

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17

Petition No. 06/2002

In the matter of: Application for Grant of Licence for Distribution and Supply of Electricity to Delhi Metro Rail Corporation Limited under the Electricity Act, 2003 read with the applicable provisions of the Delhi Electricity Reform Act, 2000.

AND

In the matter of:

Delhi Metro Rail Corporation Limited,
Through: Sh. Satish Kumar, Director (RSE)
3rd Floor, NBCC Place,
Pragati Vihar,
Bhishma Pitamah Marg,
New Delhi-110003.

.....**Applicant**

VERSUS

1. Delhi Transco Limited,
Through its: Chairman & Managing Director,
Shakti Sadan, Kotla Road,
New Delhi-110002.
2. BSES Rajdhani Power Limited
Through its: **CEO**
BSES Bhawan,
Nehru Place,
Delhi-110019.
3. BSES Yamuna Power Limited
Through its: **CEO**
Shakti Kiran Building,
Karkardooma,
Delhi-110092.
4. North Delhi Power Limited
Through its: **CEO**
Sub-Station Building,
Hudson Lines, Kingsway Camp,
Delhi-110009.
5. New Delhi Municipal Council
Through its: **Secretary,**
Palika Kendra, Parliament Street,
New Delhi-110001.

.....**Respondents**

Coram:

**Sh. Berjinder Singh, Chairman, Sh. K. Venugopal, Member &
Sh. R. Krishnamoorthy, Member.**

Appearance:

1. Sh. M.G. Ramachandran, Advocate, DMRC
2. Sh. Satish Kumar, Director (R&E), DMRC.

3. Smt. Suparna Sisdhari,
4. Sh. R.N. Joshi, Director (R)/DMRC.
5. Sh. Sharat Sharma, CEE
6. Sh. Lokendra Chelvinder, JE/Electrical.
7. Sh. Saurav Agrawal, Advocate for NDMC
8. Sh. Gaurab Banerji, Senior Advocate for NDMC.
9. Sh. Amit Pawan, Advocate for NDMC
10. Sh. S. M. Ali, Director, NDMC.
11. Sh. C.L. Jindal, Chief Engineer, NDMC.
12. Sh. Amit Kapoor, Advocate for Distribution Licensees
13. Sh. Mansoor, Advocate for NDPL.
14. Sh. R.C. Mehta, AVP, BRPL
15. Sh. R.R.Panda, manager, BRPL.
16. Sh. Akash S. Manager, BRPL.
17. Sh. Anurag Bansal, Executive Legal Affairs, NDPL.
18. Sh. Bibhu Biswal, Manager, NDPL.
19. Sh. V.B. Sharma, A.O. (Comm,), NDPL

ORDER

(Date of Hearing: 19.04.2007)

(Date of Order: 09.05.2007)

1. Delhi Metro Rail Corporation Ltd. (in short, DMRC) had made an application for grant of Distribution retail supply license, before this Commission on 25th July, 2002.
2. The original application was made for the following areas of supply: -
 - (i) The corridor of Line 1 from Shahdara to Barbala – 27 Kms.
 - (ii) Line 2 from Vishwa Vidyalaya – Central Secretariat – 11 Kms.
 - (iii) Line 3 from Barakhamba Road – Dwarka – 23 Kms.
 - (iv) For providing illumination for stations, important operational requirements including telecom, signal, automatic fare collection, lighting etc.
 - (v) Workshop depots and maintenance infrastructure.
 - (vi) Power to the staff quarters.
 - (vii) Power to kiosks, shops, food marts, vendors etc. within the Metro Stations.
3. Thereafter, there was an amendment in the application seeking the inclusion of second phase of operations as stated below: -

S. No.	LINE		TYPE OF LINE	NO. OF STATIONS	ROUTE LENGTH (KM)
	From	To			
1.	Vishwa Vidyalaya	Jahangirpuri	Underground/elevated	5	6.36
2.	Central Secretariat	Ambedkar Colony	Underground/elevated	10	12.525
3.	Shahdara	Dilshad Garden	Elevated	3	3.09

4.	Inderlok J/c Kirti Nagar – Ashok Park	Mundka	Elevated	14	18.4
5.	Indraprastha	New Ashok Nagar	At grade/ elevated	5	8.07
6.	Yamuna Bank	Anand Vihar	Elevated	5	6.16
7.	New Ashok Nagar	Noida	Elevated	6	7.04
8.	Qutab Minar	Sushant Lok (Gurgaon)	Elevated	10	14.47
TOTAL				58	76.115

(a) The second phase is scheduled to be completed by 2010.

(b) In addition to the above, the following lines are also under consideration of the Government, for completion by 2010.

- I. Central Secretariat – Badarpur: This line with a route length of 20.16 km and 16 stations would be partly underground with 13.5 km elevated portion.
- II. Jhangirpuri – Badli: This line with a route length of 3.4 KM and 2 stations would be elevated.
- III. Anand Vihar – Vaishali: This line with 2.5 Kms. route length and 2 stations would be elevated.

4. On the said application, the Commission had conveyed a deficiency memo on 09th August, 2002, seeking specific information regarding:-

- (i) An approximate statement describing any land which the Applicant proposes to acquire or has acquired in relation to electrical installations.
- (ii) Approximate statement of capital expended/proposed to be expended in connection with electricity by the Applicant.
- (iii) Annual accounts for last 3 years relating to electricity.
- (iv) Break up of energy required, category-wise, for mass rapid transit system, staff quarters, shops and other commercial properties.

5. In response to the deficiency memo, the Applicant gave a statement regarding the land requirement and total energy consumption for new electricity supply business which are given below:

Statement regarding land required:

S.No.	Location of Land	Area
1.	ISBT receiving station at Kashmere Gate for 220 kv substation	8580 Sq.m (approx.)
2.	Rithala receiving station to be fed from DPSCl's 220 kv Rohini substation	8925 Sq.m
3.	New Delhi (Ajmeri Gate), receiving station to be fed from GENCO's G.T. Station	5000 Sq.m (approx)
4.	Bhooli Bhatiyari park, Jhandewalan Extn. Receiving station to be fed from DPSCl' 220 kv Park Street substation	9600 Sq.m
5.	Dwarka receiving station near Sewak Park to be fed from DPSCl's 220 kv, Papankalan-II substation	6650 sq. m

Statement regarding total energy consumption:

S.No.	Purpose	Estimate of energy consumption 2003-04 (in MU)	Estimate of energy consumption 2005-06 (in MU)	Estimate of energy consumption 2006-07 (in MU)
1.	Traction	12	85	135
2.	Related operational activities	13	115	165
3.	Sub-total (operational energy requirement)	25	200	300
4.	Passenger amenities	3	34	35
5.	Sub-total (operational energy requirement plus passenger amenities inside station)	28	234	335
6.	Commercial development adjoining the stations, depots	3	115	115
7.	Staff quarters	1	1	1
Grand Total		32	350	451

6. On 2nd May, 2003, the Applicant made a request for the amendment to the application for grant of license and along with the said request, the Applicant also submitted a draft public notice. The Commission on 29th May, 2003, issued a letter to the Applicant for the purpose of serving a notice to MCD, NDMC, DDA, MES, Ministry of Home Affairs, Govt. of NCT of Delhi and DPCL in view of the application made by the DMRC for the license for distribution and retail supply.
7. On 09th July, 2003, the Commission sought clarification from the DMRC seeking certain amendments to the draft notice and also asked the Applicant to submit a "No Objection Certificate" from the Central Govt. under Section 15(2)(ii) of the Electricity Act, 2003. The Applicant, on 19th July, 2003, again made an application requesting the amendment of the license in view of the prevailing provisions of Electricity Act, 2003 and restricting their license only for distribution of electricity. The Applicant also

gave an affidavit stating that they did not require a 'No Objection Certificate' within the provisions of Section 15(2)(ii) since its operational area is not covering any land belonging to Defence.

8. On 07th August, 2003, the Commission directed the Applicant to issue a public notice in leading newspapers, which had wide circulation in National Capital Territory of Delhi. Accordingly, a notice was published by the Applicant on 12th August, 2003 in Hindustan Times and Indian Express (English) and on 14th August, 2003 in Hindustan and Punjab Kesari (Hindi).
9. In response to the above, various stakeholders including the three distribution licensees gave their comments to the Commission. In response to the comments, the Applicant also submitted its rejoinder responding to the specific objections raised by the various stakeholders. The Commission also asked the Delhi Metro Rail Corporation to file its written submission on the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 wherein the Central Government had laid down certain specific pre-conditions under 6th Proviso to Section 14 of Electricity Act, 2003.
10. The public hearing on the application for Licence was held on 19th April, 2007 and Sh. M.G. Ramachandran, Advocate, appeared on behalf of DMRC. It was submitted by Sh. Ramachandran that on 25th July, 2002, the Applicant made an application for grant of Supply License under provisions of Sections 20 and 26 of Delhi Electricity Reform Act, 2000, as were applicable at the relevant time when application was made by DMRC. Later, the Applicant revised the application, restricting its area of supply for electricity to the area of operation of DMRC and therefore, sought a license for an area comprising of the following:
 - (i) Operation of Metro Trains on rails at grade elevated viaducts and tunnels utilizing its power system comprising of 220KV and 66 KV cables, 220KV or 66 KV receiving sub stations, overhead Catenary system, 33 KV cables, 33KV/LT auxiliary sub stations, signalling and telecommunications, lighting, ventilation and other equipment in the corridors.
 - (ii) Metro stations, their lighting, signages, signalling, telecommunication and automatic fare collection systems, lifts, escalators, fire detection and suppression systems, pumps and equipments and maintenance

of stations, environmental control systems and air conditioning and parking areas.

- (iii) Workshops, depots, stabling lines, control centres, site offices and emergency staff accommodation.
- (iv) Passenger amenities and facilities within the station premises including kiosks, shops, banks, vendor stalls.
- (v) Other related ancillary services and such other things as may be permitted.
- (vi) Supply of electricity to staff quarters and real estate development project.

The said area of supply has been indicated in the schematic diagram enclosed with the application for grant of license.

11. Sh. Ramachandran, Ld. Counsel for the Applicant, has stated that the DMRC undertakes distribution of electricity in the area of its operations after having laid down the supply lines for conveyance and transmission of electricity both for DMRC's own consumption and for the supply to others. It is stated that the electricity is also supplied to passenger amenities and facilities such as kiosks, shops, banks, vendor stalls, food marts, advertisements, hoardings etc. within the station precincts.
12. The Ld. Counsel has also invited the attention of the Commission to the provisions of Delhi Metro Railway (Operation and Maintenance) Act, 2002 (hereinafter called the DMRC Act) and the Delhi Metro Railway General Rules, 2002 and the opening of Delhi Metro Railway for Public Carriage of Passengers Rules, 2002. It is also stated by Sh. Ramachandran, that Section 5 of the DMRC Act provides for the functions of the Applicant. Section 6 of the DMRC Act provides for the powers of the Applicant under the Act. In terms of these provisions, the Applicant has the functions and can exercise its powers to maintain and operate Metro Rail and engage in such activities which are incidental and ancillary to the Metro Rail. The provisions of the DMRC Act also provide for the passenger amenities and facilities in the stations precincts and for utilisation of properties for generation of revenue.
13. It is stated that Section 6 (2)(h) of the DMRC Act provides powers to the Applicant to "lay down or place electric supply lines for conveyance and transmission of electricity and to obtain licence for that purpose." It is submitted by the Ld. Counsel that this provision of the DMRC Act is a special provision which enable the Applicant to make an application for

obtaining a license from the competent authority for the purpose as mentioned in Section 6(2)(h) of the aforesaid Act. It is because of these provisions that the Applicant has moved an application before this Commission for obtaining a license for distribution and retail supply of electricity and the Applicant is entitled, as a matter of statutory right, to get a license under the said provisions.

14. An argument has been made by Sh. Ramachandran that under the DMRC Act, the Applicant has an exclusive authority to undertake business and activities as mentioned in DMRC Act and the Applicant has the right to exclude the interference or control of any other party within the operational area of the Applicant. It is further stated that the statutory provisions of Sections 31, 64, 67, 68, 74 etc. of the DMRC Act and the Rules 65 to 80 of the Delhi Metro Railway General Rules, 2002 and also Rules 37 to 41 of the Opening of Delhi Metro Railway for public carriage for passengers Rules, 2002 give an exclusivity to the Applicant for its area of operations. The aforesaid provisions of the Law give exclusive powers and rights to deal with the aspect of conveyance and transmission of energy within its area of operation so as to have a reliable and fully controlled power system essential for uninterrupted operations of the Applicant.
15. The Ld. Counsel for the Applicant has also made an argument that the provisions of the DMRC Act vest powers with the Applicant to exclude anybody who interferes with the working of the Applicant and it is also highlighted that under the DMRC Act any action which interferes with the operations of the Applicant is made an offence punishable under Section 64.
16. It is stated that no person including the Respondent Distribution Licensees can, therefore, interfere in the area of the Applicant and the Applicant alone is entitled to lay down and place service lines in its area of operation. It is very categorically stated that no person including the Distribution Licensees can enter the area of operation of the Applicant or otherwise can legally claim access to the service line, power supply and traction arrangement without the authority of the Applicant. It is an argument that the Applicant can restrict not only the Respondent Licensees from entering the area of operation but also all others including local authorities like NDMC, MCD etc.

17. The Ld. Counsel for the Applicant has also made another set of arguments stating that the application made by the Applicant was under the Delhi Electricity Reform Act, 2000, and as such is continued to be a valid application under the aforesaid Act. The provisions of the Electricity Act, 2003 need not be applicable in the present situation and it is prayed that the license to the Applicant may be granted under the provisions of the Delhi Electricity Reforms Act, 2000, rather than the Electricity Act, 2003. In view of these submissions, the Ld. Counsel also submits that the provisions of Distribution of Electricity License (Additional Requirements of Capital Adequacy and Credit Worthiness and Code of Conduct) Rules, 2005 would not be applicable in this situation.
18. It is argued on behalf of the Applicant that the Additional Requirements on capital adequacy and creditworthiness as specified by the Central Government under the aforesaid Rules, would not be applicable in the case of the Applicant, since the Applicant is a joint venture with the Government of India and Delhi Government. Consequently, there is no issue regarding laying conditions for the Credit Worthiness and Capital Adequacy Requirement on the Applicant. The Applicant is a Company in which the Central Govt. and the GNCTD hold the entire equity shares. The investment for the distribution and supply of electricity is integrated to the investment of the Applicant.
19. The Ld. Counsel for the Applicant also submitted that the area of supply of the Respondent Distribution Licensees do not cover the area of operations of the Applicant. It is argued that area of supply of the Applicant is an exclusive area which is not within the operational control of any of the Distribution Licensees. The lines and the equipments in the transmission and supply of the electricity have been exclusively laid by the Applicant by virtue of the powers vested in it by the DMRC Act and, as such, the Respondent Licensees do not own or control or operate any of the lines and equipments within the area of the Applicant. The area of supply of the Distribution Licensees can be said to be covering the area of operations of the Applicant only if the Respondent Distribution Licensees have the authority to enter upon the area of operations of the Applicant to lay their supply/distribution lines and give electricity connection to the consumers. It is argued that the DMRC Act gives an exclusive right of operation to the Applicant and the Applicant can exclude the Distribution Licensees from entering into its precincts.

20. The Ld. Counsel for the Applicant has also submitted that the DMRC Act is a special Act dealing with the Delhi Metro and it has specific provisions dealing with laying down or placing electric supply lines, power supply and traction arrangement and design and installation of equipments for electric traction. There is nothing inconsistent to the above in the Electricity Act, 2003. The provisions of the DMRC Act and Rules framed thereunder, have to be harmoniously interpreted with the Electricity Act, 2003, keeping in view the special feature of the Applicant. It is further stated that Section 103 of the DMRC Act provides that the "Provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act". It is further stated that merely the fact that Electricity Act, 2003 has come into force after the enactment of DMRC Act, it would not over ride the provisions of DMRC Act as it is a well settled law that a subsequent legislation does not mean that it will have the supremacy over the earlier Act. Reliance is placed on the Apex Court's order in R.S. Raghunath Versus State of Karnataka (1992) 1 SCC 335.
21. In response to the averments made by the Ld. Counsel for the Applicant, Sh. Amit Kapoor, Advocate, appearing on behalf of the three Distribution Licensees, has made counter arguments. It is stated by Sh. Amit Kapoor that the license application has to be considered under the provisions of the Electricity Act, 2003 and the Applicant has failed to establish that under what provisions of law, the application of DMRC can be excluded from the provisions of the Electricity Act, 2003. It is stated that the license application is to be necessarily maintainable in terms of applicable provisions of the Electricity Act, 2003 read with National Electricity Policy dated 12.2.2005 and the Distribution of Electricity Licensee (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. It is argued on behalf of the Licensees that for the purpose of granting a license, the Electricity Act, 2003 becomes a Special Act and it would eclipse to that extent, the provision of DMRC Act, since the application is to be considered and be evaluated under the provisions of the Electricity Act, 2003. Further, it is also stated that the Electricity Act, 2003 is a later Act of the Parliament and therefore, the provisions of the later Act will have an overriding effect on the DMRC Act, 2002.
22. It is stated by Sh. Amit Kapoor, Advocate, that the application of the Delhi Metro Rail Corporation fails on various counts specially when the

Applicant has failed to give a finite and defined "area of supply" which is a mandatory pre-requisite for grant of a distribution license in terms of Section 14 of the Electricity Act, 2003 and the Explanation to Rule 3 of the Distribution License Rules, 2005. It is also stated that the Applicant has failed to comply with the Capital Adequacy and other requirements in terms of Distribution License Rules, 2005 and further more, the DMRC has failed to place on record a "No Objection Certificate" from the Central Government in terms of Section 15(2)(ii) of the Electricity Act, 2003.

23. It is submitted that the Applicant does not have the attributes of a Distribution Licensee, since it is a "consumer" by itself. The definition of Distribution Licensee as provided under Section 2(17) of the Electricity Act, 2003 is:

"Distribution Licensee means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply."

In view of the definition and the scope of application made by the Applicant, the Applicant is merely a consumer and cannot show that it engages in activities which are akin to the activity of a Distribution Licensee. It is stated that the Applicant is trying to obtain a concession for itself both in preferred supply and also the tariff at the cost of the citizens of Delhi.

24. It is submitted that the provisions of Section 6(2)(h) of the DMRC Act do not vest any right on the Applicant to obtain a license. The only right vested with the Applicant is to lay down and place electric supply lines for conveyance and transmission of energy. The request to grant or reject the application for license has to be seen in accordance with the provisions of Chapter IV of the Electricity Act, 2003, the National Electricity Policy and the Distribution License Rules, 2005.
25. It is further submitted that the Applicant is under obligation to specify as to how it shall arrange/procure power for its consumption in case the license is granted. It is stated that as per the stand taken by the Applicant, it may procure power from the existing Licensees and if such be the case, then where is the need for the Applicant to obtain a separate Distribution License when it is proposing to procure electricity from the present Licensees as being done presently. In view of this, the

existing Licensees shall be further constrained to impose standby charges and shall have to allocate/provide for capacity allocation to serve the Applicant's demand as and when it arises.

26. It is further argued by the Ld. Counsel Sh. Amit Kapoor that the averments made by the Applicant for grant of License should be considered within the four corners of the Electricity Act, 2003 because the Electricity Act, 2003 is a statute which is posterior in time both to the DMRC Act as well as Delhi Electricity Reform Act, 2000. Further, attention is invited to Section 185 of the Electricity Act, 2003 where the provisions of State Acts given in the Schedule are saved only to the extent they are not inconsistent with the provisions of the Electricity Act, 2003. Further, it is stated by Sh. Amit Kapoor that for the purpose of distribution and retail supply of electricity, the Electricity Act, 2003, becomes the special Act and the DMRC Act a general law and, therefore, the Electricity Act, 2003 will have an overriding effect on the provisions of DMRC Act, 2002. Further, attention is also invited to Section 173, 174 and 175 of the Electricity Act, 2003. It is also stated that the Electricity Act, 2003 under Section 173, expressly exclude its application to the extent of inconsistency, with that of the provisions of Consumer Protection Act 1986, Atomic Energy Act 1962, and the Railways Act, 1989 and therefore, the provisions of these three Acts will have an overriding effect on the provisions of the Electricity Act, 2003. The aforesaid section does not create an exception in favour of the Applicant to seek priority over the provisions of the Electricity Act, 2003.
27. Sh. Amit Kapoor, further states that the application for the distribution license squarely attracts 6th Proviso of Section 14 of the Electricity Act, 2003. It is stated that the proposed area of supply and the nature of supply includes significant third party supply by the Applicant. The proposed area of supply falls within the respective area of supply of the three Distribution Companies of Delhi and, therefore, the Applicant must comply with the 6th Proviso of Section 14 of the Electricity Act, 2003.
28. It is further submitted that the Applicant has sought special dispensation on account of the provisions of Delhi Metro Rail (Operation and Maintenance) Act, 2002 which is untenable in law. The argument submitted by the Applicant is that Section 6(2)(h) and 5 of the said Act entitle them to lay down electric supply line for transmission and conveyance to obtain license and the DMR Act being a special law by virtue of Section 103, shall have an overriding effect on the provisions of

the Electricity Act, 2003 and further, that the provisions of Section 64 prohibit anybody to enter into the area of the Applicant. Sh. Amit Kapoor submits that all these arguments are fallacious, since the Electricity Act, 2003 is an Act enacted subsequent to the DMRC Act and the Electricity Act, 2003 has an overriding non-obstante clause for all other laws for the time being in force in terms of Section 174 with the only exceptions being carved in favour of three Acts mentioned in Section 173 of this Act. Further, it is also stated that even social sector projects do not deserve special dispensation in terms of Section 65 of the Electricity Act, 2003 unless specifically exempted by express language of law.

29. It is further added by Ld. Counsel for the Distribution Companies that the Applicant is aiming at getting undue advantage in terms of committed power supply in preference to the citizens of Delhi without being subjected to any additional charge. It is submitted that obtaining multiple licenses as and when DMRC extends its operations beyond the territory of Delhi to Haryana and Uttar Pradesh, in which eventuality, the Applicant may have to apply for separate license from different State Commissions. It is stated that in the event of shortage or unavailability of power at Haryana or U.P., the Applicant would indulge in drawl of needy power from Delhi where the power scenario is already bleak and the issue is already under supervision of Hon'ble Supreme Court in the power crisis matter.
30. It is submitted that the ability to pay, lack of funds or lack of competitiveness, viability of any particular industry/company, inefficiency etc. cannot be the guiding considerations in determining the price which a consumer would pay for the electricity consumed by it. Such considerations would amount to a subsidy which would then need to be covered under Section 65 of the Electricity Act, 2003 and in such case the Applicant is placed in a disadvantageous position. It is submitted on behalf of the Distribution Licensees that it is incorrect to contend that the grant of distribution license would improve the reliability of the supply of electricity. It is also stated that large number of other essential services such as Airport Authority of India, Railway, Fire Stations, etc. would take up separate distribution license in Delhi which would cause major problems as far as reliability of power procurement is concerned. At best, it is suggested by Sh. Amit Kapoor that the Applicant should apply for a franchise agreement with the existing Distribution Companies and continue its operation at a concessional tariff as may be allowed by the

Commission. It is further stated that in case the Applicant is granted a license then the Applicant will have to create a parallel distribution network that will create a significant cost to the Applicant. It is submitted that DMRC may seek Open Access in view of Section 42(2) of the Electricity Act, 2003 subject to payment of Wheeling charges, cross subsidy surcharge and additional surcharge to compensate for fixed costs and stand by charges payable to the Distribution Companies as per the committed load.

31. Objections have also been received from New Delhi Municipal Council which is a local authority within the area of operations of DMRC. Sh. Gaurab Banerji, Sr. Advocate, appearing on behalf of the NDMC, stated that the present application is not maintainable and is defective on various counts as it does not conform to the provisions of the Electricity Act, 2003 and also to the Rules and Regulations made thereunder. It is stated that in view of Section 185(3) of the Electricity Act, 2003, the application is required to be considered under the Electricity Act, 2003 and not under Delhi Electricity Reforms Act, 2000. Even otherwise, the relevant date for consideration of a license is the date on which it is considered for grant, and not the date of application. It is submitted that the area of supply as defined in the application is very ambiguous and is incapable of precise definition. It is stated that the area of supply as mentioned by the Applicant is not covered within the meaning of Section 2(3) of the Electricity Act, 2003. Further, the Applicant is in the shoes of a consumer as defined under Section 2(15) rather than a Distribution Licensee as defined under Section 2(17) of the Electricity Act, 2003. It is stated that the Applicant has claimed the distribution license for operations of area of DMRC for grant of distribution license. There is no concept of an area of operation rather the Licensee has to specify the area of supply which has to be read within the meaning as provided under the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005, which has prescribed the minimum area as a "Revenue District". The Application thus has to be in the format covering a minimum area as stated in the notification and it cannot be for an area listed as per desire of the Applicant. This would also check cherry picking and avoid picking up of area of supply of electricity to only high revenue locations/pockets. It is stated that the Applicant has made an attempt to escape from the mandate of the sixth proviso to Section 14 by erroneously stating that DMRC is not asking for license for distribution of electricity as a parallel

licensee or a multiple licensee in terms of sixth proviso of Section 14. It is an erroneous submission that the area of operations of DMRC and the area of operations of the existing distribution licensees are different and the requisites of sixth proviso to Section 14 are dispensable. In fact, the geographic area of operations of the Applicant also runs through the area of supply of the Distribution Companies as well as NDMC. It is further added by the Ld. Senior Counsel that Section 6(2)(h) of the Delhi Metro Railway (Operation & Maintenance) Act, 2002 is only an enabling provision which allows the Applicant to lay or place electric supply lines for conveyance and transmission of energy and to obtain license for that purpose. This provision has been carved out to achieve the purpose of the aforesaid Act. However, if an application is made for a distribution license then it has to be seen whether such application satisfy the provisions of the Electricity Act, 2003. Finally, it is also stated by the Ld. Counsel that the averments of the Applicant that the Delhi Metro Rail Act is a Special Act viz-a-viz the Electricity Act, 2003 is also incorrect. It is stated that the non-obstante provisions of Section 173 & 174 of the Electricity Act, 2003 have deliberately excluded the Railway Act, 1989, but not the DMRC Act as contended by the Ld. Counsel for the Applicant. In view of the above submissions the stakeholders have requested to reject the application of the Applicant for grant of a distribution license.

32. The parties have been heard in detail. After hearing the arguments of both sides, the following issues have been framed, namely;
- I. Whether the instant application for the grant of Distribution and Retail Supply License for electricity is to be considered under the provisions of Delhi Electricity Reform Act, 2000 or the Electricity Act, 2003?
 - II. Whether the instant application for the grant of Distribution and Retail Supply License for electricity is to be considered under the provisions of Delhi Metro Railway (Operation & Maintenance) Act, 2002 or under provisions of Electricity Act, 2003?
 - III. Whether the area of operation of the Applicant is an exclusive area and does it overlap the area of supply of other distribution licensees including the deemed licensee?
 - IV. Whether the Applicant requires a distribution license?

- V. Whether the application of DMRC satisfy the condition of minimum area of supply constituting at least a revenue District as laid down in the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005, framed under the 6th proviso to Section 14 of the Electricity Act, 2003.
33. Coming to the issue no I., Sh. Ramachandran, Ld. Counsel for the Applicant, submitted that the Applicant had moved an application for the grant of license under the provisions of Delhi Electricity Reform Act, 2000 and, as such, the application would still continue to be valid under the provisions of the aforesaid Act. It is stated that the provisions of Electricity Act, 2003 would not be applicable in the present situation as the Delhi Electricity Reform Act, 2000 has been saved by the Electricity Act, 2003. The element of continuity of the application under provisions of Delhi Electricity Reform Act, 2000, has been maintained since the date of filing as the application has not been withdrawn or disposed of after it was initially filed in the year 2002. Therefore, the provisions of Electricity Act, 2003, would not be applicable in the present circumstances.
34. On the other hand, Sh. Amit Kapoor, Advocate, on behalf of the three distribution companies, has submitted that despite the fact that Delhi Electricity Reform Act, 2000, has been saved under the Electricity Act, 2003, but the provisions of the State Statute which are inconsistent with the provisions of the Central Act, shall give way to the provisions of the Central Act. Therefore, the provisions of Electricity Act, 2003 would be the governing provisions for grant of second distribution license in the same area of supply.
35. Mr. Gaurab Banerji, Senior Advocate, who appeared on behalf of the NDMC, has also submitted that in view of Section 185(3) of the Electricity Act, 2003, the application of DMRC is required to be considered under Electricity Act, 2003, and not the Delhi Electricity Reform Act, 2000. It has been further submitted by him that the relevant date for consideration of a license is the date on which it is considered for grant, and not the date of application.
36. The Commission has considered the arguments of the parties as also the provisions of DERA, 2000 and the Electricity Act, 2003. The language of Sub-section 3 of Section 185 is categorical and states that, “the

provisions of the enactments specified in the schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable", meaning thereby, that if any provision of the said enactment stands repugnant to the provisions of the Central Act, it will give way to the provisions of the Central Act. The Central Act i.e. the Electricity Act, 2003, being an Act posterior in time and having an overriding effect on the provisions of the State Act, would be considered by the Commission while evaluating the present application. It is an admitted fact that the application of DMRC has been amended even after the Electricity Act, 2003, came into existence. Moreover, by virtue of Section 185(3), it would be erroneous to hold that the application filed in 2002, would be considered only under the provisions of DERA, 2000 and not the Electricity Act, 2003, even when there are inconsistencies in the provisions of the two Acts and some additional conditions / requirements have been imposed in the Central Act. The Commission is, therefore, of the view that the application filed by DMRC has to be necessarily considered under the provisions of the Electricity Act, 2003, and the Rules & Regulations made there under. As regards DERA, 2000, the provisions of this Act would be applicable till these are not inconsistent with the provisions of the Electricity Act, 2003.

37. We now consider the issue no II., as to whether this application for grant of Distribution and Retail Supply License of electricity is to be considered under the provisions of Delhi Metro Railway (Operation & Maintenance) Act, 2002 or under the Electricity Act, 2003. Sh. Ramachandran, Ld. Counsel for the applicant has argued that Section 6(2)(h) of the Delhi Metro Railway (Operation & Maintenance) Act, 2002 empowers the Applicant to "lay down or place electricity supply line for conveyance and transmission of electricity and to obtain license for that purpose." It is stated that the said provision enables the Applicant to make an application for obtaining a license from Competent Authority for the purpose as mentioned in Section 6(2)(h) of the aforesaid Act. It is by virtue of this provision that the Applicant derives a statutory right to be granted a license for the distribution and retail supply of electricity. It is further added by Sh. Ramachandran, Advocate for the Applicant, that the Delhi Metro Railway (Operation & Maintenance) Act, 2002 is a special Act which has been enacted by the Parliament keeping in view the special operational needs of the Applicant and by virtue of its status as a special Act, the provisions of the special Act

would prevail upon the other Acts and for the purpose of this application the Electricity Act, 2003 will be treated as a general Act vis-à-vis Delhi Metro Railway (Operation & Maintenance) Act, 2002.

38. Sh. Gaurab Banerji, Senior Advocate and Sh. Amit Kapoor, Advocate, have vehemently contested the argument of the Applicant in this regard. It is stated that the Electricity Act, 2003 is an Act which is posterior in time and shall have an overriding effect on the existing statutes. It is also stated that the Electricity Act, 2003 cannot be treated as a general Act vis-à-vis the Delhi Metro Railway (Operation & Maintenance) Act, 2002 because the application for the grant of a distribution license is to be considered under the provisions of the Electricity Act, 2003 and not under the provisions of Delhi Metro Railway (Operation & Maintenance) Act, 2002.
39. The Commission have heard the parties as also gone through their written submissions on this issue. The Commission has also gone through the relevant provisions of the Delhi Metro Railway (Operation & Maintenance) Act, 2002. A perusal of Section 6(2)(h) of this Act reveals that it is only an enabling provision which allows the Applicant to obtain a license for the purpose of laying down or place electric supply lines for conveyance and transmission of energy. As regards the application for grant of license, that has to be considered as per the provisions of the Electricity Act, 2003. The Commission, while considering an application under this Act, has to satisfy itself that the conditions of Section 14, 15 as also the Rules & Regulations made thereunder are satisfied. Mr. Ramachandran, Ld. Counsel for the applicant, has referred to Section 103 of the Delhi Metro Railway (Operation & Maintenance) Act, 2002, which stipulates that, "the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act". Mr. Ramachandran, has further stated that the provisions of the above Act are overriding in nature and that he has a statutory right to be granted a license for the distribution and retail supply of electricity in his area of operations. While arguing the case Sh. Ramachandran, Ld Advocate seems to have overlooked the provisions of Section 173 and 174 of the Electricity Act, 2003, which are very vital to determine this issue. Both these provisions are reproduced below:

“Sec 173: Inconsistency in Laws.*-Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 (68 of 1986) or the Atomic Energy Act, 1962 (33 of 1962) or the Railways Act, 1989 (24 of 1989).*

Sec 174: Act to have overriding effect.*-Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”*

It would be evident from Section 173 that the provisions of no other Act or enactment except the Consumer Protection Act, 1986, Atomic Energy Act, 1962 or the Railways Act, 1989 have been protected under the Electricity Act, 2003. Further, Section 174 very categorically states that the provisions of this Act shall have an overriding effect. It would, therefore, be inappropriate to hold that the Delhi Metro Railway (Operation & Maintenance) Act, 2002 will have an overriding effect, in the context of the Application of DMRC for the grant of License.

40. The Commission has also considered other provisions of the Electricity Act, 2003, which deal with the grant of licence and the procedure thereof etc. The authority to issue a license is given to the State Commission under Section 86(1)(d) of the Electricity Act, 2003. Further, Part IV of this Act (Section 12 to 24) deals with various aspects of Licensing; who are the persons authorised to transmit, distribute or undertake Trading in Electricity (Section 12), power of exemption (Section 13), Grant of License (Section 14), Procedure for grant of License (Section 15), Conditions of License (Section 16), Licensee not to do certain things (Section 17), Amendment of License (Section 18), Revocation of License (Section 19), _ _ _ _ , Suspension of distribution licence and sale of utility (Section 24). Not only this, the Central Govt while exercising its power under Sub-Section (1) of, and Clause (b) of Sub-Section(2) of Section 176 of the Electricity Act, 2003, have made the ‘Distribution of Electricity License (Additional Requirements of Capital

Adequacy, Creditworthiness and Code of Conduct) Rules, 2005'. It is an important legal obligation and an onerous responsibility of the Commission to ensure that the person applying for a license fulfil all the conditions required for granting the license before he is granted the licence.

41. The Commission while examining this issue, has also gone through various provisions of the DMRC Act and it has been observed that none of the provisions of this Act grants DMRC the status of a deemed licensee. The provisions of Sections 31, 64, 67, 68, 74 etc of the DMRC Act and the Rules 65 to 80 of the Delhi Metro Railway General Rules, 2002 and the Rules 37 to 41 of the Opening of Delhi Metro Railway for public carriage of Passengers Rules, 2002, are only indicative of the operational powers and functions of the Applicant. It would be evident from the provisions, referred *ibid*, that the present application for grant of license has to be considered by the Commission necessarily under the provisions of the Electricity Act, 2003. The Commission is, therefore, of the view that the contention of Shri Ramachandran, Ld Advocate, that his application for grant of licence is to be considered under the provisions of Delhi Metro Railway (Operation & Maintenance) Act, 2002, and that he has a statutory right to be granted a license for the distribution and retail supply of electricity, is not legally sustainable. At the cost of repetition, the Commission would like to make it clear that the present application has to be considered and decided within the four corners of the Electricity Act, 2003 and the Rules & Regulations made thereunder.
42. As regards issue No. III, as to whether the area of operation of the Applicant is exclusive and whether it overlaps the area of supply of the other Distribution Licensees, the Commission have considered the arguments made by the parties including their written submissions. During the course of arguments and also in the written submissions made by Sh. Ramachandran, Learned Counsel for the Applicant, it is stated that the area of operation of the DMRC is well defined and there is no ambiguity whatsoever. The area of operation is confined to where Metro Rail operates including the station precincts and building and facilities forming part of the Station and for operation and control of metro rail system. The contention that the area of operation of DMRC is

indefinite is, therefore, without any merit. Further, it was argued that no person including the Respondent Distribution Licensees, can interfere in the area of operation of the DMRC and DMRC alone is entitled to lay down and place service lines in the DMRC area of operation. No person including the Distribution licensees can enter the area of operation of DMRC or otherwise, can legally claim access to the service line, power supply and traction arrangement without the authority of DMRC. DMRC can validly restrict the respondent Distribution licensees from entering the area of operation or in any manner handle the electric supply lines or power system or installation in the area of operation. The operation of the power system in the DMRC area of operation is exclusively by DMRC for all intent and purposes. The Area of supply of the respondent Distribution licensees do not cover the area of operation of DMRC notwithstanding that geographical boundary mentioned in the license may circumscribe the area of operation of DMRC. The Area of Supply of the Respondent Distribution licensee can be said to cover the Area of operation of DMRC if and only if the respondent Distribution licensee has the authority to enter upon the DMRC area of operation to lay down service lines and give electricity connection. As mentioned above, the Respondent Distribution Licensees cannot do so. The area of operation of DMRC, therefore, cannot be said to be covered by the area of Supply of the Distribution licensees.

43. Mr. Ramachandran, Learned Advocate for the Applicant, has further submitted that his area of operation and the area of supply of the Respondent Distribution Licensees being different and distinguishable, the sixth proviso to section 14 of the Electricity Act, 2003 will not be applicable in his case as his application is not for a multiple license for the same area. If the License applied for, is for an area where the existing Distribution Licensees have no authority to enter upon and provide service connection and supply electricity, there is no question of multiple license being asked for. The Respondent Distribution Licensees cannot claim any right to lay down lines and supply electricity within the area of operation of DMRC. The DMRC is not claiming any authority to supply electricity to any person outside the protected area of its operation. Thus, the two areas are mutually exclusive and not overlapping. Mr. Ramachandran, Ld Advocate, in support of his plea

has also referred to the provisions of Section 64 of the Delhi Metro Railway (Operation & Maintenance) Act, 2002, which provides for penalty for unlawfully entering or remaining upon Metro Railway or walking on Metro track etc.

44. Mr. Gaurab Banerji, Senior Advocate, who appeared on behalf of the NDMC, in his written submissions, has submitted that under the 6th Proviso to Section 14, Distribution Licence can be granted for distribution of electricity "within the same area". The Applicant has not appreciated the distinction between an 'area of operation' and 'area of supply', which are entirely different concepts. Area of operation may be relevant to running of the metro systems under the DMRC Act, but is not relevant qua the 'area of supply' under the Electricity Act, 2003, which is the area within which the distribution licensee is required to sell / supply electricity to its consumers.

It is further submitted by Shri Banerji, Senior Advocate, that the Applicant by raising the issue of exclusivity, has attempted to escape from the application of the mandate of the sixth proviso to Section 14 by erroneously stating that "DMRC is not asking for license for distribution of electricity as a parallel licensee or a multiple licensee in terms of the sixth proviso to Section 14. The area of operation of DMRC and the area of operation of the existing distribution licensee are different." This is not correct and betrays confusion in the mind of DMRC as to the correct position under the Electricity Act. The applicant has to necessarily fulfil the requisites of the sixth proviso to Section 14 of the Act.

45. The Ld Counsel for the Distribution Companies, countering the averments of the applicant on this issue, has pointed out that in case an Electrical Inspector needs to enter the premises of the applicant for the exercise of his power under the Electricity Act, 2003, there is nothing under the Delhi Metro Railway (Operation & Maintenance) Act, 2002, that would restrain the entry of Electrical Inspector. Therefore, the argument of the applicant would fail on this issue.
46. The Commission has considered the arguments of the parties, their written submissions as also the relevant legal provisions so as to determine this issue. The Commission has also examined Section 64 of

Delhi Metro Railway (Operation & Maintenance) Act, 2002 which has been referred to by the Ld Counsel for the Applicant to reinforce his argument of "exclusivity". Section 64 is reproduced below:

Sec 64: *Penalty for unlawfully entering or remaining upon metro railway or walking on metro track.—(1) If a person enters into or upon the metro railway without any lawful authority or having entered with lawful authority remains there lawfully and refuses to leave on being requested to do so by any metro railway official, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.*

(2) If any person walks on the metro track without any lawful authority, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

It is clear from the language of Section 64 that it prohibits trespassing in the precincts of the applicant, violation of which would invite penalty. Further, the argument that the Applicant has an exclusive area of operation and that nobody can enter in that area without the permission of the Applicant and, therefore, they have an "absolute exclusivity" in their area of operation, does not appear to be tenable in the present context. The Commission also feels that Section 64, which is so vehemently relied upon by the Applicant, does not convey an exclusive right to bar everyone to have legal access to the precincts of the Applicant. It should be understood that the Electricity Sector has to be appreciated in a wider perspective rather than adopting a microscopic view. The provisions of DMRC Act are to be harmoniously read and interpreted along with the provisions of the Electricity Act, 2003. Whereas the provisions of DMRC Act are framed to enable the DMRC to discharge its functions and carry out its operation smoothly, the Electricity Act, 2003, deals with macro level, like National Electricity Policy and Plan, provisions relating to the generation of electricity, licensing, Intra State and Inter State Transmission, Distribution of electricity and issues relating to the functions, works etc. of the licensee and safety matters, appointment of various Authorities under the

Statute. The entire Act is meant to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition, rationalisation of electricity tariff etc. Therefore, the Commission is of the view that the Applicant cannot claim 'exclusivity' by relying upon Section 64 of the Delhi Metro Railway (Operation & Maintenance) Act, 2002, as the said Section gives the Applicant an exclusivity only with respect to its operations. A plain reading of Section 64 reveals that it is not even remotely linked with any provision which supports the claim of the applicant for grant of a Distribution and Retail Supply Licence.

47. Further, the argument of the Applicant that the area of operation of the Applicant is exclusive and does not overlap the area of operation of the other distribution licensee also fails on other grounds as well. The area of the existing distribution license is specified in their license, to be precise geographical area contoured by definite boundaries, whereas the area of operation of the Applicant as proposed in their application is only a linear corridor which runs across the area of supply of the distribution licensees. It is difficult for the Commission to accept that the area of operation of the Applicant is a separate geographical area than the area of supply of the distribution licensees. In fact, the area of operation of the Applicant is a superimposition on the geographical area of supply of the three distribution licensees and New Delhi Municipal Council as well. The schematic map of the area of operation of the Applicant shows a superimposed corridor on the area of supply of the existing Licensees and it does not indicate an area separate and distinct from the area of supply of the existing Licensees. Therefore, the issue no III, is decided against the Applicant. They have to exhibit precise geographical area in their application, which should be in consonance with the Rules framed under the Electricity Act, 2003.
48. With regard to the issue no IV, as to whether the Applicant requires a Distribution License or not, the Commission has to see what is the actual nature of functions of the Applicant. The Commission has gone through the application and it is observed that the major function of the licensee is to engage in the operations of Metro Rail and to maintain stations, workshops, depots, control centres etc. The Applicant is seeking a license for various activities which include operations of the Metro Train, signalling and other

indication system, maintaining metro lighting and signalling, workshops, depots, control centre, site offices etc. The present application for a license show that the Applicant requires the license to serve its consumers who are operating kiosks, shops, food marts, and other passenger amenities and facilities in the area of metro stations. The Applicant has submitted that it is not insisting for a license for supply of electricity to the premises in the real estate to be developed by the Applicant and the staff quarters. As a result, the net consumers of the Applicant would be confined to limited shop owners and advertisements etc operating within the precincts of the Applicant. The Applicant has also given the statement regarding the total energy consumption for various operations and it is found that the amount of electricity which may be supplied to such shops and kiosks is insignificant to the total amount of energy being supplied to the Applicant at present. The operations of the Applicant would consume much more energy than what would be left with the Applicant to distribute to its shops and kiosks at various transit stations. A close scrutiny of the functions of the Applicant indicate that the Applicant would fall within the definition of consumer as defined under section 2 (15) of Electricity Act 2003, as *"Any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be."*

49. The scope of operations of the Applicant befits the definition of the consumer rather than the definition of a distribution licensee. The definition of 'distribution licensee' as provided under Section 2(17) of the Electricity Act, 2003 is that the *"Distribution licensee means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply."* The Applicant is already a consumer for the purposes stated by it and no distribution license may be required for the said purposes. Till date, the applicant has been purchasing electricity from the various Discoms for the said purposes, without any problem. In reply to a query to the Applicant as to how it shall arrange/procure power for its consumption, if granted a licence for distribution by the DERC, the DMRC took the stand that it shall procure power from the existing Licensees or seek direct allocation. If such is the case where does the need arise for DMRC to obtain a separate distribution license. Moreover, the Applicant will be using bulk of the electricity for its operations and very little is left for

the purpose of operation and maintenance of a distribution system. The Commission feels that the Applicant, per se is not elevated to a status where it can take up the responsibility of a distribution licensee. Supplying electricity to shops and kiosks is only an ancillary activity and the quantity of electricity as compared to the entire operations of the Applicant, is also insignificant. Therefore, this issue is decided against the Applicant.

50. The Learned Counsel for the Applicant Sh. M.G. Ramachandran has submitted that 6th proviso to Section 14 of the Electricity Act, 2003 and the rules made thereunder, have no application for grant of distribution license to the DMRC. In support of his arguments he has submitted that the 6th proviso to Section 14 will apply only if the application is for multiple licence in the same area. If the licence applied for is for an area where the existing distribution licensees have no authority to enter upon and provide service connection and supply electricity, there is no question of multiple licence being asked for. The respondent distribution licensees cannot claim any right to lay down lines and supply electricity within the area of operation of DMRC. DMRC is not claiming any authority to supply electricity to any person outside the protected area of operation of DMRC. Sh. Ramachandran has further submitted that without prejudice to the above, the DMRC had applied for distribution licence before the coming into force of the Electricity Act, 2003 and subsequent framing of the rules by the Central Government providing for minimum area for multiple licences. The application filed by DMRC is required to be considered with the relevant date being the date of application. The subsequent enactment and rules providing for minimum area qualification will not, therefore, have any application to the present application for licence filed by DMRC.
51. The Learned Counsel for the Discoms Sh. Amit Kapoor while contesting the above arguments submitted that the application of DMRC attracts 6th proviso to Section 14 of the Electricity Act, 2003 and has to fulfill all the requirements stipulated therein. In support of his argument the Learned Counsel has submitted that the DMRC clearly seeks grant of a distribution license as distinct from drawing supply for own consumption. The proposed area of supply and nature of supply includes significant third party supply by DMRC as is evidenced by its filings. The proposed DMRC area of supply falls within the respective areas of supply of the three Discoms of Delhi. As such, the license application must comply 6th proviso to Section 14 of the Electricity Act, 2003, read with the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Credit Worthiness and

Code of Conduct) Rules, 2005. The Learned Counsel has further submitted that by any standard the Applicant does not fulfill the requirement of 'minimum area of supply' which is atleast a revenue District.

52. The Learned Senior Counsel Sh. Gourab Banerji who appeared on behalf of NDMC, have also contested the stand of the Learned Counsel for the Applicant and submitted that the Applicant has to satisfy the conditions of 6th proviso to Section 14 and the rules made thereunder. He has further submitted that the application has to necessarily fulfill the requirements of the 6th proviso to Section 14 of the Act and explanation to Rule 3 of the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005. The minimum area for grant of license for distribution of electricity within the same area in terms of the 6th proviso to section 14 of the Act shall be the area falling within a Municipal Council or a Municipal Corporation or a revenue District. The application, has to be for a minimum area as stated in the Notification and it cannot be for an area lesser than the minimum area as per the wish of the applicant.
53. The Commission has considered the arguments of the Learned Counsels for the Applicant, the Discoms and the NDMC, as also their written submissions, in the light of the relevant legal provisions, the requirement of minimum area of supply and other conditions stipulated in 6th proviso to Section 14 of the Electricity Act, 2003 and the rules made thereunder. After having gone through the relevant legal provisions and the submissions made by the parties, the Commission is of the view that for any applicant desirous to obtain a license for distribution and retail supply of electricity under the Electricity Act, 2003, it is essential to fulfill the conditions laid down under 6th proviso to Section 14 of the Electricity Act, 2003 which reads as under :-
- “Provided also that the appropriate Commission may grant a license to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the condition that the Applicant for grant of license within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements (relating to capital adequacy, credit worthiness, or code of conduct) as may be prescribed by the Central Government, and no such applicant who complies with all the requirements for grant of license shall be refused grant of*

license on the ground that there already exists a license in the same area for the same purpose."

54. The Central Government while exercising its powers under sub-section (1) of, and clause (b) of sub-section (2) of section 176 of the Electricity Act, 2003, have made the Rules under the 6th proviso to Section 14, namely, the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005. In the explanation to these Rules, the condition of minimum area of supply for grant of a distribution license in the same area of supply, has been clearly laid down, which reads as under :-

" Explanation – For the grant of a licence for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in the article 243 (Q) of the Constitution of Indian or a revenue district shall be the minimum area of supply".

In view of the Commission's finding on issues i, ii & iii in the preceding paragraphs, the condition of minimum area of supply is mandatory and has to be necessarily complied with. There is no provision for giving exemption to any class or category of persons, from this mandatory requirement of the minimum area of supply which is atleast a revenue District. Further, the rules, aforesaid, do not qualify the grant of distribution licence on the basis of the quantum of electricity consumed but it is the geographical area where the network of the new licence would be established.

55. While dealing with the application of Delhi Metro Rail Corporation the Commission has to also see its stand taken in other similar cases. The Commission in its order dated 08.03.2007, has rejected the applications of M/s. Vishwakarma Electrical Services and others. The main ground to reject their application was that they did not fulfil the mandatory condition of 'minimum area of supply' as given in the Explanation to Rule 3 of the Distribution of Electricity License (Additional requirements for capital adequacy, credit worthiness and code of conduct) Rules, 2005, which the Commission believes is equally applicable in the present case. The Explanation to Rule 3 of the aforesaid Rules lays down a condition of minimum area of supply i.e. the area falling within a Municipal Council or a Municipal Corporation as defined in Article 243(Q) of the Constitution of India or a revenue District. The area of supply of the present Applicant does not conform to the minimum area of supply as specified by the

Explanation to Rule 3 above. The Commission, without going into the details of the technical and other viability of the Applicant or grant of 'No-objection certificate" by the Central Government under Section 15(2)(ii) of the Act, has addressed the basic question as to whether or not the Applicant fulfils the threshold condition of a minimum area of supply. The Commission laboured hard to find an answer to this issue but, under the scheme of the Electricity Act, 2003 and the rules made thereunder, the Commission has not found any provision which would grant an exemption to the Applicant from this mandatory condition. In fact, the area of operation of the Applicant is by and large a linear corridor passing through the area of supply of the distribution licensees/New Delhi Municipal Corporation. Considering the nature of operations of the Applicant it does not suggest that they would be able to cover the 'minimum area of supply' as defined under the aforesaid rules.

56. The responsibilities of a distribution licensee are vast and extensive under the Electricity Act, 2003. The Government has kept these responsibilities in mind while framing the Distribution of Electricity License Rules, 2005. The National Electricity Policy notified by the Central Government on 12 February 2005 at para 5.4.7 also enunciates the intention and what shall be the broad National Policy governing the issues of second distribution license in the same area of supply. The said provision is reproduced as under :

"One of the key provisions of the Act on competition in distribution is the concept of multiple licensees in the same area of supply through their independent distribution systems. State Governments have full flexibility in carving out distribution zones while restructuring the Government utilities. For grant of second and subsequent distribution licence within the area of incumbent distribution licensee, a revenue district, a Municipal Council for a smaller urban area or a Municipal Corporation for a larger urban area as defined in the Article 243(Q) of the Constitution of India (74th Amendment) may be considered as the minimum area. The Government of India would notify within three months, the requirements for compliance by applicant for second and subsequent distribution license as envisaged in section 14 of the Act. With a view to provide benefits of competition to all section of consumers, the second and subsequent licensee for distribution in the same area shall have obligation to supply to all consumers in accordance with provisions of section 43 of the Electricity Act, 2003. The SERCs are required to regulate the tariff

including connection charges to be recovered by a distribution licensee under the provisions of the Act. This will ensure that second distribution licensee does not resort to cherry picking by demanding unreasonable connection charges from consumers."

57. The import of the National Electricity Policy and the Distribution of Electricity License (Additional requirements for capital adequacy, credit-worthiness and code of conduct) Rules, 2005, is very apparent. The State Commissions are given the onerous responsibilities to analyse the application for second and subsequent distribution license with abundant caution so that the purpose of the Electricity Act, 2003 to provide conducive environment for achieving system improvements, efficiency gains in various parameters and sustain system viability are met. A mere consumption, howsoever large it may be, by any person/body corporate, cannot be the sole ground to entitle him for grant of a distribution license. A Distribution Licensee has a key role to play. On one hand, it has to discharge the responsibility of providing for safety, quality service and reliability of power supply to the consumer and on the other hand, to orchestrate and organise its efforts to a large arena of providing stability to the entire Grid discipline and upstream upto the generating stations. It is the responsibility of the distribution licensee to act as a lifeline between the consumer and the generating stations and constantly provide the financial support and add to the technical health of the system. The grant of distribution license is, therefore, to be seen in the overall perspective, whether or not the Applicant would be able to contribute to the reliability and stability of the industry.
58. The Commission has been vested with responsibility under the Electricity Act, 2003 for taking measures conducive to the development of electricity industry, promoting competition, protect interests of consumers and supply of electricity in all areas etc. The Commission has been vested with functions under clause (d) of sub-section (1) of section 86 to "issue license to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;" . This function has to be executed within the framework of the Act and the Rules and Regulations framed there under. In the provisions of the Distribution of Electricity License (Additional Requirements for Capital Adequacy, credit worthiness and Code of Conduct) Rules, 2005, there are unambiguous provisions as to what will be the minimum area of supply, which the Applicant has to satisfy. The Electricity Act 2003, under section

173 only engraves an exception in favour of Railways Act 1989, and not in favour of the Applicant. The Applicant will have to fulfil the conditions as laid down by the Act, Rules and Regulations like any other applicant who applies for the grant of a distribution license.

59. The Commission has carefully considered the averments made by each party on the issue of minimum area of supply. Onus to prove that the application is made for an area of supply constituting atleast a revenue district would lie on the Applicant. In a place like Delhi where the entire geographical area of the city has been divided into nine revenue Districts, the Applicant has not been able to show as to which revenue District they intend to supply the electricity as a distribution licensee. What they have been pleading is that 6th proviso of Section 14 of the Electricity Act, 2003 and the Rules made thereunder, including the requirement of minimum area of supply, are not applicable to them. The Commission is convinced that the application of DMRC, has necessarily to be considered under the Electricity Act, 2003 and 6th proviso to Section 14 and the Rules made thereunder, including the requirement of minimum area of supply, are applicable in the present case. The Applicant cannot escape from the said requirements as there is no provision of granting exemption to any class or category of persons seeking licence for distribution of electricity in the same area. The Commission is in agreement with the stand of the Distribution licensees and the NDMC that the Applicant has to show and satisfy that the application for distribution licence covers an area constituting at least a revenue District. The Applicant has not been able to show that they fulfill the requirement of at least one revenue District for their area of supply. The condition prescribed under the Rules for the minimum area of supply is incorporated to avoid a situation of cherry picking and is, therefore, based on very sound logic and principle. The Commission, therefore, is unable to accept the request of DMRC for grant of a distribution and retail supply licence on the grounds mentioned above. However, before parting with this Order, we would like to mention that the DMRC is at liberty to approach the Commission as and when they satisfy the requirements of The Electricity Act, 2003 and the rules made thereunder, as amended from time to time.
60. Ordered accordingly.

Sd/-
(K. Venugopal)
MEMBER

Sd/-
(R. Krishnamoorthy)
MEMBER

Sd/-
(Berjinder Singh)
CHAIRMAN