	395/kVAh

From the above table it is evident that the DMRC tariff was always lower than the Railways tariff till 2015-16. In 2015-16, DMRC tariff was made equal to Railways but again in 2018-19, it was made lower than Railways.

In case of HT Industry (above 50 KW), after FY 2013-14, DMRC tariff has always been lower than HT Industry but it was made equal to DMRC in the FY 2021-22.

2.8 It has been further submitted that Section 61 of the Electricity Act 2003 (Part VII), stipulates as under:

*"The appropriate commission shall subject to the provision of this act, specify the terms and conditions for the determination of tariff and in doing so, shall be guided by the following, namely: --*

*(d) safe guarding of consumers interest and at the same time recovery of cost of Electricity in a reasonable manner;*

*(e) The principles rewarding efficiency in performance;*

*(g) that the tariff progressively reflects the cost of supply of electricity and also reduces and eliminates cross subsidy within the period to be specified by the appropriate commission.”*

- 2.9 Since DMRC system is uniquely designed to fulfil the requirements of the Electricity Act, 2003, and hence it becomes entitled to be treated as a separate category for fixing of tariff.

Keeping in view the agreement between DMRC and the Government of Haryana (GoH), stand taken by the commission in yesteryears as mentioned in above paras and utilizing the provision of section 61 of the Indian Electricity Act-2003, DMRC should not be treated at par with Indian Railways or HT Industry, it should remain a separate category and Tariff to DMRC should be fixed on cost price from Transco.

3. Review of Tariff for DMRC in Tariff Order for FY2021-22:

The Commission vide its impugned Tariff Order dated 30.03.2021 has substantially increased the existing Tariff of DMRC for the FY 2021-22. In this regard, the petitioner has submitted as under: -

- 3.1 The Commission, in the tariff order for FY 2015-16 (at para 4.10, page 187), has stated as under:

*“The Commission has noted the objection filed by the DMRC that their tariff ought to be equal to the bulk supply rate of the DISCOMS as per the Agreement signed with the State Government, and observes that the Agreement with Haryana Government referred to by the DMRC has not been approved by this Commission. Hence, in case the Haryana Government desires to introduce any concessional tariff for DMRC then they will have to compensate the DISCOMS for the loss of revenue vis-a-vis the tariff approved by the Commission. The Commission, keeping in mind the average CoS of the DISCOMS and the cross-subsidy limits prescribed by the NTP, has revised the tariff applicable to DMRC”.*

That the same tariff, as of FY 2015-16, was maintained by the Commission in the FY 2016-17 without assigning any reasons.



- 3.2 Even after maintaining unity power factor, high load factor, absorption of all the losses and maintenance costs in DMRC's network/system and provision existing in the agreement with Govt. of Haryana for supplying electricity to DMRC at cost price from Transco, the tariff for DMRC is being fixed much higher as evident from the following table:

Power Purchase cost Vs. Actual cost to DMRC

SN.	F.Y.	Power purchase cost at Haryana boundary in ₹/kVAh	Cost of Electricity to DMRC	
			Unit rate ₹/kVAh for DMRC at 66kV (as per Tariff Order of HERC)	Avg. unit price of DMRC including Fixed charges & FSA
1	2010-11	2.60	3.95	4.74
2	2011-12	2.85	3.95	4.69
3	2012-13	3.44	4.50	5.70
4	2013-14	3.52	4.80	6.50
5	2014-15	3.84	5.30	6.95
6	2015-16 & 2016-17	3.95	5.90	7.61
7	2017-18	4.13	6.35	7.63
8	2018-19	3.74	6.25	7.24
9	2019-20	4.90	6.25	7.35
10	2020-21	4.93	6.25	9.12
12	2021-22	4.88 (#1)	6.45 (#2)	--

Note:

#1 From the above table, it is clear that the rate of power purchase has taken into consideration all kinds of transmission and distribution losses, whereas, as per agreement between DMRC and Govt. of Haryana, the above rate of power purchase should be declared by DISCOMs separately for each of the voltage levels (66kV in the case of DMRC) by clearly accounting for the losses at each of the voltage levels (220, 132, 66, 33, 11KV & LT level).

The increase in tariff in case of DMRC is against the spirit of Agreement signed between DMRC & Govt. of Haryana.

- 3.3 The losses disclosed in table at page 196 of tariff order for FY 2021-22 reveals that based on the data submitted by DISCOMs (i.e. DHBVNL & UHBVNL) to HERC, Hon'ble Commission has disclosed losses upto 33 kV only. The losses at 66kV and above have not been disclosed. The above-mentioned table is reproduced below:

Losses disclosed by DISCOMs at 33 KV and below.

Voltage Levels	UHBVNL	DHBVNL
33 kV line losses	0.42%	0.42%
33 kV Transformation losses	0.27%	0.19%

11 kV line losses	5.35%	6.04%
11 kV Transformation losses	0.98%	0.97%
LT line losses	5.23%	4.93%
Total losses up to LT level	11.80%	12.41%

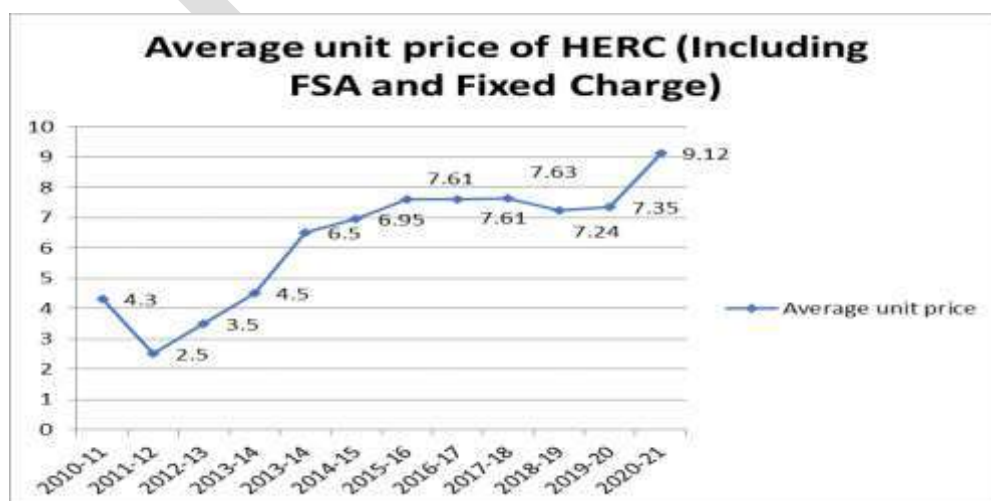
The Hon'ble Commission has passed the following observations regarding losses:

*“---it is possible to work out the total losses up to 11 kV level & overall losses at LT level. However, working out losses at different HT level i.e. 66 kV, 132 kV, 220 KV etc is not possible till the time similar data is made available at these voltages by the utilities. Hence for calculating voltage wise losses the commission has broadly considered only two categories i.e. HT (11kV level and above) and LT voltage level”.*

In this regard, it is submitted that, since DMRC is getting separated at 66kV level, losses at 66kV level to be disclosed/ accounted for by the DISCOMs to determine the actual cost of supply to DISCOM at 66kV, which is desirable in line with clause 3.0 of agreement dated: 17.11.2006, clause 4.0 of agreement dated: 26.03.2012 and para 5.0 of the agreement dated 02.02.2013 between DMRC & Govt. of Haryana for Gurugram, Faridabad and Bahadurgarh respectively.

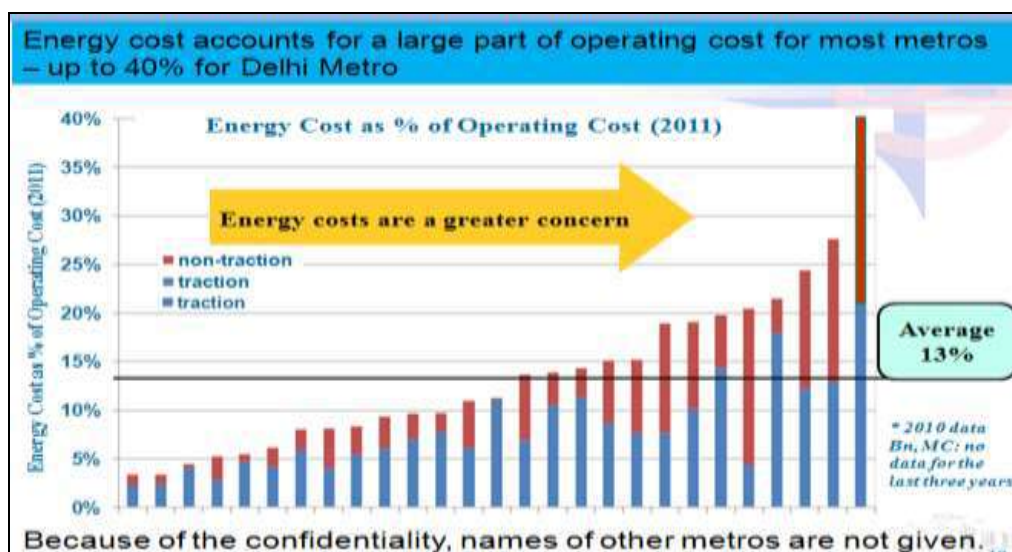
Further, from the Table-4 of technical losses it is evident that the losses at 33kV level are (0.42%+0.19%) i.e. 0.61% for DHBVNL and (0.42%+0.27%) i.e. 0.69% for UHBVNL & therefore, losses at 66kV would be even lower and then the cost of supply to DISCOMs at 66kV level would be approximately ₹4.87/kVAh (for DHBVNL) ₹4.91/kVAh (for UHBVNL) and ₹4.88/kVAh (Total).

- 3.4 The graph of Avg. unit price of DMRC including fixed charges & FSA is as given below:



### 3.5 Cost of Electricity to DMRC on Global Scenario:

It is further submitted that the electricity tariff for DMRC is the highest among all the MRTS system of different countries. This is apparent from the following graph given as below:



In the light of para 3.0 of the agreement dated 17.11.2006, para 4.0 of the agreement dated 26.03.2012 and para 5.0 of the agreement dated 02.02.2013 signed between DMRC & Govt. of Haryana and various facts given in the previous paras, the tariff for DMRC may be fixed on cost price from Transco, and the Hon'ble Commission is requested to give directive/instruction to DISCOMs to declare the losses at each voltage level (i.e 220 kV, 132 kV, 66 kV, 33 kV, 11 kV & LT level) separately & declare the cost of supply at each of voltage level, so that cost of supply at 132 kV & 66 kV to Transco/DISCOMs is well known to decide the tariff & corresponding compensation to be given to DMRC by Govt. of Haryana.

In light of facts mentioned above, DMRC's tariff needs to be reviewed and also that re-fixing of tariff may be carried out considering the distribution losses at 66KV where DMRC is separated from the network of DISCOMs. It is further prayed that the revision of tariff for FY 2021-22 vide Impugned Order dated 30.03.2021 shall be held in abeyance / stayed till the decision of this review petition by this Hon'ble Commission and the excess payment already made by the petitioner may be adjusted in the forthcoming electricity bills of DMRC.

### 4. Relaxation in tariff of DMRC considering Covid-19 Pandemic:

The petitioner has submitted that due to COVID-19 pandemic and nationwide lockdown imposed by the Govt. of India w.e.f. 24/25<sup>th</sup> March 2020 midnight, the

financial position of DMRC has been adversely affected. The revenue operations were stopped from 22nd March, 2020 to 6th September, 2020 (approx. five and half months) and even thereafter, keeping in view social distancing norms, the system is being operated at reduced passenger capacity while the operation expenses remain nearly unchanged. Even in the present time, DMRC financial position is further deteriorating due to the Curfew imposed by the Govt. NCT of Delhi w.e.f 20.04.2021.

5. Issue of directive – regarding differential payment to DHBVNL and UHBVNL on the same line of Directive 6 (Chapter 10) (page no. 280) issued by this Hon'ble Commission in its Tariff Order dated 01.06.2020 for the FY 2020-2021 in the present Tariff Order for FY 2021-22.

That the petitioner hereby invites the attention of the Commission with respect to the Directive 6 (Chapter 10) (Page No. 280) issued by this Commission in its Tariff Order dated 01.06.2020 for the FY 2020-2021. The Hon'ble Commission has directed that DMRC shall carry out metering, billing and revenue collection for the commercial consumers within its premises and the difference between DMRC (Traction) tariff and NDS tariff as determined by the Commission shall be credited by the DMRC into the accounts of the DISCOMs concerned as per billing cycle. However, this Hon'ble Commission has not issued any such directives in its Impugned Tariff Order dated 30.03.2021.

The extract of the directive 6 (Chapter 10) (Page No. 280) issued by this Hon'ble Commission in its Tariff Order dated 01.06.2020 for the FY 2020-2021 is reproduced below: -

6. DMRC (Commercial Supply)

*“Given the peculiar and commercially win-win situation for both DHBVNL and DMRC, the Commission considers it appropriate to relax anything to the contrary contained in the Single Point Supply Regulations and directs that DMRC shall carry out metering, billing and revenue collection for the commercial consumers within its premises subject to installation of correct meters as per CEA norms duly tested and jointly sealed with Discoms. The difference between DMRC (Traction) Tariff and NDS Tariff as determined by the Commission shall be credited by the DMRC into the accounts of the Discom concerned as per the billing cycle.”*

In view of the above, this Commission is requested to reconsider the same and issue the same directives to DHBVNL & UHBVNL as were issued earlier by this Hon'ble Commission in its Tariff Order dated 01.06.2020 by allowing the DMRC to carry out metering, billing and revenue collection for the commercial consumers within its

premises and to credit the difference between DMRC (Traction) tariff and NDS tariff into the accounts of the DISCOMs concerned.

**PRAYERS:**

In view of facts brought out in Para 1 to 5 above, the petitioner / DMRC most respectfully pray the Hon'ble Commission to:

- (a) Fix of Tariff for DMRC in line with principal agreement between DMRC & Government of Haryanas (GoH) and tariff to be fixed lower than Indian Railways and HT Industry (above 50 kW):

In view of the para 3.0 of the agreement dated 17.11.2006 for Gurugram, Para 4.0 of the agreement dated 26.03.2012 for Faridabad and Para 5.0 of the agreement dated 02.02.2013 for Bahadurgarh, signed between DMRC & Govt. of Haryana, DMRC has invested huge amount in accordance with Electricity Act. There is no change in the condition, consumption, PF, Load factor, voltage levels or any other factor in case of DMRC, earlier stand of the Commission may be maintained and accordingly tariff for DMRC may be reviewed by keeping DMRC as separate category for the purpose of tariff fixation and DMRC tariff may kindly be fixed lower than that of Indian Railways and HT Industry (above 50 KW).

- (b) Review of tariff fixed for DMRC in tariff order for FY 2021-22 being purchase cost of DHBVN & UHBVN lower than FY 2020-21:

In view of various facts given in the previous paras, the tariff for DMRC may be fixed on cost price from Transco, and Hon'ble Commission is requested to give directive/instruction to DISCOMs to declare the losses at each voltage level (i.e. 220 kV, 132 kV, 66 kV, 33 kV, 11 kV & LT level) separately and declare the cost of supply at each of voltage level, so that cost of supply at 132 kV & 66 kV to Transco/DISCOMs is well known to decide the tariff and corresponding compensation to be given to DMRC by the Govt. of Haryana. The power purchase cost of DHBVN and UHBVN for FY 2021-22 is lower than that of 2019-20 & FY 2020-21, Hon'ble commission is requested to review and decrease the Tariff for DMRC for FY 2021-22.

- (c) Relaxation in Tariff of DMRC considering COVID-19 pandemic: -

Since DMRC revenue has been adversely affected due to COVID-19 pandemic, the Hon'ble commission is requested to kindly consider the stressed financial condition of DMRC and review / decrease the tariff for DMRC for FY 2021-22.

- (d) Issue the directives - regarding differential payment to DHBVNL and UHBVNL on the same line of Directive 6 (Chapter 10) (Page No. 280) issued by this Hon'ble

Commission in its tariff order dated 01.06.2020 for the FY 2020-2021 in the present Tariff Order for FY 2021-2022.

- (e) Till the decision of review petition, the revision of tariff for FY 2021-22 shall be held in abeyance / stayed.

### **Reply by the Respondents**

The Respondent Nigam filed its reply to the issues raised and relief sought by the petitioner on 18.06.2021 as under:

1. Fixing of Tariff for DMRC in line with principal agreement between DMRC & Government of Haryana (GoH) and tariff to be fixed lower than Indian Railways and HT Industry (above 50 kW): In view of the para 3.0 of the Agreement dated 17.11.2006 for Gurugram, Para 4.0 of the agreement dated 26.03.2012 for Faridabad and Para 5.0 of the agreement dated 02.02.2013 for Bahadurgarh, signed between DMRC & Govt. of Haryana. DMRC has invested huge amount in accordance with Electricity Act, there is no change in condition, consumption, PF, Load factor, voltage levels or any other factor in case of DMRC, earlier stand of the Commission may be maintained and accordingly tariff for DMRC may be reviewed by keeping DMRC as separate category for the purpose of tariff fixation and DMRC tariff may kindly be fixed lower than that of Indian Railways and HT Industry (above 50 KW).

#### **Reply:**

- Retail supply tariff for Delhi Metro Rail Corporation (DMRC) was devised in HERC Tariff Order dated 13.09.2010. Supply of electricity to DMRC was identified as a separate category and the tariff for supply of electricity was determined on the cost of supply basis.
- It is evident that the services of DMRC were of unique nature in the year 2006, therefore the relaxed terms and conditions for retail supply tariff were executed between the Govt. of Haryana (GOH) and DMRC in the Agreement dated 17.11.2006. However, due to rapid commercialization of DMRC, stringent norms for retail supply tariff were executed between the Govt. of Haryana (GOH) and DMRC in the subsequent Agreements dated 26.03.2012 and 02.02.2013. The Govt. of Haryana has categorically specified in the latter agreements that the electricity and water should be provided to DMRC on no profit/no loss basis (i.e. in a cost reflective manner).
- This step clearly shows that even the GOH had identified the DMRC as a commercially viable unit and adequate compensation (in a cost of reflective

manner) was therefore intended for the services provided to DMRC. The relevant extract of the agreements is reproduced as under:

Para 3.0 of the Agreement dated 17.11.2006

*"Government of Haryana shall also arrange to provide electricity on cost price from Transco under open access system. Delhi Metro Corporation Limited shall pay wheeling charges as decided by Haryana state Electricity regulatory Authority as applicable from time to time."*

Para 4.0 of Agreement dated 26.03.2012 and Para 5.0 of Agreement dated 02.02.2013

*"Government of Haryana shall provide electricity and water at no profit/no loss basis to DMRC".*

- Henceforth, the request of DMRC regarding the status of special category, based on its nature of services, is redundant and may not be entertained.

In yesteryears, special impetus in the form of concessional tariff has already been provided to DMRC. Besides the supply of electricity to DMRC has been kept at a consistent rate over the past three years. Furthermore, the supply of electricity to DMRC in Haryana is still more competitive than the electricity supply in the neighboring state. Therefore, in consideration to the above, the retail supply tariff of electricity to DMRC may not be kept separate from the HT Supply Category and the applicable tariff determined by the Hon'ble Commission should be retained and continued for the ensuing year.

- Further, the Hon'ble Commission in the Tariff Order dated 07.05.2015 has overruled the objection of DMRC to realign its tariff as per the bulk supply rate envisaged in the MOU signed between the GOH and DMRC. The Hon'ble Commission has directed that the tariff for DMRC has been determined as per the National Tariff Policy 2016. Any concession to be provided by the GOH on the applicable tariff has to be compensated appropriately to the Discoms. The relevant extract of the Tariff Order is as under:

**"4.10 Metro (DMRC) Tariff**

The Commission has noted the objections filed by the DMRC that their tariff ought to be equal to the bulk supply rate of the Discoms as per the MOU signed with the State Government and observes that the MOU with Haryana Government referred to by the DMRC has not been approved by this Commission. Hence, in case the Haryana Government desires to introduce any concessional tariff for DMRC then they will have to *compensate the Discoms for*

*the loss of revenue vis-a-vis the tariff approved by the Commission. The Commission, keeping in mind the average CoS of the Discoms and the cross-subsidy limits prescribed by the NTP, has revised the tariff applicable to DMRC.*

- The Review Petition filed by DMRC is not maintainable. As per the Supreme Court Order in *Sow Chandra Kante v. Sk. Habib* [(1975) 1 SCC 674] review of a judgement can only be sought when there is case a glaring omission or patent mistake or grave error in earlier judicial fallibility. In the present case regarding the fixing of tariff for DMRC there is no such event recorded in the Tariff Order dated 30.03.2021. Therefore, the same cannot be undertaken for review. The excerpt of the Supreme Court Order is reproduced as under:

*Sow Chandra Kante v. Sk. Habib* [(1975) 1 SCC 674] speaking through V.R. Krishna Iyer, J. on review has stated the following in para 1: (SCC p. 675)

*“A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient.”*

- Furthermore, the Hon'ble APTEL in its Order on Appeal No 106 Of 2018 has upheld that the Hon'ble Commission has power to design tariff as per its own wisdom and it may not require to call for public comments before finalization of the same. The relevant extract of the Order is reproduced as under:

*“14) It is not the case of the appellant that the Commission had no power to create a tariff design different from the one proposed by the licensee. The Commission has the power to design the tariff as per its own wisdom. The Commission need not, before issuing the actual order, publicly announce the tariff it proposed and call for public comments...”*

- It is submitted that the liquidity of the Discoms has been eroded under such unprecedented situations of COVID-19 Pandemic. Discoms are under severe financial distress to meet its debt service obligation and other liabilities towards power purchase. It is therefore requested that the HT Supply Category tariff for relevant voltage level may kindly be continued for DMRC, for the larger interest of the Discoms as well as the consumers at large.

2. Review of tariff fixed for DMRC in tariff order for FY 2021-22 being purchase cost of DHBVN & UHBVN lower than FY 2020-21: In view of various facts given in the previous paras, the tariff for DMRC may be fixed on cost price from Transco, and Hon'ble Commission is requested to give directive/instruction to DISCOMs to declare



the losses at each voltage level (i.e. 220 kV, 132 kV, 66 kV, 33 kV, 11 kV & LT level) separately and declare the cost of supply at each of voltage level, so that cost of supply at 132 kV & 66 kV to Transco/DISCOMs is well known to decide the tariff and corresponding compensation to be given to DMRC by the Govt. of Haryana. Since the power purchase cost of DHBVN and UHBVN for FY 2021-22 is lower than that of 20` 9-20 & FY 2020-21, Hon'ble commission is requested to review and decrease the Tariff for DMRC for FY 2021-22.

**Reply:**

- Cost of supply is an exhaustive exercise and requires subject matter expertise because of the complexity of the distribution network. Study requires proper sampling of the feeders and mapping of distribution network to capture the relevant representative data for all the areas lying under the jurisdiction of the Discoms. Planning to rollout the study is underway and the progress regarding the same will be updated to the Hon'ble Commission accordingly.
- It is further submitted that as per as per Clause 8.3 (1) of National Tariff Policy, 2016 titled as "Tariff design: Linkage of tariffs to cost of service" the retail supply tariff shall be determined based on the average cost of supply with a capping of +/- 20%. The relevant clause is reproduced as under:

*8.3 Tariff design: Linkage of tariffs to cost of service*

*For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the Appropriate Commission would notify a roadmap such that tariffs are brought within  $\pm 20\%$  of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy.*

- Therefore, in view of the above, the claim of DMRC regarding the revision of the retail supply tariff owing to reduction in power purchase cost is devoid of any merit. Moreover, HT Supply Category tariff of relevant voltage level for DMRC is within the prescribed limit.
3. Relaxation in Tariff of DMRC considering COVID-19 pandemic: Since DMRC revenue has been adversely affected due to COVID-19 pandemic, the Hon'ble commission is requested to kindly consider the stressed financial condition of DMRC and review/ decrease the tariff for DMRC for FY 2021-22.

**Reply:**

Discom submits that being a revenue neutral entity, allowing any relaxation in tariff to DMRC would impact the profitability of the Discom. The tariff is determined by the

HERC in accordance with power vested under section 62 of the Electricity Act, 2003. Hence, Discoms are bound to levy the tariff approved by the Hon'ble Commission. It is requested that any relaxation in tariff, if allowed, may be provided in a revenue neutral manner so that the larger interest of the consumer can be safeguarded.

4. Issue the Directives - Regarding differential payment to DHBVNL and UHBVNL on the same line of Directive 6 (Chapter 10) (Page No. 280) issued by this Hon'ble Commission in its tariff order dated 01.06.2020 for the FY 2020-2021 in the present Tariff Order for FY 2021-2022.

**Reply:**

It is submitted that the directive of FY 2020-21 which states that "Given the peculiar and commercially win-win situation for both DHBVNL and DMRC, the Commission considers it appropriate to relax anything to the contrary contained in the Single Point Supply Regulations, and directs that DMRC shall carry out metering, billing and revenue collection for the commercial consumers within its premises subject to installation of correct meters as per CEA norms duly tested and jointly sealed with Discoms. The difference between DMRC (Traction) Tariff and NDS Tariff as determined by the Commission shall be credited by the DMRC into the accounts of the Discom concerned as per the billing cycle" has already been enforced and implemented accordingly.

5. Till the decision of review petition, the revision of tariff for FY 2021- 22 may be held in abeyance / stayed.

**Reply:**

Retail supply tariff is determined by HERC in accordance with power vested under Section 62 of the Electricity Act, 2003. Therefore, the Discoms are bound to levy the retail supply tariff from the date mentioned in the Tariff Order.

In view of the foregoing submissions, it is prayed that the issues raised by DMRC may be disallowed as already been done in the past by Hon'ble Commission.

**Commission's Order**

The case was heard by the Commission on 14.07.2021, as scheduled.

The petitioner mostly reiterated their written submissions which have been taken on record. Additionally, it has been argued that till the passing of the impugned Order, DMRC was treated as a distinct tariff category and the rates were lower than that of HT Industrial Supply. However, in the impugned order, DMRC has been merged with HT Supply Tariff, thereby, putting additional financial burden. It has been further submitted that revenue recovery of DMRC is not based on the commercial model but the charges recovered from the passengers are subsidized and the same have not been increased in the last 20 years.

Further, given the pandemic, the operations of DMRC remained suspended for over six months and even now the capacity utilization is only about 10%. Hence, the increase in electricity tariff will only add to the financial distress.

Per contra, the respondent Nigam has submitted that they are also impacted by pandemic and have witnessed decline in the revenue realization from the sale of power. Hence, any relaxation in the tariff to DMRC will further adversely affect the revenue of the Discoms.

The Commission heard the parties at length. On a query from the Commission regarding 'error apparent' and any 'new fact' that were not known to the Commission while passing the impugned Order, the GM Legal, DMRC was not able to point out any error or any new fact; he reiterated that the increase in the DMRC tariff will aggravate their financial losses.

The Commission has perused the grounds / submissions filed by the Petitioner, the reply filed by Discoms and the submissions made by the parties in the hearing held in the matter. The review sought by the petitioner are on the following issues:

- a. Fixing of Tariff for DMRC in line with the principle agreement between DMRC and Govt of Haryana (GoH) and tariff to be fixed lower than Indian Railways and HT Industry (above 50 kW).
- b. Review of tariff for DMRC in tariff order for FY 2021-22 being purchase cost of DHBVN & UHBVN lower than from FY 2020-21.
- c. Relaxation in Tariff of DMRC considering COVID-19 pandemic.
- d. Issue of the directives – Regarding differential payment to DHBVNL & UHBVNL on the same line of directives issued by this Hon'ble Commission in its tariff order dated 01.06.2020 for the FY 2020-2021 in the present Tariff Order for FY 2021-22.
- e. Till the decision of review petition, the revision of tariff for FY 2021-22 qua DMRC shall be held in abeyance / stayed and the excess payment already made may be adjusted in the forthcoming electricity bills of DMRC.

Before going into the merits of the case and the rival submissions of the parties, the Commission has considered it appropriate to examine the scope of review jurisdiction of this Commission. In order to examine the scope of review jurisdiction, the Commission has perused the provision of Regulation 78(2) of the HERC (Conduct of Business) Regulations, 2004 including its subsequent amendments, which empowers the Commission to exercise review jurisdiction. The relevant regulation is reproduced below: -

**78 (2) "REVIEW OF THE DECISIONS, DIRECTIONS, AND ORDERS:**

*"The Commission may review its Orders or decisions if: -*

- (a) There exists an error apparent on the face of the record, or*

- (b) *Any new and important matter of evidence was discovered which after the exercise of due diligence, was not within the knowledge of or could not be produced by the party concerned at the time when the Order or decision was made, or*
- (c) *For any other sufficient reasons”.*

Further, the Commission has also perused the judgment of Hon’ble Delhi High Court in Aizaz Alam Versus Union of India & Others (2006 (130) DLT 63: 2006(5) AD (Delhi) 297. The relevant extract from the aforesaid judgment is reproduced below: -

*“We may also gainfully extract the following passage from the decision of the Supreme Court in Meera Bhanja V. Nirmala Kumari Choudhury, where the Court, while dealing with the scope of review, has observed:*

*The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. The review petition has to be entertained on the ground of error apparent on the face of record **and not on any other ground** (emphasis added). An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivable be two opinions. The limitation of powers of courts under Order 47 Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the Orders under Article 226.*

*Applying the above principles to the present review petition, there is no gainsaying that the review of the Order passed by this Court cannot be sought on the basis of what was never urged or argued before the Court (emphasis added). The review must remain confined to finding out whether there is any apparent error on the face of the record. As observed by the Supreme Court in Lily Thomas and Ors.V Union of India & Ors., the power of review can be used to correct a mistake but not to substitute one view for another (emphasis added). That explains the reason why Krishna Iyer, j. described a prayer for review as “asking for the moon” M/s Northern India Caterers (India) Ltd. V. Lt. Governor of Delhi”.*

Additionally, the Commission has perused the Hon’ble Supreme Court case law cited by the Respondent Nigam i.e. Sow Chandra Kante v. Sk. Habib [(1975) 1 SCC 675]. The sum and substance of the said judgement is that a judgement ought to suffer from ‘glaring omission’ ‘mistake’ or ‘grave error’ in order to be taken up for review. The Commission will keep in mind the case laws on the issue of review jurisdiction while examining the present review petition. The Commission has examined the review sought, issue wise, by the petitioner

including maintainability tested on the anvil of the aforesaid Regulations / Case Laws as under: -

**1. Fixing of Tariff for DMRC in line with principle agreement between DMRC & Govt of Haryana (GoH) and tariff to be fixed lower than Indian Railways and HT Industry (above 50 kW).**

The Commission has examined the submissions of the Petitioner and observes that 'tariff design' is in the absolute domain of the Commission and the decision of Commission is based on a holistic view of the power sector including interest of the electricity consumers at large. Hence, the Commission, after due deliberations, determined the applicable tariff for DMRC in its capacity as a HT consumer of the Discoms and also keeping in mind the CSS limits as per the provisions of the National Tariff Policy 2016. In case, the Government of Haryana desires to introduce any concessional tariff for DMRC, then they will have to compensate the Discoms for the loss of revenue vis-a-vis the tariff approved by the Commission, as per the provisions of section 65 of the Electricity Act 2003. No such commitment has been received in the Commission from the Haryana Government. **Further, this Commission has already, adequately and judiciously, dealt and decided this issue (Supra) in its Order dated 7.05.2015, the operating part of the said Order has been reproduced earlier in the present Order rejecting the submissions of DMRC for a tariff at the bulk supply rate of the Discoms. In effect, this issue raised in the present review petition is res judicata.**

Hence, the Commission, while rationalising the consumer category wise tariff, has well kept in mind the principles of tariff determination as per Sections 61 and Section 62 of the EA, 2003, the Tariff Policy, 2016 including the limits of Cross – Subsidy surcharge and the MYT Regulations in vogue. Additionally, in the impugned Order, the Commission has done away with consumer categories i.e. HT Industry Supply, NDS Supply, Railways (Traction) Supply, DMRC and introduced voltage and load differentiated HT Supply Tariff. The Commission, therefore, is of the considered view that the review sought on this issue is not admissible as the same is beyond the scope of review jurisdiction as no new facts / figures or error apparent on the face of record have been put forth by the petitioner. Resultantly, the review sought on this issue is rejected as the same travels beyond the scope of review jurisdiction as laid down by the Apex Court in a catena of cases.

**2. Review of tariff for DMRC in tariff order for FY 2021-22 being purchase cost of DHBVN and UHBVN lower than from FY 2020-21.**

The petitioner submitted that DMRC's tariff needs to be reviewed and also that re-fixing of tariff may be carried out considering the distribution losses at 66KV where DMRC is separated from the network of DISCOMs. It is further submitted that the revision of tariff for FY 2021-22 vide Impugned Order dated 30.03.2021 shall be held in abeyance / stayed till the decision of this review petition by this Hon'ble Commission and the excess payment already made by the petitioner may be adjusted in the forthcoming electricity bills of DMRC.

The Commission has considered the submissions of the petitioner including the grounds on which review has been sought. It is observed that the tariff determination by the Commission is largely based on cost causation principles keeping the cross subsidy surcharge within (+/-) 20%, as per the National Tariff Policy 2016 i.e. "the retail supply tariff shall be determined based on the average cost of supply with a capping of +20%".

**Therefore, the Commission determined the tariff applicable for DMRC i.e. HT Supply tariff corresponding to the voltage at which electricity supply is being availed by the petitioner. Hence, the review sought is not admissible as the same is beyond the scope of review jurisdiction as no new facts / figures or error apparent on the face of record has been established by the Petitioner. Thus, the Commission finds no merit in the review sought on this issue and rejects the same as non-maintainable.**

**3. Relaxation in Tariff of DMRC considering COVID-19 pandemic.**

It has been argued that due to COVID-19 pandemic and nationwide lockdown implemented by the Govt. of India w.e.f. 24/25 March 2020 midnight, the financial position of DMRC has been adversely affected. The revenue operations were stopped from 22 March, 2020 to 6 September, 2020 (approx. five and half months) and even thereafter, keeping in view social distancing norms, the system is being operated at reduced passenger capacity while the operation expenses remain nearly unchanged. Even in the present time, DMRC financial position is further deteriorating due to the curfew imposed by the Govt. NCT of Delhi w.e.f 20.04.2021.

The Commission has considered the submissions of the petitioner and is of the view that the liquidity/financial position of almost all industrial/commercial entities including the power utilities have been eroded due to the unprecedented COVID-19 pandemic, which has adversely affected one and all. Hence, any relief that may be extended to DMRC will further reduce the revenue realisations of the Discoms from their sale of power. **Hence, the Commission is of the view that since the Discoms are a revenue neutral entity, allowing any relaxation in tariff to DMRC, would**

adversely impact the revenue of the Discoms and impair its ability to perform its functions as a distribution licensee, and furthermore, adversely affect the interests of the other consumers. Moreover, the review sought is not maintainable as the same is beyond the scope of review jurisdiction i.e. no new facts / figures or error apparent on the face of record has been put forth by the Petitioner. Thus, the Commission finds no merit in the review sought on this issue and rejects the same as non-maintainable.

4. **Issue of the directives – regarding differential payment to DHBVNL and UHBVNL on the same line as the directives issued by this Hon’ble Commission in its tariff order dated 01.06.2020 for the FY 2020-2021 in the present Tariff Order for FY 2021-22.**

The Commission has considered the submissions of the petitioner that the directive no. 6 (Chapter 10) (Page No. 280) issued by Commission in its Tariff Order dated 01.06.2020 for the FY 2020-2021 does not find mention in the Impugned Tariff Order dated 30.03.2021 for the FY 2021-22. It has been submitted that the said directive states that DMRC shall carry out metering, billing and revenue collection for the commercial consumers within its premises and the difference between DMRC (Traction) tariff and NDS tariff as determined by the Commission shall be credited by the DMRC into the accounts of the DISCOMs concerned as per billing cycle. **The Commission observes that the directive regarding differential payment to DHBVNL & UHBVNL has already been enforced and implemented. Therefore, the concern of the petitioner is addressed and complied with. Hence, no further directive as sought by the petitioner is required on this issue. However, as the Commission has done away with the NDS (Commercial) consumer category, the differential shall be the HT Supply tariff applicable to DMRC and the HT/LT (as the case may be) supply tariff applicable to the commercial entities within the premises of DMRC.**

5. **DMRC has prayed that till the decision of review petition, the revision of tariff for FY 2021-22 qua DMRC shall be held in abeyance / stayed and the excess payment already made may be adjusted in the forthcoming electricity bills of DMRC.**

The Commission has considered the above submission and observes that the Tariffs and Charges determined in the impugned Tariff Order dated 30.03.2021 are applicable w.e.f. 1<sup>st</sup> April, 2021 across all consumer categories. This ensures that the annual revenue requirement assessed by the Commission for the FY 2021-22 is fully recovered during the same financial year. Hence, no tariff or part of the tariff can be held in abeyance as the same will disturb the entire revenue balance determined by

the Commission. The Discoms are bound to levy the retail supply tariff from the date mentioned in the Tariff Order. **Thus, the Commission finds no merit in the review sought on this issue and rejects the same as non-maintainable.**

In terms of the above findings / decisions, the present review petition preferred by DMRC is disposed of.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 20<sup>th</sup> July, 2021.

**Date: 20.07.2021**  
**Place: Panchkula**

**(Naresh Sardana)**  
**Member**

**(Pravindra Singh Chauhan)**  
**Member**

**(R.K. Pachnanda)**  
**Chairman**