



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

---

No: F11(1113)/DERC/2014-15/4361

**In re: In compliance with the directions of the Hon'ble Supreme Court of India vide its judgement dated 01.12.2021 in Civil Appeal Nos. 884 of 2010 and Order dated 11.03.2022 in M.A. No. 446 of 2022 filed by DERC against the Hon'ble APTEL'S Judgement dated 06.10.2009.**

**And In the matter of**

**Delhi Electricity Regulatory Commission**

**vs.**

**BSES Rajdhani Power Ltd.**

**Coram:**

**Hon'ble Shri Justice Shabihul Hasnain 'Shastri', Chairperson**

**Hon'ble Dr. A. K. Ambasht, Member**

**ORDER**

(Date of order: 12.04.2022)

1. The Hon'ble Supreme Court of India vide its Order dated 01.12.2021 in Civil Appeal No. 884 of 2010 has directed as under:

*"...We are also of the view that the appellant has to comply with the directions issued by the Appellate Authority, namely, Appellate Tribunal for Electricity within a reasonable time. Therefore, we direct the appellant to comply with the directions contained in the impugned order within a period of three months from today, if not already complied with, and file a compliance report before this Court within two weeks thereafter."*

2. The Commission has filed a Miscellaneous Application No. 446 of 2022 in Civil Appeal No. 884 of 2010 before the Hon'ble Supreme Court of India, seeking extension of time for Compliance of Order dated 01.12.2021, by a further period of six weeks from 01.03.2022 and to file a compliance affidavit within two weeks thereafter. The matter was listed for hearing on 11.03.2022 before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India granted additional time of 4 weeks from 11.03.2022 for compliance of the Order dated 01.12.2021. The relevant extract of the Order dated March 11, 2022 is as under: -

*"Four weeks' time from today is granted finally to comply with the Order dated 1st December, 2021 passed by this Court and to file a compliance affidavit within two weeks thereafter."*

3. This Order is limited to the implementation of two pending issues in respect of Hon'ble APTEL's judgment dated 06.10.2009 in Appeal No. 36 of 2008 filed by M/s BSES Rajdhani Power Limited (BRPL) viz.

- (i) Capital Expenditure - allowance of purchase from related party after benchmarking with NDPL; and
- (ii) Allowance of Capitalization pending Electrical Inspector Clearance

4. The Hon'ble APTEL vide its judgment dated 06.10.2009 at para 56 and para 57 has stated as under:

*"56) We do feel that it was imprudent on the part of the appellant to resist the comparison to the prices paid to REL with the prices paid for similar products by NDPL. The appellant has realized the folly now. In view of the appellant resisting the comparison, mentioned above, the Commission also gave up all efforts to compare. The fact, however, remains that both the appellant as well as NDPL has incurred capital expenditures of various nature and has purchased goods and commodities in furtherance of the same. The Commission has to treat all the distribution companies at par. It is not disputed that the NDPL has purchased products of the same description although they may be different in their quality and technical specifications. Of the long list of articles which are involved in the dispute in hand some may be comparable to articles purchased by the NDPL. If for those articles the Commission has allowed same price there is no reason why the appellant should not have been allowed the same price provided, however, they are lower than the price paid to REL for those products. The Commission has to treat all the distribution licensees on the same scale and no one of them can be either victimized or favoured on account of the stands or pleas taken by them during the tariff hearings. At the same time the Commission is duty bound to make the prudent check on all the claims made by the distribution licensees.*

*57) The NDPL submitted its records before the Commission simultaneously with the appellant during the tariff hearing of the relevant year. As such the records are expected to be with the Commission. We think it is appropriate to allow the appellant an opportunity to prove, item-wise, that the price paid by it to REL was not higher than the price paid by NDPL and allowed to it by the Commission for similar products. The onus will be entirely on the appellant to prove that the products purchased by it and the one purchased by NDPL offered for comparison are of the same technical specifications and quality and also should be similarly priced on account of the other relevant factors influencing the prices namely the time of purchase, the quantity purchased, vendor rating etc. In case the price paid to REL is same as or lower than the price allowed to NDPL for a comparable commodity, the Commission shall allow the price paid to REL. The Commission shall, however, allow a lesser price if the NDPL's price is lower than the price of REL's purchase plus 5% margin. Till such exercise is completed the appellant will have to accept the decision of the Commission as reflected in the view of the Chairperson."*

5. In terms of the judgement of Hon'ble APTEL dated 06.10.2009 in Appeal No. 36 of 2008, some items are comparable and for the comparable items, price comparison has to be done as under:

- (i) In case the prices paid to REL is same or lower than the prices allowed to NDPL for a similar product, the Commission to allow the price paid to REL.
  - (ii) In case NDPL's price is lower than the price of REL purchase plus 5% profit margin, allow a lower price to BRPL.
  - (iii) Till such exercise is completed the appellant will have to accept the decision of the Commission as reflected in the view of the Chairperson.
6. BRPL vide its letter dated 14.12.2021 has submitted the claim in respect of implementation of Hon'ble Supreme Court of India's Order dated 01.12.2021 on these above issues as under:

“

- B. Capital Expenditure - allowance of purchase from related party after benchmarking with NDPL.
- C. Allowance of Capitalization pending Electrical Inspector Clearance

.....

*The rates of TPDDL's procurement are available with the Commission and BRPL's procurement is at rates less than those of TPDDL which has been brought to the notice of the Commission.*

*Even otherwise, BRPL has submitted that it has independently provided the comparison of 63% of total assets procured as gleaned from market sources in its letter dated 31.07.2013. The comparison shows that rate of REL procurement was 23% lower than the price paid by TPDDL.*

*The claim requiring this issue has to be considered along with issue of pending EIC since the disallowance pertaining to REL purchases cannot be made in isolation as the same have an impact on the total entitlements. BRPL requests the Commission to allow actual CAPEX and capitalization incurred by it.”*

7. After receipt of letter dated 14.12.2021, DERC held a meeting with BRPL on 22.12.2021 to discuss the claim of BRPL and to ascertain whether the claim made by BRPL is in accordance with the directions dated 06.10.2009 of Hon'ble APTEL in Appeal No. 36 of 2008. On the matter, during the meeting, BRPL emphasized to allow the claim as per audited accounts and no comparison was demonstrated by BRPL as per directions of Hon'ble APTEL. Accordingly, DERC vide its letter dated 29.12.2021 has directed BRPL to submit the comparison sheet with same technical specifications and quality with time of purchase and quantity purchased by them in comparison to purchase of NDPL (now TPDDL) as stipulated in Hon'ble APTEL's Judgement. The relevant extract of DERC letter dated 29.12.2021 is as under:

*“A meeting was held with BRPL & BYPL on 22.12.2021 to demonstrate the comparison of prices with TPDDL as directed in APTEL judgement which requires comparison of the items with same technical specifications and quality and also should be similarly priced on account of the other relevant factors influencing the prices namely the time of purchase, the quantity purchased, vender rating etc. However, the comparison could not be demonstrated.*

*Accordingly, BRPL and BYPL are directed to submit comparison sheet with same technical specification and quality with time of purchase and quantity purchased by them in comparison with the purchase of TPDDL (NDPL) as stipulated in Hon'ble APTEL judgment.”*

8. Further, the Commission in response to BRPL letter dated 31.12.2021 and 03.01.2022, to put a quietus to the dwelling controversy, vide its letter dated 20.01.2022, has shared the available data regarding the purchase orders of NDPL for FY 2004-05 & FY 2005-06 collected during the ongoing exercise of review of capitalization. Accordingly, BRPL was directed to submit their respective item-wise costs as well as comparison sheets with a clear comparison of the prices paid by them to REL against the prices paid by NDPL for similar products of same technical specifications and quality, with time of purchase and quantity purchased by them etc., as laid down in the APTEL's order dated 06.10.2009 in Appeal No. 36 of 2008 and as per enclosed format Annexure II & III of DERC's letter dated 06.01.2015. The said details were also to be submitted in soft copy in excel workbook within a period of one week. BRPL was also directed to submit the details of assets capitalised for purchases from REL and other than REL as per enclosed formats in line with APTEL's Order dated 06.10.2009 in Appeal No. 36 of 2008 within a period of one week. The said details were also to be submitted in soft copy in excel workbook. Further, as capitalization of assets purchased from REL was being re-examined against NDPL prices, BRPL and BYPL were also asked that they may point out specific instances of any overlap noticed by them during this exercise.
9. Since the data was not submitted by BRPL in time, DERC vide its letter dated 03.02.2022, again directed BRPL to submit the details immediately as sought in DERC letter dated 20.01.2022 as per formats provided to them, so that the Commission can implement the Orders of Hon'ble Supreme Court of India within the stipulated time frame.
10. BRPL vide its letter dated 08.02.2022 has stated as under regarding the assessment of data in purchase orders provided by the Commission vide its letter dated 20.01.2022:
- "10. Without prejudice to the above, on assessment of data and Purchase Orders provided by the Ld. Commission by its letter dated 20.01.2022, it is submitted that:*
- a) The comparison provided by BRPL on 31.07.2013, 13.11.2013 and 13.03.2015 includes major Materials which were part of BRPL's CAPEX Scheme for FY 2004-05 to FY 2006-07 which inter alia includes Meters, HT Cables, LT Cables, Conductors, Power Transformers, Feeder Pillars, Joints, RMUs, and HVDS Schemes.*
  - b) In terms of the data provided by Ld. Commission, the Purchase Orders were indexed into 180 serial numbers. Upon verification of the individual Purchase Orders, it was found that there were 200 Purchase Orders which included 417 Materials.*
  - c) Out of the said 417 Materials there are seventy-two (72) Materials purchased by NDPL which were similar to the purchases of BRPL in the relevant Financial Years.*
  - d) In terms of the data submitted by BRPL in 2013 as well as the data provided/offered by the Ld. Commission by its letter dated 20.01.2022, Ld. Commission has to allow Rs. 1004 Crores out of total purchases of Rs. 1006 Crores from REL by BRPL. Detailed analysis of the entitlement of BRPL in terms of the APTEL Judgement is annexed hereto and marked as Annexure-B. Brief summary of the comparison is tabulate herein below: -*

Sl. No	Particulars	Rs. Cr.
1	Total purchases from REL	1006
2	Materials comparable with NDPL	692
3	Material not traceable in documents provided by the Ld. Commission	314
Comparison with NDPL as per APTEL Judgement		
4	Materials where prices are lower than NDPL	678
5	Materials where prices are higher than NDPL	14
6	Prices of Sl. 5 at NDPL prices	12
7	BRPL's entitlements (3+4+6)	1004

e) Kindly note that:

- (i) Out of purchases worth Rs. 1006 Crores made by BRPL from REL, BRPL was able to compare purchases worth Rs. 692 Crores which were similar.
- (ii) Upon comparison, it was found that prices for materials worth Rs. 678 Crores purchased by BRPL is lower than NDPL rates.
- (iii) For Materials where NDPL rate is lower, BRPL does not have the date of purchases made by REL. As such, in the spirit of the directions in paragraphs nos. 57 and 58 of the APTEL Judgment, for cases where NDPL's price is lower than the price paid by BRPL, BRPL is entitled to Rs. 12 Crores (at NDPL's price). Accordingly, BRPL has considered NDPL prices wherever the prices incurred by BRPL are more than NDPL's prices for Materials worth Rs. 14 Crores. However, without prejudice to the above, BRPL has submitted the justification for some of the categories where prices were higher which is annexed hereto and marked as Annexure-C.
- (iv) Therefore, as against the total of Rs. 692 Crores, BRPL is entitled Rs. 690 Crores (Rs. 678 Crores plus Rs. 12 Crores) (i.e., 99.7% of the total amount paid by BRPL in terms of value).
- (v) As regards the remaining Material worth Rs. 314 Crores (Rs. 1006 Crores less Rs. 692 Crores), the Ld. Commission has not furnished/offered any document for comparison. In the absence of any document which establishes otherwise, and considering the overall comparison of materials, since the Ld. Commission has not discharged its onus of providing the complete documentation for comparison, an adverse inference is required to be drawn that if such documentation had been provided, it would have established that BRPL's price is lesser than that of NDPL. On that basis, Ld. Commission is requested to allow the cost of incomparable materials in its entirety."

11. However, from Annexure-1 of the comparison sheet submitted by BRPL vide its letter dated 08.02.2022, it was observed that out of total number of 1127 number of line items having value of Rs.1005.22 Crore as indicated, a clear comparison of 98 number of line items has been made with the purchases of NDPL items.
12. Further, on preliminary examination of data submitted by BRPL, it was observed that as many as around 339 unique items, no data has been indicated regarding the purchases of NDPL items.

13. The Commission, in order to comply with the directions of Hon'ble Supreme Court of India, to ensure the transparency while exercising its powers and discharging its functions as required under Section 86(3) of the Electricity Act, 2003, and to facilitate the comparison of large number of items, has sought the purchase orders for remaining items (371 unique items of BRPL & BYPL) from NDPL (now TPDDL), vide its letter dated 21.02.2022, which were required to be submitted by 23.02.2022. TPDDL vide its letter dated 02.03.2022 has submitted details of Purchase Orders or the Good Receipt Note (GRN) maintained by the store for the available items. For balance items for which Purchase Orders or the Good Receipt Note (GRN) was not maintained, TPDDL stated that TPDDL does not have purchase orders as either these items are consumables or similar rating/similar specifications items were not purchased.
14. DERC vide its letter dated 04.03.2022 has forwarded the data received from TPDDL to BRPL and to submit the comparison as per DERC letter dated 21.01.2022, within 7 days of issue of the letter. BRPL vide its letter dated 10.03.2022, 'without prejudice and under protest' has stated that BRPL is in process of reviewing the data provided by DERC vide letter dated 04.03.2022 and will submit the same at the earliest.
15. BRPL vide its letter dated 15.03.2022, 'without prejudice and under protest' has submitted the data and stated as under:

*f) In terms of the data submitted by BRPL in 2013 as well as the data provided/offered by the Ld. Commission by its letter dated 20.01.2022 and 04.03.2022, Ld. Commission has to allow Rs. 1003 Crores out of total purchases of Rs. 1006 Crores from REL by BRPL. Comparison provided by earlier our letters dated 31.07.2013, 13.11.2013 and 08.02.2022 has also been taken into account in our detailed analysis, which is annexed hereto and marked as Annexure-A. Brief summary of the comparison is tabulated herein below: -*

Sl. No	Particulars	Rs. Cr.
1	Total purchases from REL	1006
<b>Purchase Orders made available for benchmarking</b>		
2	Materials comparable with NDPL	692
3	Material not traceable in documents provided by the Ld. Commission	315
<b>Comparison with NDPL as per APTEL Judgement</b>		
4	Materials where prices are lower than NDPL	616
5	Materials where prices are higher than NDPL	76
6	Prices of Sl. 5 at NDPL prices	73
7	<b>BRPL's entitlements (3+4+6)</b>	<b>1003</b>

3. *Kindly note that:*

- a) *Out of purchases worth Rs. 1006 Crores made by BRPL from REL, BRPL was able to compare purchases worth Rs. 692 Crores since the items purchased were comparable/similar.*
- b) *Upon comparison, it was found that prices for Materials worth Rs. 616 Crores purchased by BRPL is lower than NDPL rates.*
- c) *For Materials where NDPL rate is lower, BRPL does not have the date of purchases made by REL. As such, in the spirit of the directions in paragraphs nos. 57 and 58 of the APTEL*

Judgment, for cases where NDPL's price is lower than the price paid by BRPL, BRPL is entitled to Rs.73 Crores (at NDPL's price) out of 76 Cr. incurred by BRPL. Accordingly, BRPL has considered NDPL prices wherever the prices incurred by BRPL are more than NDPL's prices for Materials worth Rs. 73 Crores. However, without prejudice to the above, BRPL has submitted the justification for some of the categories where prices were higher which is annexed hereto and marked as Annexure-B (Colly).

- d) Therefore, as against the total of Rs. 692 Cores of Materials comparable with NDPL, BRPL is entitled Rs. 689 Crores (Rs. 616 Crores plus Rs. 73 Crores).
- e) Remaining Materials worth Rs. 315 Crores (Rs. 1006 Crores less Rs. 692 Crores), Ld. Commission has not furnished/offered any document for comparison. In the absence of any document which establishes otherwise, and considering the overall comparison of materials, since the Ld. Commission has not discharged its onus of providing the complete documentation for comparison, an adverse inference is required to be drawn that if such documentation had been provided, it would have established that BRPL's price is lesser than that of NDPL. On that basis, Ld. Commission is requested to allow the cost of incomparable materials in its entirety."
- f) Therefore, out of total Materials worth Rs. 1006 Crores purchased by BRPL from REL, BRPL is entitled to Rs. 1003 Crores (i.e., 99.7% of the total amount paid by BRPL in terms of value).

**Annexure-A**

**Summary Rate Comparison-BRPL**

Amount (Rs. in Cr.)

Sl. No.	Description	Total	Annexure	Remarks
	<b>Comparable items breakup</b>			
<b>A</b>	<b>HVDS</b>	528.89	A1	Lump sum Basis
<b>B</b>	<b>EHV + Schemes + Meter</b>			
<b>B.1</b>	Rates less than NDPL	86.91	A2	Comparison made on weighted average basis on data submitted by DERC
<b>B.2</b>	Rates higher than NDPL	76.01	A3	
	<b>Grand total of comparable material</b>	691.81		
	<b>Rates of line item B.2 on NDPL rates</b>			
<b>C</b>	B.2 material at NDPL Rates	72.75	A3	Comparison made on weighted average basis on data submitted by DERC.

16. It is pertinent to state that regarding price comparison, Hon'ble APTEL in its judgement in Appeal No. 36/2008 has specifically directed as follows:

*“57... In case the price paid to REL is same as or lower than the price allowed to NDPL for a comparable commodity, the Commission shall allow the price paid to REL. **The Commission shall, however, allow a lesser price if the NDPL's price is lower than the price of REL's purchase plus 5% profit margin. Till such exercise is completed the appellant will have to accept the decision of the Commission as reflected in the view of the Chairperson.**”*

17. Accordingly, in case the prices paid to REL is same or lower than the prices allowed to NDPL for a similar product, the Commission has to allow the price paid to REL. **In case NDPL's price is lower than the price of REL purchase plus 5% profit margin, the Commission has to allow to BRPL a lower price.**
18. However, BRPL and BYPL vide their letters dtd. 8/02/2022 and 15/03/2022 have submitted before the Commission that they do not have details of REL's purchase though the same has been mandated by Hon'ble APTEL to be considered by the Commission. More specifically, BRPL at para 10 (e) (iii) of its letter dated 08.02.2022 and para 3 (c) of letter dated 15.03.2022, has already admitted that for the materials where NDPL rate is lower, BRPL does not have the data of purchases made by REL. It is also noted that BRPL has not indicated their efforts for calling of purchase price of REL being their sister concern even though Hon'ble APTEL in its judgement dated 06.10.2009 has made the directions for comparison.
19. **Accordingly, as per the directions of Hon'ble APTEL in the said judgment, the exercise to this extent is not completed till now.** Therefore, as mandated by Hon'ble APTEL, BRPL & BYPL have to accept the decision of the Commission as reflected in the view of the Chairperson in the impugned Tariff Order dtd. 23/02/2008 in Appeal No. 36/2008. The Commission will reconsider the impact of the same when details of REL purchases is provided by BRPL & BYPL.
20. Accordingly, the two pending issues as mentioned above are deliberated and decided as under:

**Issue-1: Capital Expenditure - allowance of purchase from related party after benchmarking with NDPL.**

**CATEGORY 'A': Items not comparable:**

**A1: Purchases made by BRPL without description of the Material in the Purchase Orders**

**A1.1: Comparison of HVDS for 423 number of line items for Rs. 528.82 Crore**

19. BRPL vide its letter dated 08.02.2022 has submitted the comparison of HVDS on Dwelling Unit (DU) basis. BRPL has submitted that the rate of material paid by NDPL (now TPDDL), for the procurement of equipment for HVDS system on per DU basis is Rs. 37,189 whereas the rate of material paid by BRPL is Rs.19,602 per DU.
20. As per Annexure B6 of the BRPL's Letter dated 08.02.2022, BRPL has submitted that the electrification on HVDS system has been carried out by placing an Order on REL for a value of Rs. 528.89 Crore during FY 2004-05 and 2005-06.
21. As per judgement dated 06.10.2019 in Appeal No. 36 of 2008, Hon'ble APTEL has directed that item wise comparison has to be made. The Appellant has to prove that the items purchased by NDPL are of same technical specifications and quality



and should be similarly priced on account of other relevant factors influencing the prices namely the time of purchase, the quantity purchased, vendor rating etc.

22. It is noted from the purchase orders that BRPL has placed the order on M/s REL Limited for HVDS on Dwelling Unit basis. A perusal of the said purchase orders show that there is only a general description regarding supply of materials for different colonies, without any details of the specific items covered by the purchase orders. On the other hand, the purchase order of NDPL (now TPDDL), for HVDS system specifies the different material used such as 25 kVA transformer, PCC polls, conductor etc. which are required for HVDS system. It has been noted, for example, from PO no. NDPL/ENGG/APDRP/543/04 dated 23.10.2004 that as many as 45 items have been specified in the purchase order for electrification of Lawrence Road on HVDS.
23. It is beyond comprehension that how the distribution licensee could have placed the order for electrification of area on HVDS system on dwelling units without specifying the material which is required for HVDS system. It has also been noted that based on the proposal of the distribution licensee, DERC vide its letter no. F.17 (13-D)/Engg./DERC/2004-05/5499 dated 15.09.2004, while giving 'In-principle' approval for installation of HVDS system has noted as under:

*HVDS Works*

*The original DPR for capex works had proposed HVDS works covering 140 colonies at an estimated cost of Rs. 166.05 Crore. The revised DPR contains the proposal to electrify 36 colonies with HVDS at an estimated cost of Rs. 69.24 Crore.*

*On detailed analysis, it was found that cost of other materials used is almost 200% of the total cost of transformers, poles and conductors. It was also noted that the cost of transformer and pole considered by BRPL is on the higher side. On the basis of this analysis and adopting the prevalent market rates, the scheme report for HVDS works submitted by BRPL is approved for 36 colonies at an estimated cost of Rs. 48.20 crore as per details given in annexure II.*

24. It has been observed that while according 'In-principle' approval for HVDS schemes, the Commission in Annexure-II of its letter dated 15.09.2004, has considered the estimated cost of the scheme based on the material/equipment such as 25 kVA single phase transformer, PCC poles, conductor etc. to be used for electrification. Further, DERC vide its letter dated 22.11.2004 on HVDS system had revised the estimate based on BRPL letter dated 06.10.2004 stating that rates for transformers and poles required for HVDS system as mentioned in DPR are reasonable. Annexure-II of DERC letter dated 15.09.2004 is as under:

Sl. No.	BRPL Colony Name	Equipment proposed									Total Amount proposed (Rs.)	Total Amount Approved (Rs.)		
		Transformer (25 KVA, single)			Poles (PCC)			Conductor				Amount towards Trfs, Poles & Cond.	Other items (200% of the major items)	Total Amount (Rs)
		Qty (Nos.)	Rate (Rs.)	Amt (Rs.)	Qty (Nos.)	Rate (Rs.)	Amt (Rs.)	Qty (Mtr.)	Rate (Rs./mtr)	Amount (Rs.)				
1	Anand Vihar Gurpreet Ngr-26	101	30250	3055250	162	1700	275400	27770	50	1388500	20604000	4719150	9438300	14157450
2	Dabar Enclave-115	27	30250	816750	43	1700	73100	7723	50	386150	5457000	1276000	2552000	3828000
3	Dharampur a-145	79	30250	2389750	126	1700	214200	21830	50	1091500	16116000	3695450	7390900	11086350
4	Dichaun Enclave-152	84	30250	2541000	134	1700	227800	23079	50	1153950	17059500	3922750	7845500	11768250
5	Gopal Ngr Dhansa Rd-224	69	30250	2087250	111	1700	188700	19164	50	958200	14101500	3234150	6468300	9702450

Sl. No.	BRPL Colony Name	Equipment proposed									Total Amount proposed (Rs.)	Total Amount Approved (Rs.)		
		Transformer (25 KVA, single)			Poles (PCC)			Conductor				Amount towards Trfs, Poles & Cond.	Other items (200% of the major items)	Total Amount (Rs)
		Qty (Nos.)	Rate (Rs.)	Amt (Rs.)	Qty (Nos.)	Rate (Rs.)	Amt (Rs.)	Qty (Mtr.)	Rate (Rs./mtr)	Amount (Rs.)				
6	New Roshanpur Ext-602	46	30250	1391500	73	1700	124100	12886	50	644300	938500	2159900	4319800	6479700
7	Ranaji enclave Ph-II-741	143	30250	4325750	229	1700	389300	39076	50	1953800	29146500	6668850	13337700	20006550
8	Shivram Park E1 & E2-882	124	30250	3751000	199	1700	338300	34014	50	1700700	25321500	5790000	11580000	17370000
9	Vidhya Vihar A & B block	33	30250	998250	53	1700	90100	9410	50	470500	6732000	1558850	3117700	4676550
10	Patel Garden & Patel Gdn Ext	105	30250	3176250	168	1700	285600	28783	50	1439150	21369000	4901000	9802000	14703000
11	Hastal Vihar (B & C) block	79	30250	2389750	127	1700	215900	21898	50	1094900	16167000	3700550	7401100	11101650
12	Jain Ciny	105	30250	3176250	168	1700	285600	28783	50	1439150	21369000	4901000	9802000	14703000
13	Kailash Puri Extn	107	30250	3236750	171	1700	290700	29356	50	1467800	21802500	4995250	9990500	14985750
14	Indira Park Extn Pt-I Uttam Ngr	15	30250	453750	23	1700	39100	4415	50	220750	2958000	713600	1427200	2140800
15	Bharat Vihar Block-A	67	30250	2026750	106	1700	180200	18455	50	922750	13566000	3129700	6259400	9389100
16	Bharat Vihar Block-B	80	30250	2420000	127	1700	215900	21999	50	1099950	16243500	3735850	7471700	11207550
17	Nand Vihar	35	30250	1058750	56	1700	95200	10018	50	500900	7191000	1654850	3309700	4964550
18	Nishant Park	23	30250	695750	36	1700	61200	6575	50	328750	4590000	1085700	2171400	3257100
19	Shivpuri New Deendanpur	100	30250	3025000		1700	0		50	0				0
20	Subhash Park Extn	56	30250	1694000	90	1700	153000	15721	50	786050	11500500	2633050	5266100	7899150
21	Uttam Ngr LOP (Z block)	19	30250	574750	31	1700	52700	5731	50	286550	3952500	914000	1828000	2742000
22	New Roshan Pura Ext. block-608	25	30250	756250	40	1700	68000	7216	50	360800	5074500	1185050	2370100	3555150
23	Vandana Vihar-971	39	30250	1179750	62	1700	105400	10929	50	546450	7879500	1831600	3663200	5494800
24	Rajdhani Park P&T-711	29	30250	877250	46	1700	78200	8263	50	413150	5865000	1368600	2737200	4105800
25	Akash Vihar-09	27	30250	816750	44	1700	74800	7858	50	392900	5559000	1284450	2568900	3853350
26	Prem Ngr Phase-I, II, III	37	30250	1119250	59	1700	100300	10456	50	522800	7522500	1742350	3484700	5227050
27	Prem Ngr Phase A,B,D,E,F block	191	30250	5777750	306	1700	520200	52138	50	2606900	39015000	8904850	17809700	26714550
28	Dharampur a Ist	50	30250	1512500	80	1700	136000	14000	50	700000	10200000	234850	4697000	4931850
29	Sangam Vihar G Block	255	30250	7713750	408	1700	693600	69418	50	3470900	52071000	11878250	23756500	35634750
30	Ambedkar Colony	116	30250	3509000	185	1700	314500	31685	50	1584250	23582000	5407750	10815500	16223250
31	Shakti Vihar	104	30250	3146000	168	1700	282200	28513	50	1425650	21165000	4853850	9707700	14561550
32	Om Nagar	227	30250	6866750	362	1700	615400	61655	50	3082750	46206000	10564900	21129800	31694700
33	Vishwakarma Colony	154	30250	4658500	246	1700	418200	41979	50	2098950	31339500	7175650	14351300	21526950
34	Paryavaran	146	30250	4416500	233	1700	396100	39819	50	1990950	29707500	6803550	13607100	20410650
35	Zakir Ngr	312	30250	9438000	499	1700	848300	84706	50	4235300	63622500	14521600	29043200	43564800
36	Lakhpat Part-II	231	30250	6987750	370	1700	629000	62938	50	3146900	47175000	10763650	21527300	32290950
37	Total	3440		104060000	5498		9346600	945624		47281200	692447500	160687800	321376600	482063400

25. It has been noted that the details of material/ equipment were submitted by BRPL while seeking 'In-principle' approval from the Commission for HVDS system. However, while placing orders, no details of materials have been mentioned even though the dates of purchase order are after the 'In-principle' approval of the Commission.

26. BRPL has made the comparison as follows:

- a. It has placed reliance on the prices of TPDDL for each item / material as per TPDDL's purchase orders;
  - b. It has then applied such prices to the estimated quantity approved 'in-principle' by the Commission (for BRPL) vide letter dated 15.09.2004.
27. However, the approach now adopted by BRPL is not in keeping with its own purchase orders, which are on a dwelling unit basis and not based on the actual quantity of material/equipment used for installation of HVDS system. It is to be noted that in Annexure II of DERC's letter dated 15.09.2004, the number of dwelling units has not been mentioned. Further, BRPL in its submission has stated that comparison has been made on lumpsum basis.
28. By any stretch of imagination, the comparison made by BRPL is not in line with the directions given by Hon'ble APTEL in Appeal No. 36/2008. Accordingly, the claim of BRPL that the prices paid for HVDS system are lower than TPDDL system cannot be accepted.

**A1.2: Supply of Material for 33/11 kV or 66/11kV for 5 number of line items for Rs. 43.67 Crore**

29. BRPL in its submissions has claimed supply of material for 3 number of 33/11kV Grid substations: at a price of Rs. 12.23 Crore for A-4 Paschim Vihar, at a price of Rs.7.20 Crore for Balaji Estate and at a price of Rs. 8.75 Crore for R.K. Puram. Further, in respect of 2 number of 66/11kV Grid substations at C-DOT and Jasola, BRPL has claimed a price of Rs. 9.93 Crore and Rs. 5.55 Crore respectively. From the purchase order No. DOI23003953 dated 20.01.2005, it is noticed BRPL has not indicated any description of the material and the quantity for supply of material for these Grids. On the other hand, from the purchase order no. NDPL/Engg./1574/03 dated 16.02.2005 of NDPL for 66/11kV Grid substation at Rohini Sector-22, it is observed that details of the description of 70 number of material for Grid substation has been mentioned.
30. It has been noted from the purchase order of BRPL that there is large price variation in the cost of supply of material at one Grid substation to another Grid substation. The major material used in the Grid substation is Power Transformer with its capacity and also its quantity i.e. whether Grid substation is of 2 Power Transformers or 3 Power Transformers. Typically, the Power Transformers of 16MVA, 20MVA or 25MVA capacity are used. Thus, BRPL has computed the variation in prices for supply of material for grid substations without specifying the description of material with quantity, in the relevant purchase orders.
31. BRPL at point no. 8 of Annexure-1 of its Letter dated 08.02.2022 has stated that *BRPL has not received any data for benchmarking corresponding to these grid substations from the Commission. In the absence of documents which establishes otherwise, and considering the overall comparison of materials, since the Commission has not discharged its onus of providing the complete documentation for comparison, an adverse inference is required to be drawn that if such documentation had been provided, it would have established that BRPL's price is lesser than that of NDPL. On that basis, the Commission is requested to allow the cost of incomparable materials in its entirety.* The Commission vide its letter dated 04.03.2022 has provided the purchase order of NDPL for establishment of Grid substation which contains the description of material with quantity. However, BRPL in the revised submission dated 15.03.2022 has reiterated that similar Purchase Order has not been provided by the Commission.

32. From the above, it may be observed that from the documents furnished by BRPL regarding the orders placed for establishment of Grid substations, which does not contain any description of material, such items cannot be compared as per the directions given by Hon'ble APTEL in Appeal no. 36/2008.

**A2: Items not comparable with the purchases of NDPL due to different technical specifications**

33. It is noted that 176 no. of line items for Rs. 94.12 Cr. are having different technical specifications. Therefore, these items have been found to be not comparable as per the directions given by Hon'ble APTEL in Appeal no. 36/2008. The comparison sheet of items is annexed at Annexure-I of this Order.

**A3: Items either consumables or not Purchased by NDPL**

34. From the submission of BRPL dated 15.03.2022, it is observed that for 924 line items for Rs. 982.79 Cr. are not clearly matched with the data of NDPL (TPDDL). It is observed that out of 924 line items worth Rs. 982.79 Cr., the purchase orders for 428 line items worth Rs. 572.49 Cr. do not contain any description of material/equipment, as stated at category A1.1 and A1.2 above.

35. TPDDL, apart from submission of purchase orders, has also forwarded the details of Goods Receipt Note (GRN) for other 102 items. BRPL has not made any comparison with the data of GRN provided by NDPL (TPDDL). In order to compare the maximum number of equipment/items, the Commission has considered the data of GRN provided by TPDDL, in cases where purchase orders were not available. From the data of GRN, it was established that 70 line items are comparable.

36. From the above, it has been noted that for the remaining 140 items [(1127-428) (A1.1+ A1.2) - 176(A2) - 383 (items comparable B.1 +B.2)], (being 88 unique items) the Commission vide its letter dated 21.02.2022 has sought the purchase orders from TPDDL which were part of 371 unique items. From the above, it has been concluded that these 140 line items (88 no. of unique items) for Rs. 56.49 Crore have either been consumables or the items have not been purchased by NDPL.

37. In summary, it has been found that 744 line items worth Rs. 723.11 Crore (under category A1, A2 & A3) are not comparable. From the conjoint reading of para 52, 53, 56 and 57 of Hon'ble APTEL's Judgement dated 06.10.2009 following is discernible:

- (i) Of the long list of articles, some articles are comparable with the purchases of NDPL;
- (ii) For these comparable items, if the price paid to REL is same or lower than price allowed to NDPL, the price paid to REL is to be allowed. The Commission to allow lesser price, if the NDPL price is lower than the price of REL purchases plus 5% profit margin;
- (iii) For the items which are not comparable, the price of REL purchase plus 5% margin to be allowed as per para 52 & 53 of Hon'ble APTEL's judgement dated 06.10.2009.

38. Since BRPL has not furnished REL purchase price (for items covered by para 37(iii) above), therefore, the approach contained in Annexure V- 'Disallowance of capital expenditure and asset capitalization' of the Tariff Order dated 23.02.2008 is to be followed. Accordingly, the Commission has considered a disallowance of 37.5%  $((535.5 \times 100) / 1428)\%$  on the prices paid to REL for the items which are not comparable with NDPL items. The allowable price for these items thus works out to be as under:

Sl. No.	Particulars	Amount (Rs. Crore)	Amount to be disallowed (Rs. Crore)	Net amount to be allowed (Rs. Crore)
(i)	HVDS	528.82	198.31	330.51
(ii)	Grid substations	43.67	16.38	27.29
(iii)	Items either consumables or not Purchased by NDPL	56.49	21.18	35.31
(iv)	Items not comparable with the purchases of NDPL due to different technical specifications	94.13	35.30	58.83
	Total	723.11	271.17	451.94

#### **CATEGORY 'B': Items comparable with the purchases of NDPL**

39. It has been observed from the Annexure-A (which is a summary of rate comparison) of the Letter dated 15.03.2022 that BRPL has made the comparison for Rs. 691.81 Crores. We fail to understand why BRPL has not submitted this comparison in the detailed sheet submitted by them in excel form. The main reason appears to be that HVDS worth Rs. 528.82 Crore is not comparable for the reasons as stated above under HVDS head. If we do not consider HVDS amount from the comparison amount of Rs. 691.81 Crores submitted by BRPL, the comparison submitted by BRPL in Annexure-A of letter dated 15.03.2022 works out to be only Rs.162.92 Crore against which comparison with NDPL price works out to be Rs.159.66 Crore.
40. Further, on detailed scrutiny, it is observed that for 117 line items worth Rs. 216.80 Crore, BRPL has not made comparison on the ground of mismatch in technical specification. However, it was observed that 87 line items worth Rs.195.96 Crore are comparable with NDPL equipment. Further, it was observed that BRPL has not made any comparison with the prices submitted by TPDDL in their GRN. It was noted that 70 items for which GRN has been provided by TPDDL are comparable with the items purchased by BRPL. In addition to above, 24 number of line item for Rs.10.33 Crore were also identified in Purchase Orders. One item for Rs.0.024 Crore compared by BRPL has not been considered as it was having different technical specification. Therefore, in total 383 no. of line items for Rs. 282.13 Cr. are comparable.

#### **B.1: Where prices paid to REL are lower than NDPL prices**

41. 191 no. of line items for Rs. 180.05 Cr. are having prices lower than NDPL prices. The comparison sheet of items is annexed as Annexure-II of the Order.

#### **B.2: Where prices paid to REL are greater than NDPL prices**

42. 192 no. of line items for Rs.102.07 Cr. are having prices greater than NDPL prices. Accordingly, as stipulated above, since REL purchase price details has not been submitted by BRPL & BYPL, therefore to this extent, the Commission has kept the same view as stipulated in Tariff Order dtd. 23/02/2008 in line the judgment of Hon'ble APTEL in 36/2008. The comparison sheet of items is annexed as Annexure-III of the Order.
43. The summary of above comparison works out to be as under:

Sl. No.	Description	Line Items	Amount as	Amount
		(Nos.)	per BRPL (Rs. Cr.)	approved (Rs. Cr.)
<b>A : Items not comparable</b>				
<b>A1: Purchases made by BRPL without description of the Material in the Purchase Orders</b>				

Sl. No.	Description	Line	Amount as	Amount
		Items	per BRPL	approved
		(Nos.)	(Rs. Cr.)	(Rs. Cr.)
1	A1.1 HVDS	423	528.82	330.51
2	A1.2 Supply of material for Grid substation	5	43.67	27.29
3	A2 Items not comparable with the purchases of NDPL due to different technical specifications	176	94.13	58.83
4	A3: Items either consumables or not Purchased by NDPL	140	56.49	35.31
<b>B: Items comparable with NDPL</b>				
<b>B1: Items for which price paid to REL is less than NDPL</b>				
5	Items for which price paid to REL is less than NDPL as per PO	159	133.80	133.80
6	Items for which price paid to REL is less than NDPL as per GRN	32	46.25	46.25
<b>B2: Items for which price paid to REL is more than NDPL</b>				
7	Items for which price paid to REL is more than NDPL as per PO	154	94.9	59.31*
8	Items for which price paid to REL is more than NDPL as per GRN	38	7.17	4.48*
	<b>Total</b>	<b>1127</b>	<b>1005.23</b>	<b>695.78</b>

\* As per Tariff Order dtd. 23/02/2008, since the details of REL purchase as mandated by Hon'ble APTEL has yet not been submitted by BRPL & BYPL

44. BRPL in its Letter dated 08.02.2022 in Annexure B.18 has submitted that these items purchased from REL were capitalized in different years. However, it is observed that the quantity indicated as purchased is not matching with the quantity actually capitalized till FY 2012-13. The amount of purchases made from REL is more than the amount indicated as capitalized. The Commission failed to understand that since this format was provided to BRPL in 2015, why the purchases made in FY 2004-05 & FY 2005-06 were not matched. Apart from the submissions made by BRPL on 08.02.2022, BRPL also had opportunities to reconcile the quantity capitalized with the quantity purchased and could have updated the Annexure in their submissions made vide letter dated 15.03.2022. As a normal practice, the quantities purchased for creation of assets are required to be capitalized. BRPL has submitted the quantities capitalized upto FY 2012-13. The only issue that appears here is regarding reconciliation of quantities procured and quantities capitalized by BRPL. Accordingly, the Commission has pro-rated the balance amount (purchased - capitalized) in the year of capitalization as per the details provided by BRPL and therefore, the amount of capitalized has been matched with the amount of purchases. Based on the above comparison, the amount of capitalization which is required to be disallowed in different years works out to be as follows:

( Rs. Crore)

	Material Capitalisation (In Cr.)									Total
	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	
Amount claimed by BRPL based on quantity capitalised	245.18	455.53	112.23	31.46	53.07	10.49	1.77	0.14	0.17	<b>910.02</b>
Balance Capitalisation	25.65	47.66	11.74	3.29	5.55	1.10	0.18	0.02	0.02	<b>95.21</b>
<b>Total</b>	<b>270.83</b>	<b>503.18</b>	<b>123.97</b>	<b>34.75</b>	<b>58.62</b>	<b>11.58</b>	<b>1.95</b>	<b>0.16</b>	<b>0.19</b>	<b>1005.23</b>
Amount approved by DERC based on quantity capitalised	172.44	311.23	77.75	26.82	33.30	6.82	1.25	0.13	0.12	<b>629.87</b>
Balance Capitalisation	18.04	32.57	8.14	2.81	3.49	0.71	0.13	0.01	0.01	<b>65.91</b>
<b>Total</b>	<b>190.48</b>	<b>343.80</b>	<b>85.88</b>	<b>29.63</b>	<b>36.79</b>	<b>7.53</b>	<b>1.38</b>	<b>0.15</b>	<b>0.14</b>	<b>695.78</b>
<b>Difference</b>	<b>80.35</b>	<b>159.39</b>	<b>38.08</b>	<b>5.12</b>	<b>21.83</b>	<b>4.05</b>	<b>0.58</b>	<b>0.01</b>	<b>0.05</b>	<b>309.45</b>

#### **Issue-2: Allowance of Capitalization pending Electrical Inspector Clearance**

45. The Commission sought details from BRPL regarding the pending applications for capitalization which were held up for want of an Electrical Inspector Certificate, and which are to be allowed w.e.f. 16th day of filing of the application after payment of necessary fees. From the data submitted by BRPL, it was observed that applications for Electrical Inspector clearance were made after the capitalization made in their books of accounts. Therefore, in compliance with the Hon'ble APTEL Judgement dated 06.10.2009 in Appeal No. 36 of 2008, the capitalization of schemes has been considered from 16th day of filing of applications with the Electrical Inspector. It must be noted that where the date of application was not legible / available, the Commission has allowed capitalization from the actual date of Electrical Inspector certificate.
46. From the data submitted by BRPL, it has been observed that for schemes worth Rs. 5.72 Crore requiring Electrical Inspector clearance, BRPL has not applied for Electrical Inspector clearance but has nonetheless capitalized this amount.
47. Further, for schemes worth Rs.22.44 Crore, the dates for application before Electrical Inspector and dates for approval by Electrical Inspector is not legible from the documents furnished. Therefore, the Commission has not considered these amounts for capitalization at this stage. It is very difficult to segregate the elements of 1127 line items from the amount of Rs. 28.16 Crore (Rs. 5.72 Crore + Rs. 22.44 Crore). Since the amount has been disallowed on account of there being issues in purchases, therefore, in order to avoid an anomalous situation of double deduction emerging, the Commission has considered total average deduction and allowed proportionate value of disallowance on the purchases.
48. The capitalization based on audited accounts of BRPL by considering the Related Party Transactions and Electrical Inspector Clearance data, in line with Hon'ble APTEL Judgement dated 06.10.2009 in Appeal No. 36 of 2008 works out to be as under:

( Rs. Crore)

S. No	Particulars	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
1	Amount capitalized as per books of accounts	266	779	316	261	459	299	357	156	313
2	Assets requiring EI certificate and capitalized in FY	192.01	615.88	209.70	114.66	171.67	69.49	157.08	43.69	64.09
3	Consideration of capitalization from 16 <sup>th</sup> day of filing of applications with EI*	92.86	271.93	400.93	58.03	417.59	69.33	141.1	64.19	48.15
4	Capitalization based on submission of EI application (1-2+3)	166.85	435.05	507.23	204.37	704.91	298.84	341.02	176.50	297.06
5	Disallowances on related party transaction	80.35	159.39	38.08	5.12	21.83	4.05	0.58	0.01	0.05
6.	Allowance of double deduction on REL purchase	1.04	5.57	0.01	0.05	0.05	0.00	0.00	0.00	0.00
7	Net capitalization (4-5+6)	87.54	281.24	469.16	199.31	683.13	294.79	340.44	176.49	297.01

\*Note: Further capitalization from 16<sup>th</sup> day of filing of applications with EI beyond FY 2012-13 has been as under;

FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
31.41	3.51	0.11	5.54	1.20	0.01	4.16	0.07

49. It is to be mentioned that the Commission had already allowed provisional capitalization to BRPL in respective Tariff Orders. Accordingly, the financial impact of the above findings will be appropriately provided in the ensuing Tariff Order. Needless to mention that the impact, if any, in the ongoing capex review exercise for issues other than the two issues dealt above, will be considered separately.

Sd/-  
(Dr. A. K. Ambasht)  
Member

Sd/-  
(Justice Shabihul Hasnain 'Shastri')  
Chairperson