



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

No: F11(I619)/DERC/2018-19

In re: In compliance of the directions of Hon'ble Supreme Court of India in its Order dated 15.12.2022 in MA Nos. 1261 & 1262 of 2022 and 918 & 919 of 2022 in Civil Appeal Nos. 884 and 980 of 2010

In the matter of
BSES Yamuna Power Ltd.

Coram:
Hon'ble Dr. A. K. Ambasht, Member

ORDER

(Date of order: 14.05.2023)

- I. The Hon'ble Supreme Court of India vide its Order dated 15.12.2022 in MA Nos.1261 and 1262 of 2022 in Civil Appeal Nos. 884 and 980 of 2010 (uploaded on the website of the Hon'ble Supreme Court on 03.01.2023) in respect of Issue No.2 (Capital Expenditure and Capitalization Charges) had directed as under:

"...30. Learned counsel for the non-applicants responds by stating that his clients are willing to prepare a statement reflecting the item-wise breakup of the materials supplied by NDPL and indicate the components of the dwelling unit purchased by the non-applicants, as a whole, for ease of comparison. Besides that, the non-applicants shall also furnish the details of the colony-wise dwelling units that have been purchased by it for the DERC to undertake the exercise of comparison, as has been directed by APTEL.

31. The aforesaid exercise shall be completed by the non-applicants within four weeks. The DERC shall pass an order on the above aspect within four weeks therefrom after affording an opportunity of hearing to the non-applicants.

32. In view of the above order, the summary of comparisons made in Column A of the table at paragraph 43 of the order dated 12.04.2022, shall be kept in abeyance."

II. This Order is limited to the implementation of two issues in respect of Hon'ble APTEL's judgment dated 30.10.2009 in Appeal No. 37 of 2008 filed by BSES Yamuna Power Limited (BYPL) viz.

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

III. The Hon'ble Supreme Court, in its order dated 15.12.2022, directed the DERC to reconsider Column A and Column B2 of the summary table provided in the DERC's Compliance Order dated 12.04.2022, as shown below:

Table: 01

Table: 01				
Sl. No.	Description			
		Line Items (Nos.)	Amount as per BYPL (Rs. Cr.)	Amount approved (Rs. Cr.)
A : Items not comparable				
A1: Purchases made by BYPL without description of the Material in the Purchase Orders				
1	A1.1 HVDS	160	168.7	105.44
2	A1.2 Supply of material for Grid substation	6	48.78	30.49
3	A2 Items not comparable with the purchases of NDPL due to different technical specifications	97	43.22	27.01
4	A3: Items either consumables or not Purchased by NDPL	68	26.96	16.85
B: Items comparable with NDPL				
B1:Items for which price paid to REL is less than NDPL				

Sl. No.	Description			
		Line Items (Nos.)	Amount as per BYPL (Rs. Cr.)	Amount approved (Rs. Cr.)
5	Items for which price paid to REL is less than NDPL as per PO	101	77.63	77.63
6	Items for which price paid to REL is less than NDPL as per GRN	23	65.28	65.28
B2: Items for which price paid to REL is more than NDPL				
7	Items for which price paid to REL is more than NDPL as per PO	90	28.96	18.1*
8	Items for which price paid to REL is more than NDPL as per GRN	32	14.21	8.88*
	Total	577	473.73	349.68

**"As per Tariff Order dated 23.02.2008, since the details of REL Purchase as mandated by Hon'ble APTEL has not yet been submitted by BRPL & BYPL".*

- IV. BYPL submitted data on 31.01.2023 & 17.02.2023 for consideration of the Commission. The Commission provided opportunity to the BRPL & BYPL on 27.03.2023 as per direction of the Hon'ble Supreme Court and explained its observation on the data submitted by the BRPL/BYPL and on the request of BRPL/BYPL shared the details of items not comparable with respect to Sub-columns (i) 'A2: Items not comparable with the purchases of North Delhi Power Ltd. ("NDPL") due to different technical specifications'; and (ii) 'A3: Items either consumables or not purchased by NDPL; on 31.03.2023 for BYPL/BRPL to provide comments by 17.04.2023. Further, Commission also shared details of non-comparable items of Sub-column 'A1.2 Supply of material for Grid Substation on 03.04.2023.
- V. In compliance with the Hon'ble Supreme Court's Order dated 15.12.2022, each category of items has been re-examined and details submitted as under:

1) A1.1 HVDS

- (i) For HVDS comparison, the relevant para of Hon'ble Supreme Court's Order dated 15.12.2022 is given below:

*"30. Learned counsel for the non-applicants responds by stating **that his clients are willing to prepare a statement reflecting the item-wise breakup of the materials supplied by NDPL and indicate the components of the dwelling unit purchased by the non-applicants, as a whole, for ease of comparison.** Besides that, the non-applicants shall also furnish the details of the colony-wise dwelling units that have been purchased by it for the DERC to undertake the exercise of comparison, as has been directed by APTEL."* [emphasis supplied]

- (ii) In compliance to the above, BRPL/BYPL was supposed to give component wise BOQ of their dwelling unit contracts, placed by them, as a whole unit basis and submit comparison with NDPL's item-wise breakup of material purchased by them to enable DERC to undertake comparison exercise in respect of rates paid by BRPL/BYPL to its related party M/s. REL.
- (iii) BYPL on 30.01.2023 has submitted an affidavit in respect of comparison of its cost with that of NDPL. The Commission analyzed the data submitted by BRPL/BYPL and the Commission had a meeting with BRPL/BYPL officials on 13.02.2023 and requested for additional data vide letter dated 14.02.2023. BYPL submitted set of documents through hard/soft copy vide its letter dated 17.02.2023.
- (iv) After detailed analysis of the data submitted by the BYPL in the aforementioned letters/affidavit, it is observed that the submission does not contain the details as required to be submitted by BYPL in terms of paragraph 30 of the Hon'ble Supreme Court's Order dated 15.12.2022 and the comparison as submitted are not in line with the directions of the Hon'ble Supreme Court.

- (v) BYPL submitted the number of Dwelling Units (DU), which is 87062 with 160 line items, amounting to Rs. 168.7 Crore vide its letter dated 08.02.2022, during the earlier compliance exercise as per the Hon'ble Supreme Court judgment dated 01.12.2021. However, BYPL has now submitted the number of dwelling units as 90589 with 120 colonies vide its letter dated 31.01.2023. This different number in BYPL's submission gives rise to further doubts on the integrity of their data. However, Commission has considered the submission made by BYPL on HVDS for analysis.
- (vi) While BYPL did not submit the item wise breakup of the materials of its Purchase Order for HVDS for the comparison, BYPL instead resorted to **extrapolation of the cost**, based on weighted average cost of NDPL purchase orders (including unverified POs) for the period FY 2003-04 to 2008-09), vis-a-vis the lump sum cost of dwelling units provided in their purchase orders.
- (vii) For this extrapolation they have taken the purchase cost of 5 major items (mainly 25 KVA Single Phase Transformer, Poles & Cables) from the rates paid by them in a few unrelated purchase orders (not related to their HVDS orders) and compared it with the weighted average cost of NDPL purchase orders (ranging from the FY 2003-04 to FY 2008-09) and extrapolated the "balance items and services costs", as a difference of per Dwelling Unit Purchase Order Cost. In this context, it is worthwhile to mention that the Civil Appeal filed before the Hon'ble Supreme Court is for purchases for the period of FY 2004-05 and FY 2005-06 alone.
- (viii) As stated by BYPL/BRPL, the ratio of Cost of 5 major items, to the cost of "Other items" is as under:
- a. BRPL: 36.6%: **63.4 %**
 - b. BYPL: 29.5% : **70.5 %**
- (ix) Further, in order to arrive at the NDPL cost of HVDS projects, BYPL/BRPL have multiplied this calculated ratio of **"other items and**

service other than above five items” with weighted average price of NDPL ordered quantities of major 5 items.

- (x) The ratio of cost of 5 major items, to the “Other items” of BYPL is different for BRPL as well, which shows that this methodology cannot be applied to arrive at a “fixed ratio” for comparison with that of NDPL prices.
- (xi) It is further observed that while putting the rates of the above 5 major items in the comparison and as per the data submitted by BYPL on 31.01.2023, the cost of NDPL (including unverified POs) has been wrongly calculated as 63.72 Crore whereas the cost of these items as per NDPL Purchase price (including unverified POs) for the financial year 2004-05 works out to be Rs 45.91 Cr. based on the data submitted by BYPL, the cost of Dwelling Unit (“**DU**”) works out as follows:

BYPL

		Cost of BYPL per Dwelling Unit basis as per their PO	Cost of NDPL as per BYPL submission on 31.01.2023	Cost of NDPL as per Commission Analysis based on FY 2004-05 data (submitted by BYPL)
Cost per DU of Major Items at NDPL prices	Rs. / DU	5,691.17	7,033.78	5,067.55
Total Cost of Other Items in the same proportion	Rs. / DU	13,626.83	16,841.54	12,133.65
Total Cost per DU at NDPL Prices	Rs. / DU	19,318.00	23,875.31	17,201.20

- (xii) The cost submitted by BYPL is Rs. 19,318 for one DU and as per the analysis done by the Commission, it is Rs. 17,201.20 for one DU after comparison with NDPL’s rates (including unverified POs) submitted by BYPL for FY 2004-05 considering the same methodology adopted by BYPL in their submission. Further BYPL

has submitted no detail of the other 70.5% items which have been used to commission, one DU as per BYPL contract, as a whole.

- (xiii) Similarly, for BRPL the cost of DU is based on the comparison submitted with NDPL purchase price (including unverified POs) considering the same methodology adopted and same data submitted by BRPL in their submission as follows:

BRPL

		Cost of BRPL per Dwelling Unit basis as per their PO	Cost of NDPL as per BRPL submission on 31.01.2023	Cost of NDPL as per DERC Analysis based on FY 2004-05 data
Cost per DU of Major Items at NDPL prices	Rs. / DU	7,180.74	8,770.54	6,322.01
Total Cost of Other Items in the same proportion	Rs. / DU	12,421.26	15,171.31	10,935.84
Total Cost per DU at NDPL Prices	Rs. / DU	19,602.00	23,941.86	17,257.85

- (xiv) Detailed comparison of the Cost of major items submitted by BYPL vide its letter dated 31.01.2023 & 17.02.2023 and the Commission's analysis on the same data for FY 2004-05 considering the same methodology adopted by BYPL in their submission is below:

Comparison - BYPL vs. NDPL

Sl. No.	Major Asset Particulars of BYPL	UoM	Quantity	UoM	Price paid to REL	NDPL Rates as per BYPL submission on 31.01.2023 (from 2004-05 to FY 2007-08)	Commission Analysis –based on the Rate NDPL for FY 2004-05 submitted by BYPL
1	Transformers - 25 KVA Single Phase	No.	9736	Rs. / Transformer	38,657	49,709	33148.24
2	Poles						
a	11 meters	No.	12728	Rs. / Pole	3,386	3,561	3315.42
b	9 meters	No.	3102	Rs. / Pole	2,018	1,908	1851.37
3	Cables						
a	1X95+1X35 mm ²	Meter	329155	Rs. / Mtr	166	198	167.87
b	3X150+1X150 mm ²	Meter	60248	Rs. / Mtr	584	611	550.00

Number of DU	No.	90589
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Determination of total cost for complete DUs				
Cost of Major Items for Electrification of the above DU	UoM	At Price paid to REL	At NDPL Amount submitted by BYPL	Commission analysis – as per NDPL cost for FY 2004-05 submitted by BYPL
Transformers	Rs. Cr.	37.64	48.40	32.27
Poles	Rs. Cr.	4.94	5.12	4.79
Cables	Rs. Cr.	8.98	10.20	8.84
Total Cost	Rs. Cr.	51.56	63.72	45.91

(xv) It is the Commission's view that the "extrapolation" methodology adopted by BYPL is obviously faulty as they are depending upon the cost of 5 items and have extrapolated the same comparison with the remaining items (Other items) which are in the ratio as for the same NDPL cost of "major 5 items", the comparative cost of complete tender cost is different in both BRPL and BYPL.

(xvi) Further, on scrutiny of the documents submitted for HVDS by BYPL, following observation was made: -

- a. The Commission had asked BYPL to submit copies of their complete Purchase Order, whereas BYPL submitted only a "few pages of contract containing only the price component" of various "Dwelling Unit Contracts." In the absence of the Bill of Quantity, the material used in each Dwelling Units cannot be ascertained and as such cannot be compared with the cost, had the calculations done on item-wise cost, on the basis of material purchased by NDPL.
- b. It is noted from the Purchase Order of BYPL, that BYPL had the detailed complete BOQ for each dwelling Unit PO, in their possession, as a result of the conditions of payment included in their POs..

5.0 Terms of Payment:

5.1 - 10% - Advance (Interest Free) along with the purchase order.

5.2 - 1% - Against Submission of Drawings and Documents duly approved project Incharge.

5.3 - 79% on completion of supplies of equipment/material on each Distribution Transformer- wise. You shall submit distribution transformer wise BOQ duly certified by our Engineer In charge.

5.4 -10% on successful completion of supplies for each Distribution Transformer against submission of performance bank guarantee valid for 12 months.

Special attention needs to be paid to Clause 5.3 which states:

5.3 - 79% on completion of supplies of equipment/material on each Distribution Transformer-wise. You shall submit distribution transformer wise BOQ duly certified by our Engineer In charge.

- c. It is evident from clause 5.3 of the above cited extract of the Purchase Order that BOQs for HVDS dwelling units were available with BYPL and the reason for its non-submission has not been explained by them. It is further observed that as per the terms of payment of Purchase Order, duly certified BOQs for each of the HVDS dwelling unit Purchase Orders, in question, were compiled by the contractors and submitted to BYPL to obtain the release of "79%" payment, in line with the terms of payment of the Purchase Orders. BYPL has not provided the BOQ and calculation of individual item prices based on actual BOQ executed and comparing the same with P.O. price of NDPL service contract.
- d. BYPL/BRPL did not submit the PO-wise details/BOQ regarding their Purchase Orders for HVDS (which was required in terms of paragraph 30 of Hon'ble Supreme Court's order dated 15.12.2022), instead they have extrapolated the cost, based on the weighted average cost of only 5 number items in NDPL Purchase Orders (considering its POs for the period for FY 2004-05 to FY 2008-09), vis-a-vis the lump sum cost of dwelling units provided in their purchase orders.
- e. Furthermore, to arrive at a comparable cost for item wise NDPL rates for extrapolation purposes, BYPL/BRPL has:

Taken an average of all the Purchase Orders/delivery challans (9257 pages of data from various Purchase Orders of NDPL, as collected by them from third parties) pertaining to the period from **FY 2004-05 to FY 2008-09 (5-year period)**. In contrast, the average cost calculated by BYPL/BRPL is based on a **few contracts** placed in 2004-05 and 2005-06, as mentioned below:

Sl. No.	Item description	Quantity & POs considered for weighted average cost	Quantity in the HVDS orders	Sample size (%)
BYPL				
1	Transformers 25 kV Single Phase Transformers	267 Nos. (2 purchase orders)	9736 Nos.	2.74%.
2	Pole 11 Mtrs.	(0 purchase order)	12728 Nos.	0%
3	Pole 9 Mtrs.	(0 purchase order)	3102 Nos.	0%
4	HT cable 3cx150sqmm	23.056 KMtrs. (1 purchase order)	60 Kmtrs.	38.43%
5	HT cable 1cx95 sqmm	5 KMtrs. (2 purchase orders)	329 KMtrs.	1.52%
BRPL				
Sl. No.	Item description	Quantity & POs considered for weighted average cost	Quantity in the HVDS orders	Sample size (%)
1	Transformers 25 kV Single Phase Transformers	933 Nos	9736 Nos.	9.58%
2	Pole 11 Mtrs.	4 Nos.	22833 Nos.	0.02%
3	Pole 9 Mtrs.	27 Nos.	30372 Nos.	0.09%
4	HT cable 3cx150sqmm	6.001 Km.	328 Km.	1.83%
5	HT cable 1cx95 sqmm	32 Km.	955 Km.	3.35%

(xvii) The Commission in its hearing dated 27.03.2023 and meeting with staff of Commission and representatives of BYPL and BRPL on 31.03.2023 explained the above observation on HVDS.

(xviii) BYPL thereafter, vide its letter dated 17.04.2023 has submitted a list of additional 17 items and claimed that the ratio of cumulative cost of 21, items to the cumulative cost of all the dwelling units Purchase Orders taken together, works out to 49% :51% wherein the cost of BYPL purchase is lower than NDPL. A perusal of the statement as submitted by BYPL indicates that

whereas they might have had the individual prices of all the BOQ items, they have chosen some 17 items for comparison (which includes un-verified Purchase Orders of NDPL submitted by Third Party) for above statement. Further BYPL has requested the Commission to allow the Capital expenditure of Rs. 168.7 Crore with its consequential entitlements including Carrying Cost.

- (xix) The Commission notes that certain Third Parties had circulated some Purchase Orders in June 2022, alleged to have been placed by NDPL, to Commission/Counsels of Commission and Counsels of DISCOMs. It is observed that BYPL has relied upon such alleged Purchase Orders and has compared prices and submitted their claims of CAPEX accordingly. The Commission attempted to verify these Third-Party Purchase Orders of NDPL by contacting NDPL. However, NDPL has stated that the period covered by these documents pertains to over 10 years, and pursuant to their record-keeping policy, the same are not available in their office and therefore cannot be verified or authenticated.
- (xx) As stated above, the said alleged Purchase Orders were also available with the Counsels of DISCOMs but Hon'ble Supreme Court in its Order dated 15.12.2022 has neither taken cognizance of such Third Party un-verified Purchase Orders nor directed the Commission to consider such unverified Purchase Orders. Accordingly, the Commission considers it prudent to not to take cognizance of said Purchase Orders, being unverified and un-authenticated.

In view of above the following is concluded in respect of item No. A-1.1 – HVDS:

- (xxi) The methodology adopted by BYPL, for the comparison is:

- a. an extrapolation methodology without taking reference to their Dwelling Unit POs and its BOQs (as directed in paragraph 30 of the Hon'ble Supreme Court's Order dated 15.12.2022),
 - b. taking weighted average cost for all the NDPL Purchase Orders which includes un-verified Purchase Orders submitted by Third Party executed in 5-year periods and not on average year-wise costs,
 - c. taking its own costs of major items (5 items) based on a few POs only and not submitted any POs or references for comparison of additional items (17 items) submitted vide its letter dated 17.04.2023.
 - d. BYPL submitted the number of dwelling units, which is 87062 with 160 line items, amounting to Rs. 168.7 Crore vide its letter dated 08.02.2022, during the earlier compliance exercise as per the Hon'ble Supreme Court judgment dated 01.12.2021. However, BYPL has now submitted the number of dwelling units as 90589 with 120 colonies vide its letter dated 31.01.2023.
- (xxii) This different number in BYPL's submission gives rise to further doubts on the integrity of their SAP data. Further, quantities used in additional 17 items submitted by BYPL for the dwelling units cannot be verified due to a lack of supporting documents submitted by them.
- (xxiii) In view of the aforementioned discrepancies, the extrapolated comparison of the rates as submitted in its compliance affidavit by BYPL/BRPL on 31.01.2023, in respect of item No. A-1.1 – HVDS, cannot be considered as compliance of Hon'ble Supreme Court's directions in its Order dated 15.12.2022 and therefore is not allowed.
- (xxiv) In view of the above, the treatment given by the Commission in its Compliance Order dated 12.04.2022 is maintained and allowed Rs 105.44 Crore under A-1.1 – HVDS category.

2) A1.2 Supply of material for Grid Substations:

- (i) In line with the Hon'ble Supreme Court's directions, BYPL was also to submit the BoQ of the Grid Substation along with purchase order, for ease of comparison.
- (ii) However, despite providing them with opportunities, BYPL has failed to submit a comparison of the component-wise priced BOQ of their contract, which was placed "as a whole" at their "contracted prices," as opposed to "NDPL item-wise contracts."
- (iii) While BRPL/BYPL did not submit their Purchase price or, item-wise details/BOQ for Grid Substations, they submitted the cost derived based on NDPL's BoQ. To extrapolate this data, they have used the per-unit price of items used in NDPL and extrapolated the "items' quantity used in BYPL Grid Substation and per-unit price of NDPL" to develop the Grid Substation cost.
- (iv) In this regard, it is noted that while the Commission had asked for a copy of the complete PO, BYPL has only submitted "items-wise breakup" (Bill of quantities) containing only the quantity component, without the prices" for the purpose of comparison.
- (v) However, on detailed examination of the data submitted, it is observed by the Commission that most of the items compared with the NDPL BOQ and BYPL BOQ **do not match technically**.

A few examples are given hereunder in this regard:

a) Comparison of Major Material of 33/11kV Grid Substation

- i. BYPL in its submission dated 31.01.2023 in volume -19 annexure-15 at page no 9516 has provided list of items used in 4 nos. of 33/11 kV Grid Substations namely, Anand Parbat, Shakarpur, Shahdra, Jhilmil. The Commission, while analyzing the same, has observed that some major items in the said list

are having different technical specifications. Some of the illustrations in this regard are as under:

BYPL specification	TPDDL specification
<i>Line incomer with 1250 A Breaker</i>	<i>Line Panel for 33KV 1250A SF6 Circuit Breaker</i>

It is clearly seen that BYPL has compared a normal breaker with NDPL SF6 circuit breaker SF6 circuit breaker cost is normally at higher side as compared to normal breaker, which is not same technical specification and is not comparable. Hence NDPL prices are at higher side because of their higher technical specifications.

- ii. Similarly, in Serial No. 1(a) of Page 9558 in volume -19, the comparison provided is as follows:

BYPL specification	TPDDL specification
<i>Transformer, 20MVA, 33/11KV, Z=14%, OLTC+ -10%, ONAN including bushing</i>	<i>TRANSFORMER POWER 20/25 MVA, 33/11 kV, OIL FILLED, ONANIONAF, Dyn11</i>

It is clearly observed from the above that BYPL has compared capacity of 20MVA Transformer with NDPL 20/25 MVA transformer, which is not same technical specification and is not comparable. Hence NDPL prices are at higher side because of their higher technical specifications. **Thus it is concluded that major items of substation i.e. power transformer are not comparable.**

- iii. Similarly, in Serial No. 4(a) of Page 9518 in volume -19, the comparison provided is as follows:

BYPL specification	TPDDL specification
<i>Bus-Coupler Circuit Breaker 1250 A</i>	<i>Bus Coupler Panel for 33 kV 1250A SF6 Circuit Breaker</i>

It is clearly observed from the above that BYPL has compared a Bus-Coupler Circuit breaker with the NDPL's Bus Coupler Panel for 33 kV SF6 circuit breaker. SF6 circuit breaker cost is normally at higher side

as compared to normal breaker, which is not same technical specification and is not comparable.

b) Comparison of Major Material of 66/11kV Grid Substation

- i. BYPL in its submission dated 31.01.2023 in volume -19 annexure-15 on page no 9540 has claimed list of items used in 2 nos. of 66/11 kV Grid Substations namely, Loni & Yamuna Vihar. The Commission, while analyzing the same, has observed that some major items in the said list are having different technical specifications. Some of the illustrations in this regard are as under.

BYPL specification	TPDDL specification
<i>Transformer, 20MVA,66/11KV, Z=14%,OLTC+-10%, ONAN including bushing</i>	<i>TRANSFORMER POWER 20/25 MVA, 66/11 kV, OIL FILLED, ONANIONAF, Dyn11</i>

It is clearly observed from the above that BYPL has compared the capacity of 20MVA Transformer with the NDPL 20/25 MVA transformer, which is not same technical specification and is not comparable.. **Thus we can conclude that major items of substation i.e. power transformer is not comparable.**

- ii. Similarly, in Serial No. 10 of Page 9542 in volume -19, the comparison provided is as follows:

BYPL specification	TPDDL specification
<i>66 KV SF6 Circuit Breaker,2000A,35KA for 3 sec</i>	<i>72.5kV, 1600a, 25ka, sf6 circuit breaker, 3ph gang operated complete with operating mech. &support structure</i>

It is clearly observed from the above that BYPL has compared a 66kV breaker with the NDPL 72.5 kV breaker. Capacity and current rating of breaker are not comparable as both the breakers have different specifications which is not same technical specification and is not comparable.

iii. After a detailed analysis, status of line items comparable, is as follows:

Name of Substation	Anand Parbat	Shakarpur	Shahdra	Jhilmil	Loni	Yamuna Vihar
Total No. of Items	98	96	97	99	113	111
No. of Items Matched/compared by BYPL in its submission	98	96	97	99	113	111
Items matched with same technical specification	36	35	35	31	34	35
Items comparable in %	36.73%	36.46%	36.08%	31.31%	30.09%	31.53%

iv. It is noted from the above table that BYPL has submitted cost analysis with NDPL where only 30% to 36% of items are comparable in each grid substation. The number of line items compared is very limited, and for the comparable items, BYPL has only submitted the NDPL's purchase price (including unverified POs) for each line item and not provided their own purchase price. Since, the purchase price of comparable items of the BYPL grid substation is not available, the Commission is unable to provide any comparative cost for such items. Furthermore, as only a few BoQ items are comparable, it is not possible to compare the total grid substation cost of BYPL with that of NDPL's purchase price.

- v. The Commission in the hearing dated 27.03.2023 and meeting with staff of Commission and representatives of BRPL/BYPL on 31.03.2023 explained the above observation on Grid Substations. and shared the details of list of non-comparable items after analysis on the data submitted by BYPL vide its letters dated 31.01.2023 & 17.02.2023 vide its email dated 03.04.2023.
- vi. BYPL in its letter dated 17.04.2023 commented on the non-comparable items shared by the Commission. On examination of the same, only 2 additional items were identified as comparable. However, BYPL has not submitted any purchase order (PO) to verify the price and only provided the SAP data page number. An example of the comments submitted by BYPL on the above-mentioned materials of the grid substation vide its letter dated 17.04.2023 and DERC comments on the same are as follows:

BYPL specification	TPDDL specification	BYPL Remarks 17.04.2023	DERC Remarks
<i>Line incomer with 1250 A Breaker</i>	<i>Line Panel for 33KV 1250A SF6 Circuit Breaker</i>	1. Both BSES & TPDDL line items are comparable as they pertain to 33kV Indoor switchgear. 2. BSES switchgear is Vacuum type whereas TPDDL switchgear is SF6 type. 3. It may be noted that Vacuum is considered to be superior technology for 33kV voltage level globally. SF6 technology has become obsolete for 33kV level. Hence BSES implemented a superior technology	BYPL Circuit breaker is Vacuum while TPDDL circuit breaker is SF6 both circuit breakers are of different technical specification hence not comparable

Transformer, 20MVA, 33/11KV, Z=14%, OLTC+ -10%, ONAN including bushing	TRANSFORMER POWER 20/25 MVA, 33/11 kV, OIL FILLED, ONANIONAF, Dyn11	<p>1. Both BSES & TPDDL line items are comparable as they pertain to 33/11kV Power transformer.</p> <p>2. BSES transformer rating is 20 MVA with natural cooling where as TPDDL transformer rating is 20/25 MVA with forced cooling. BSES transformers are presently utilised at grid with 25MVA rating with forced cooling by investing only Rs 2.96 Lacs per transformer.</p>	Both BYPL and TPDDL 33/11kV Power Transformer are of different capacity, hence it is not comparable.
Bus-Coupler Circuit Breaker 1250 A	Bus Coupler Panel for 33 kV 1250A SF6 Circuit Breaker	<p>1. Both BSES & TPDDL line items are comparable as they pertain to 33kV Indoor switchgear.</p> <p>2. BSES switchgear is Vacuum type whereas TPDDL switchgear is SF6 type.</p> <p>3. It may be noted that Vacuum is considered to be superior technology for 33kV voltage level globally. SF6 technology has become obsolete for 33kV level. Hence BSES implemented a superior technology</p>	BYPL Bus coupler panel is Vacuum circuit breaker while TPDDL bus coupler panel is SF6 circuit breaker both bus coupler panel are of different technical specification, hence not comparable
Transformer, 20MVA, 66/11KV, Z=14%, OLTC+-10%, ONAN including bushing	TRANSFORMER POWER 20/25 MVA, 66/11 kV, OIL FILLED, ONANIONAF, Dyn11	<p>1. Both BSES & TPDDL line items are comparable as they pertain to 66/11kV Power transformer.</p> <p>2. BSES transformer rating is 20 MVA with natural cooling where as TPDDL transformer rating is 20/25 MVA with forced cooling. BSES transformers are presently utilised at grid with 25MVA rating with forced cooling by investing only Rs</p>	Both BYPL and TPDDL 66/11kV Power Transformer are of different capacity, hence it is not comparable.

		<i>2.96 Lacs per transformer.</i>	
<i>66 KV SF6 Circuit Breaker, 2000A, 35KA for 3 sec</i>	<i>72.5kV, 1600a, 25ka, sf6 circuit breaker, 3ph gang operated complete with operating mech. & support structure</i>	1. Both BSES & TPDDL line items are comparable as both pertain to 66 KV SF6 Circuit Breaker 2. BSES Circuit Breaker has a higher current rating. 3. Circuit Breaker model remains same irrespective of current rating.	Both BYPL and TPDDL items are of different technical specification, hence it is not comparable.

vii. In view of above, it is observed that either BYPL has not submitted the adequate data/information or have not submitted equipment of same technical specification for comparison. It is further noticed that Hon'ble APTEL in its Judgment dated 06/10/2009 in Appeal No. 36 of 2008 has specifically stated that the onus would be entirely on the BYPL 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, extracted as follows:

"57.....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 would 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, vender rating etc....."

viii. Further, Hon'ble Supreme Court of India in its Order dated 15.12.2022 in in MA Nos. 1261 and 1262 of 2022 in Civil

Appeal Nos. 884 and 980 of 2010 has directed DERC to recompute the amount payable to the non-applicants for the commodities purchased by it, strictly in terms of the directions issued in paragraphs 56 and 57 of the APTEL's judgment dated 06.10.2009 in Appeal No. 36 of 2008.

- ix. Therefore, the methodology provided by the Commission in its Compliance Order dated 12.04.2022 is maintained and BYPL is allowed Rs. 30.49 Crore in respect of item No. **A1.2 – Supply of material for Grid Substation.**

3) A2 Items not comparable with the purchases of NDPL due to different technical specification:

- i. BYPL vide its letter dated 31.01.2023 & 17.02.202 has submitted additional data for "items not comparable with the purchases of NDPL due to different technical specification" category.
- ii. BYPL has compared items with NDPL's price (including from unverified Purchase Orders submitted by third parties) and submitted as follows:

"8.9 I say that out of a total of 97 numbers of line items, there are:

(a) 64 number of line items where BSES Price is less than NDPL Price. Hence BSES Price has to be allowed by the Hon'ble Commission in terms of the direction of Hon'ble Supreme Court at Para 21 and 25 of the MA order.

(b) 24 number of line items where BSES Price is more than NDPL Price. Hence, NDPL Price is to be allowed by the Hon'ble Commission in terms of the direction of Hon'ble Supreme Court at Para 26 of the MA order.

(c) 9 number of line items where POs are still not provided by the Hon'ble Commission for comparison."

- iii. Further, the Commission provided opportunity to the BRPL & BYPL on 27.03.2023 as per direction of the Hon'ble Supreme Court and

explained the observation on the data submitted by the BRPL/BYPL and on the request of BRPL/BYPL shared the details of non-comparable items with respect to Sub-columns (i) 'A2: Items not comparable with the purchases of North Delhi Power Ltd. ("NDPL") due to different technical specifications'; and (ii) 'A3: Items either consumables or not purchased by NDPL on 31.03.2023 for BYPL/BRPL to provide comments on 17.04.2023.

- iv. BYPL submitted a comparison of the same on 17.04.2023. Based on BYPL's submissions dated 31.01.2023, 17.02.2023, and 17.04.2023, the Commission's analysis is as follows:

Commission's Analysis:

- i. The Commission notes that certain Third Parties had circulated some Purchase Orders, alleged to have been placed by NDPL, to Commission/Counsels of Commission and Counsels of DISCOMs. It is observed that BYPL has relied upon such alleged Purchase Orders and has compared prices and submitted their claims of CAPEX accordingly. The Commission attempted to verify these Third-Party Purchase Orders of NDPL by contacting NDPL. However, NDPL has stated that the period covered by these documents pertains to over 10 years, and pursuant to their record-keeping policy, the same are not available in their office and therefore cannot be verified or authenticated.
- ii. As stated above, the said alleged Purchase Orders were also available with the Counsels of DISCOMs but Hon'ble Supreme Court in its Order dated 15/12/2022 has neither taken cognizance of such Third Party un-verified Purchase Orders nor directed DERC to consider such Purchase Order. Accordingly, the Commission considers it prudent to not to take cognizance of said Purchase Orders, being unverified and un-authenticated.

- iii. Therefore, the methodology provided by the Commission in its Compliance Order dated 12.04.2022 is maintained and BYPL is allowed Rs. 27.01 Crore in respect of category **A2 (Items not comparable with the purchases of NDPL due to different technical specification)**.

4) A3 Items either consumables or not purchased by NDPL:

- i. BYPL vide its letter dated 31.01.2023 & 17.02.2023 has submitted additional data for "either consumables or not purchased by NDPL" category.
- ii. BYPL has compared items with NDPL price (including from unverified Purchase Orders submitted by the third party) and submitted as follows.

"8.10 I say that out of a total of 68 numbers of line items, there are:

(a) 43 number of line items where BSES Price is less than NDPL Price. Hence, BSES Price has to be allowed by the Hon'ble Commission in terms of the direction of Hon'ble Supreme Court at Para 21 and 25 of the MA order.

(b) 18 number of line items where BSES Price is more than NDPL Price. Hence, NDPL Price is to be allowed by the Hon'ble Commission in terms of the direction of Hon'ble Supreme Court at Para 26 of the MA order.

(c) 07 number of line items where POs are still not provided by the Hon'ble Commission for comparison."

- iii. Further, the Commission provided opportunity to the BRPL and BYPL on 27.03.2023 as per direction of the Hon'ble Supreme Court and explained the observation on the data submitted by the BRPL/BYPL and on the request of BRPL/BYPL shared the details of non-comparable items with respect to Sub-columns (i) 'A2: Items not comparable with the purchases of North Delhi Power Ltd. ("NDPL") due to different technical specifications'; and (ii) 'A3: Items either consumables or not purchased by NDPL, on 31.03.2023 for BYPL/BRPL to provide comments on 17.04.2023 .

- iv. BYPL submitted a comparison of the same on 17.04.2023. Based on BYPL's submissions dated 31.01.2023, 17.02.2023, and 17.04.2023, the Commission's analysis is as follows:

Commission's Analysis:

- i. The Commission notes that certain Third Parties had circulated some Purchase Orders, alleged to have been placed by NDPL, to Commission/Counsels of Commission and Counsels of DISCOMs. It is observed that BYPL has relied upon such alleged Purchase Orders and has compared prices and submitted their claims of CAPEX accordingly. The Commission attempted to verify these Third-Party Purchase Orders of NDPL by contacting NDPL. However, NDPL has stated that the period covered by these documents pertains to over 10 years, and pursuant to their record-keeping policy, the same are not available in their office and therefore cannot be verified or authenticated.
- ii. As stated above, the said alleged Purchase Orders were also available with the Counsels of DISCOMs but Hon'ble Supreme Court in its Order dated 15/12/2022 has neither taken cognizance of such Third Party un-verified Purchase Orders nor directed DERC to consider such Purchase Order. Accordingly, the Commission considers it prudent to not to take cognizance of said Purchase Orders, being unverified and un-authenticated.
- iii. Therefore, the methodology provided by the Commission in its Compliance Order dated 12.04.2022 is maintained and BYPL is allowed Rs. 16.85 Crore in respect of category **A3 (Items either consumables or not purchased by NDPL).**

5. B1 Items for which price paid to REL is less than NDPL:

- i. The Commission had allowed BYPL price of Rs 142.91 Crore in its Compliance Order dated 12.04.2022, and there is no dispute in respect of this category. The Hon'ble Supreme Court's Order dated 15.12.2022 also affirms the same for this category, stating:

"25. As is apparent from the table above, under column B are listed the items that are comparable with NDPL. Sub-column B-1 refers to items for which the price paid by the BYPL to REL is less than the price paid by NDPL, which is not disputed by either side"

Commission Compliance order dated 12.04.2022 and as per the comparison submitted by the BYPL vide its letter dated 31.01.2023, 17.02.2023 & 17.04.2023, DERC has approved following cost in **B1** category.

B1: Items for which price paid to REL is less than NDPL			
As per DERC Compliance Order dated 12.04.2022			
B1.1: Items for which price paid to REL is less than NDPL as per PO	101	77.63	77.63
B.1.2: Items for which price paid to REL is less than NDPL as per GRN	23	65.28	65.28

6. B2 Items for which price paid to REL is more than NDPL:

- i. The items under this head, pertain to those where the price paid to REL is more than that of NDPL. The Commission in its Order dated 12/04/2022 had mentioned that for finalization of CAPEX against such items, REL's Purchase Orders are required in line with APTEL Judgment in Appeal No. 36 and 37 of 2008, quoted 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.**"*

- ii. The calculation of payable amount to BRPL/BYPL in line with the above Judgment of APTEL is tabulated as under:

Illustration of para 56 & 57 of the Appeal 36 & 37 of 2008

Case Situation	Price paid to REL (BSES purchase price)	NDP L purchase price	Purchase Price of REL	Condition 1	Condition 2	Price allowed as per APTEL Order in Appeal no 36 & 37	Para 57 of the APTEL Order
Case 1	X	Y	Z	if (X<Y)		X	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.
Case 2	X	Y	Z	if (X>Y) then check condition 2	if (Y< (Z+5% margin))	Y	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
					if (Y> (Z+5% margin))	Z+ 5% margin	

- iii. However, as was noted in DERC's Order dated 12/04/2022, BRPL and BYPL vide their letters dtd. 8/02/2022 and 15/03/2022 had submitted before the Commission that they do not have details of REL's purchase though the same has been mandated by Hon'ble APTEL, therefore, the Commission considered the said exercise as incomplete and retained the view of Chairperson, as was mandated by APTEL in its Order dated 30.10.2009 in Appeal No. 37 of 2008.
- iv. Thereafter, the Hon'ble Supreme Court in its Order dated 15/12/2022 has ruled that **"...DERC has passed an order dated 12.04.2022, applying the rate in terms of the Tariff Order dated 23.02.2008, on an observation that the REL purchase price has not been submitted by the non-applicants, which in our opinion, is impermissible."**, quoted as follows:

"26. The rub of the matter lies in respect of sub-column B-2, that refers to items for which the price paid to REL is more than NDPL. It is noteworthy that at the foot of the table, a note is appended with an asterisk stating that "as per Tariff Order dated 23.02.2008, since the details of REL purchase as mandated by APTEL has yet not been submitted by BRPL and BYPL". In other words, though para 57 of the impugned judgment records that the DERC will allow a lesser price to the BRPL if NDPL's purchase price is lower than the price of REL's purchase + 5% profit margin, the DERC has passed an order dated 12.04.2022, applying the rate in terms of the Tariff Order dated 23.02.2008, on an observation that the **REL purchase price has not been submitted by the non-applicants, which in our opinion, is impermissible.**"

Therefore, in compliance with the Hon'ble Supreme Court observation in Order dated 15/12/2022, as quoted above, Commission has considered review of allowance to B2 category items based on NDPL's Purchase Price as follows:

Sr. No.	Description	Line Item	Claimed by BRPL (Rs In Cr.)	Amount Approved in DERC Order dated 12/04/2022	Now Approved based on NDPL Price (Rs In Cr.)
B2: Items for which price paid to REL is more than NDPL					
1	B2.1: Items for which price paid to REL is more than NDPL as per PO	90	28.96	18.1	25.77
2	B2.2: Items for which price paid to REL is more than NDPL as per GRN	32	14.21	8.88	11.66

VI. Based on the details of DERC's analysis in compliance with Hon'ble Supreme Court's Order dated 15/12/2022, the summary of approved cost works out to be as under:

Table 10 : Summary of Approved Cost

Sl. No.	Description	Line Items (Nos.)	Amount claimed as per BYPL submission (Rs. Cr.)	Amount approved (Rs. Cr.)
A : Items not comparable				
A1: Purchases made by BYPL without description of the Material in the Purchase Orders				
1	A1.1 HVDS	160	168.7	105.44
2	A1.2 Supply of material for Grid substation	6	48.78	30.49

3	A2 Items not comparable with the purchases of NDPL due to different technical specifications	97	43.22	27.01
4	A3: Items either consumables or not Purchased by NDPL	68	26.96	16.85
B: Items comparable with NDPL				
B1: Items for which price paid to REL is less than NDPL				
5	Items for which price paid to REL is less than NDPL as per PO	101	77.63	77.63
6	Items for which price paid to REL is less than NDPL as per GRN	23	65.28	65.28
B2: Items for which price paid to REL is more than NDPL				
7	Items for which price paid to REL is more than NDPL as per PO	90	28.96	25.77
8	Items for which price paid to REL is more than NDPL as per GRN	32	14.21	11.66
	Total	577	473.74	360.14

VII. BYPL in Annexure B.18 of its Letter dated 08.02.2022 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 only issue that appears here is regarding reconciliation of quantities procured and quantities capitalized by BYPL. Accordingly, the Commission has pro-rated the balance amount (purchased and capitalized) in the year of capitalization as per the details provided by BYPL 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 under:

	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	
Total amount Claimed by BYPL (A)	185.65	215.71	50.53	6.94	6.83	6.3	1.57	0.16	0.04	473.74
Claimed Amount of BYPL based on quantity capitalised (B)	171.26	198.98	46.61	6.4	6.3	5.82	1.45	0.15	0.04	437.01
Balance due Capitalisation (C=A-B)	14.39	16.72	3.92	0.54	0.53	0.49	0.12	0.01	0	36.73
Total Approved Amount by DERC as per above table 10 (D)	139.42	163.42	40.83	5.93	5	4.22	1.17	0.12	0.03	360.14
Pro-rata amount approved by DERC based on ratio of quantity capitalised (E)	128.6	150.74	37.66	5.47	4.61	3.89	1.08	0.11	0.03	332.19
Balance Capitalisation (F=D-E)	10.82	12.68	3.17	0.46	0.39	0.33	0.09	0.01	0	27.95
Difference (A-D)	46.23	52.28	9.71	1.01	1.82	2.08	0.41	0.04	0	113.6

VIII. Issue of Allowance of Capitalization pending Electrical Inspector Clearance

- (i) The Hon'ble Supreme Court in its Order dated 15.12.2022 had held as under:

*"35. Though it is the stand of learned counsel for the DERC that if the entire judgment on the above aspect is read and understood in the correct perspective, particularly paragraphs 67 and 68, the import would be otherwise, we are of the view that for the purposes of ascertaining compliance of the impugned judgment, it is the directions in the operative paragraph 118 that must be adhered to. The words used in the said paragraph are "**capitalization of the fresh assets**" during the MYT period. That being the position and since this Court is confining itself to examining compliances of the impugned judgment and no further, it is hereby clarified that the DERC was required to consider the issue of capitalization of fresh assets of the DISCOM alone.*

The DERC is therefore directed to undertake a fresh exercise in the light of the above observations." [emphasis supplied]

- (ii) With respect to the issue of capitalization of fresh assets from the 16th day of filing of the application after payment of necessary fees, in

compliance with the direction of Hon'ble APTEL, the Commission has already implemented the capitalization of fresh assets during the MYT period, as well as after the judgment dated 30.10.2009 of Hon'ble APTEL and hence needs no revision.

(iii) BYPL in its letter dated 17.02.2023 has submitted for review of assets capitalization for the period before the MYT period on the basis of actual use/ audited accounts basis for which DERC in its Compliance Order dated 12.04.2022 has computed the date of capitalization with effect from 16th day of submission of application for EI certificate in line with the APTEL's Order. However, since Hon'ble Supreme Court's direction was only for *fresh* assets capitalized during the MYT period, therefore, assets capitalized before the MYT period have not been addressed in this order and will be dealt with according to EIC certificates and applicable Rules and Regulations.

(iv) Lastly, the Commission had filed Miscellaneous Applications on 28.02.2023 (namely MA 466/2023 and MA 467/2023) before the Hon'ble Supreme Court of India, seeking extension of time for compliance of the Order dated 15.12.2022 on the issue of capital expenditure and capitalization. The Hon'ble Court by order dated 02.05.2023 extended the time for compliance till 15.05.2023, and accordingly, this order is being passed by the Commission in accordance with the directions of the Hon'ble Supreme Court.

IX. It is to be mentioned that the Commission had already allowed provisional capitalization to BYPL 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 dealt above, will be considered separately.

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