



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 No. 980 of 2010 and Order dated 11.03.2022 in M.A. No. 447 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 Yamuna 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. 980 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 had filed a Miscellaneous Application No. 447 of 2022 in Civil Appeal No. 980 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 Appellate Tribunal for Electricity's ('**APTEL**') judgment dated 30.10.2009 in Appeal No. 37 of 2008 filed by M/s BSES Yamuna Power Limited (BYPL) wherein all the issues involved in Appeal No. 37 of 2008 were settled in Appeal No. 36 of 2008 in judgement dated 06.10.2009. The said order of Hon'ble APTEL states that the judgement in Appeal No. 36 of 2008 has to be read as judgement deciding the issues involved in Appeal No. 37 of 2008. The two issues being considered in this order are being accordingly dealt with as per Hon'ble APTEL's judgement dated 06.10.2009 in Appeal No. 36 of 2008, 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 BYPL.
- (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. BYPL 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 BYPL's procurement is at rates less than those of TPDDL which has been brought to the notice of the Commission.

Even otherwise, BYPL has submitted that it has independently provided the comparison of 46% of total assets procured as gleaned from market sources in its letter dated 13.09.2013. The comparison shows that rate of REL procurement was 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. BYPL 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 BYPL on 22.12.2021 to discuss the claim of BYPL and to ascertain whether the claim made by BYPL 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, BYPL emphasized to allow the claim as per audited accounts and no comparison was demonstrated by BYPL as per directions of Hon'ble APTEL. Accordingly, DERC vide its letter dated 29.12.2021 has directed BYPL 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 BYPL 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, BYPL 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. BYPL 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 BYPL in time, DERC vide its letter dated 03.02.2022, again directed BYPL 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. BYPL 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 BYPL on 13.09.2013 and 14.11.2013 includes major Materials which were part of BYPL'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 BYPL in the relevant Financial Years.*
- d) In terms of the data submitted by BYPL 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. 474 Crores out of total purchases of Rs. 475 Crores from REL by BYPL. Detailed analysis of*

the entitlement of BYPL 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	475
2	Materials comparable with NDPL	259
3	Material not traceable in documents provided by the Ld. Commission	216
Comparison with NDPL as per APTEL Judgement		
4	Materials where prices are lower than NDPL	253
5	Materials where prices are higher than NDPL	6
6	Prices of Sl. 5 at NDPL prices	5
7	BYPL's entitlements (3+4+6)	474

e) *Kindly note that:*

(i) *Out of purchases worth Rs. 475 Crores made by BYPL from REL, BYPL was able to compare purchases worth Rs. 259 Crores since the item purchased were comparable/similar.*

(ii) *Upon comparison, it was found that prices for materials worth Rs. 253 Cores purchased by BYPL is lower than NDPL rates.*

(iii) *For Materials where NDPL rate is lower, BYPL 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 BYPL, BYPL is entitled to Rs. 5 Crores (at NDPL's price). Accordingly, BYPL has considered NDPL prices wherever the prices incurred by BYPL are more than NDPL's prices for Materials worth Rs. 6 Crores. However, without prejudice to the above, BYPL 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. 259 Cores, BYPL is entitled Rs. 258 Crores (Rs. 253 Crores plus Rs. 5 Crores) (i.e., 99.6% of the total amount paid by BYPL in terms of value).*

(v) *As regards the remaining Material worth Rs. 216 Crores (Rs. 475 Crores less Rs. 259 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 BYPL'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 BYPL vide its letter dated 08.02.2022, it was observed that out of total number of 577 line items having value of Rs.473.74 Crore as indicated, a clear comparison of 61 line items has been made with the purchases of NDPL items.

12. Further, on preliminary examination of data submitted by BYPL, it was observed that as many as around 189 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 doesn't 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 BYPL and to submit the comparison as per DERC letter dated 21.01.2022, within 7 days of issue of the letter. BYPL vide its letter dated 10.03.2022, without prejudice and under protest' has stated that BYPL 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. BYPL 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 BYPL 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. 473 Crores out of total purchases of Rs. 475 Crores from REL by BYPL. Comparison provided by earlier our letters dated 13.09.2013, 14.11.2013 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	475
Purchase Orders made available for benchmarking		
2	Materials comparable with NDPL	260
3	Material not traceable in documents provided by the Ld. Commission	215
Comparison with NDPL as per APTEL Judgement		
4	Materials where prices are lower than NDPL	225
5	Materials where prices are higher than NDPL	35
6	Prices of Sl. 5 at NDPL prices	34
7	BYPL's entitlements (3+4+6)	473

3. *Kindly note that:*

- a) *Out of purchases worth Rs. 475 Crores made by BYPL from REL, BYPL was able to compare purchases worth*

- Rs. 260 Crores since the items purchased were comparable/similar.
- b) Upon comparison, it was found that prices for Materials worth Rs. 225 Cores purchased by BYPL is lower than NDPL rates.
 - c) For Materials where NDPL rate is lower, BYPL 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 BYPL, BYPL is entitled to Rs.34 Crores (at NDPL's price) out of 35 Cr. incurred by BYPL. Accordingly, BYPL has considered NDPL prices wherever the prices incurred by BYPL are more than NDPL's prices for Materials worth Rs. 35 Crores. However, without prejudice to the above, BYPL 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. 260 Crores of Materials comparable with NDPL, BYPL is entitled Rs. 259 Crores (i.e Rs. 225 Crores plus Rs. 34 Crores).
 - e) Remaining Materials worth Rs. 215 Crores (Rs. 475 Crores less Rs. 260 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 BYPL'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. 475 Crores purchased by BYPL from REL, BYPL is entitled to Rs. 473 Crores (i.e., 99.7% of the total amount paid by BYPL in terms of value).

Annexure-A

Summary Rate Comparison-BYPL

Amount (Rs. in Cr.)				
Sl. No.	Description	Total	Annexure	Remarks
	Comparable items breakup			
A	HVDS	167.01	A1	Lump sum Basis
B	EHV + Schemes + Meter			
B.1	Rates less than NDPL	57.14	A2	Comparison made on weighted average basis on data submitted by DERC
B.2	Rates higher than NDPL	35.10	A3	
	Grand total of comparable material	259.75		
	Rates of line item B.2 on NDPL rates			
C	B.2 material at NDPL Rates	33.81	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 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 BYPL a lower price.**

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.

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.

18. Accordingly, the two pending issues are 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 BYPL without description of the Material in the Purchase Orders

A1.1: Comparison of HVDS for 160 number of line items for Rs. 168.70 Crore

19. BYPL vide its letter dated 08.02.2022 has submitted the comparison of HVDS on Dwelling Unit (DU) basis. BYPL 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. 36,665 whereas the rate of material paid by BYPL is Rs.19,318 per DU.
20. As per Annexure B6 of the BYPL's Letter dated 08.02.2022, BYPL has submitted that the electrification on HVDS system has been carried out by

placing an Order on REL for a value of Rs. 167.01 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 BYPL 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/2004-05/5491 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 70 colonies at an estimated cost of Rs. 145 Crore. The revised DPR contains the proposal to electrify 56 colonies with HVDS at an estimated cost of Rs. 120 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 BYPL 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 BYPL is approved for 57 colonies at an estimated cost of Rs. 83.6 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 25.11.2004 on HVDS system had revised the estimate based on BYPL letter dated 04.10.2004 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.	BYPL 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./m)	Amount (Rs.)				

									tr)					
1	Devi Nagar	21	30250	6.3525	33	1700	0.561	6069	50	3.0345	41.6031	9.948	19.896	29.844
2	Shiv Vihar Phase III	94	30250	28.4350	150	1700	2.55	25779	50	12.8895	188.8529	43.875	87.749	131.624
3	Bank Colony Mandoli	57	30250	17.2425	92	1700	1.564	15958	50	7.979	115.4801	26.786	53.571	80.357
4	Shiv Vihar O&P Block	87	30250	26.3175	140	1700	2.38	24058	50	12.029	175.9937	40.727	81.453	122.180
5	Ambica Vihar Block C	74	30250	22.3850	118	1700	2.006	20413	50	10.2065	148.7626	34.598	69.195	103.793
6	Shiv Vihar Phase IV	100	30250	30.2500	160	1700	2.72	27500	50	13.75	201.7120	46.720	93.44	140.160
7	Shiv Vihar Phase VIII	38	30250	11.4950	61	1700	1.037	10760	50	5.38	76.6506	17.912	35.824	53.736
8	Mahalaxmi Vihar	32	30250	9.6800	51	1700	0.867	9106	50	4.553	64.2957	15.100	30.2	45.300
9	Shiv Vihar Phase VII	116	30250	35.0900	185	1700	3.145	31685	50	15.8425	232.9774	54.078	108.155	162.233
10	Shiv Vihar Phase VI	107	30250	32.3675	172	1700	2.924	29491	50	14.7455	216.5883	50.037	100.074	150.111
11	Bhagirathi Vihar F&G Block Phase II	135	30250	40.8375	217	1700	3.689	37051	50	18.5255	273.0676	63.052	126.104	189.156
12	Jagdambe Colony	68	30250	20.5700	109	1700	1.853	18961	50	9.4805	137.9206	31.904	63.807	95.711
13	Rajeev Nagar	123	30250	37.2075	197	1700	3.349	33710	50	16.855	248.1058	57.412	114.823	172.235
14	Prem Vihar	213	30250	64.4325	340	1700	5.78	57875	50	28.9375	428.6380	99.150	198.3	297.450
15	Janid Panchal Vihar	102	30250	30.8550	163	1700	2.771	27939	50	13.9695	204.9898	47.596	95.191	142.787
16	Chaman Park	45	30250	13.6125	72	1700	1.224	12650	50	6.325	90.7704	21.162	42.323	63.485
17	Khazani Nagar	32	30250	9.6800	51	1700	0.867	9039	50	4.5195	63.7914	15.067	30.133	45.200
18	Ziauddin Pur (Mustafabad)	55	30250	16.6375	87	1700	1.479	15215	50	7.6075	109.9330	25.724	51.448	77.172
19	Ambedkar Colony	131	30250	39.6275	209	1700	3.553	35836	50	17.918	263.9906	61.099	122.197	183.296
20	Tunda Nagar	52	30250	15.7300	83	1700	1.411	14506	50	7.253	104.6381	24.394	48.788	73.182
21	Shakti Garden	66	30250	19.9650	106	1700	1.802	18421	50	9.2105	133.8863	30.978	61.955	92.933
22	Ganga Sahai Colony	30	30250	9.0750	47	1700	0.799	8499	50	4.2495	59.7572	14.124	28.247	42.371
23	Ram Vihar	17	30250	5.1425	27	1700	0.459	5090	50	2.545	34.2910	8.147	16.293	24.440
24	Prakash Vihar	46	30250	13.9150	74	1700	1.258	12920	50	6.46	92.7875	21.633	43.266	64.899
25	Village Samboli Extn	105	30250	31.7625	167	1700	2.839	28749	50	14.3745	211.0412	48.976	97.952	146.928
26	Ambika Vihar A Block	83	30250	25.1075	132	1700	2.244	22843	50	11.4215	166.9167	38.773	77.546	116.319
27	Tukhmeer Pur Khasra 480	9	30250	2.7225	14	1700	0.238	2896	50	1.448	17.9019	4.409	8.817	13.226
28	Saboli Bagh Part I	32	30250	9.6800	51	1700	0.867	9140	50	4.57	64.5478	15.117	30.234	45.351
29	Pratap Nagar	161	30250	48.7025	257	1700	4.369	43936	50	21.968	324.5042	75.040	150.079	225.119
30	Johnpur East	104	30250	31.4600	166	1700	2.822	28479	50	14.2395	209.0241	48.522	97.043	145.565

WEAR FACE MASK

WASH HANDS REGULARLY

MAINTAIN SOCIAL DISTANCING

31	Radha Vihar	105	30250	31.7625	168	1700	2.856	28816	50	14.408	211.5455	49.027	98.053	147.080
32	Mandoli Extn Part II	53	30250	16.0325	85	1700	1.445	14776	50	7.388	106.6552	24.866	49.731	74.597
33	Harijan Basti D Block	24	30250	7.2600	39	1700	0.663	7048	50	3.524	48.9152	11.447	22.894	34.341
34	Saboli Bagh Part II	63	30250	19.0575	101	1700	1.717	17476	50	8.738	126.8264	29.513	59.025	88.538
35	Surya Vihar, East Sartarpur	39	30250	11.7975	62	1700	1.054	10963	50	5.4815	78.1634	18.333	36.666	54.999
36	Dilshad Masjid, Mustafabad	121	30250	36.6025	194	1700	3.298	33271	50	16.6355	244.8279	56.536	113.072	169.608
37	Bhagat Vihar II	71	30250	21.4775	114	1700	1.938	19771	50	9.8855	143.9719	33.301	66.602	99.903
38	Harijan Basti E Block	128	30250	38.7200	205	1700	3.485	35128	50	17.564	258.6956	59.769	119.538	179.307
39	Shushila Garden	17	30250	5.1425	27	1700	0.459	4989	50	2.4945	33.5346	8.096	16.192	24.288
40	Ankur Enclave	100	30250	30.2500	160	1700	2.72	27500	50	13.75	201.7120	46.720	93.44	140.160
41	Krawal Nagar Extn	59	30250	17.8475	94	1700	1.598	16295	50	8.1475	118.0015	27.593	55.186	82.779
42	Maa Ramabai Ambedkar Mohallaa	25	30250	7.5625	40	1700	0.68	7250	50	3.625	50.4280	11.868	23.735	35.603
43	Kardam Farm	33	30250	9.9825	53	1700	0.901	9444	50	4.722	66.8171	15.606	31.211	46.817
44	HB Mandoli	18	30250	5.4450	29	1700	0.493	5360	50	2.68	36.3082	8.618	17.236	25.854
45	HB Karawal Nagar	24	30250	7.2600	38	1700	0.646	6845	50	3.4225	47.4023	11.329	22.657	33.986
46	Ghaholi	20	30250	6.0500	32	1700	0.544	5968	50	2.984	40.8467	9.578	19.156	28.734
47	HB Mandoli Extension	59	30250	17.8475	94	1700	1.598	16329	50	8.1645	118.2537	27.610	55.22	82.830
48	West Karawal Nagar	404	30250	122.2100	646	1700	10.982	109580	50	54.79	814.9165	187.982	375.964	563.946
49	Ambika Vihar	44	30250	13.3100	70	1700	1.19	12313	50	6.1565	88.2490	20.657	41.313	61.970
50	Harsh Vihar	1250	30250	378.1250	2000	1700	34	338000	50	169	2521.4000	581.125	1162.25	1743.375
51	D Block Sonia Vihar	250	30250	75.6250	400	1700	6.8	68000	50	34	504.2800	116.425	232.85	349.275
52	A Block Sonia Vihar Pkt I	142	30250	42.9550	227	1700	3.859	38773	50	19.3865	285.9268	66.201	132.401	198.602
53	Sonia Vihar A Blk Pkt II	144	30250	43.5600	230	1700	3.91	39380	50	19.69	290.4653	67.160	134.32	201.480
54	Sonia Vhar A Blk Pkt 3	45	30250	13.6125	72	1700	1.224	12650	50	6.325	90.7704	21.162	42.323	63.485
55	Sonia Vihar A Blk Pkt VI	113	30250	34.1825	180	1700	3.06	30875	50	15.4375	226.9260	52.680	105.36	158.040
56	Sonia Vihar C Blk Ph I	138	30250	41.7450	220	1700	3.74	37625	50	18.8125	277.3540	64.298	128.595	192.893
57	Sonia Vihar C Blk Ph II	144	30250	43.5600	230	1700	3.91	39313	50	19.6565	289.9610	67.127	134.253	201.380
	Total	5968		1805.3	9541		162.197	1638312		819.156	12026.57	2786.673	5573.346	8360.019

25. It has been noted that the details of material/ equipment were submitted by BYPL 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. BYPL has made the comparison as follows:
- It has placed reliance on the prices of TPDDL for each item / material as per TPDDL's purchase orders;
 - It has then applied such prices to the estimated quantity approved 'in-principle' by the Commission (for BYPL) vide letter dated 15.09.2004.
27. However, the approach now adopted by BYPL 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 letter dated 15.09.2004, the number of dwelling units has not been mentioned. Further, BYPL in its submission has stated that comparison has been made on lumpsum basis.
28. By any stretch of imagination, the comparison made by BYPL is not in line with the directions given by Hon'ble APTEL in Appeal No. 36 of 2008. Accordingly, the claim of BYPL 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 6 number of line items for Rs. 48.78 Crore

29. BYPL in its submissions has claimed supply of material for 4 number of 33/11kV Grid substations: at a price of Rs. 10.10 Crore at Anand Parbat, at a price of Rs.6.76 Crore at Shakarpur, at a price of Rs. 8.05 Crore at Shahdara and at a price of Rs. 7.40 Crore at Jhilmil. Further, in respect of 2 number of 66/11kV Grid substations at East of Loni and Yamuna Vihar, BYPL has claimed a price of Rs.5.95 Crore and Rs. 10.52 Crore respectively. From the purchase order No. DOI23003954 dated 20.01.2005, it is noticed BYPL 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 BYPL 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, BYPL 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. BYPL at point no. 8.1 of Annexure-1 of its Letter dated 08.02.2022 has stated that *BYPL 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 BYPL'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 contain the description of material with quantity. However, BYPL 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 BYPL 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 of 2008.

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

33. It is noted that 97 no. of line items for Rs. 43.22 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 BYPL dated 15.03.2022, it is observed that for 453 line items worth Rs. 462.18 Cr. are not clearly matched with the data of NDPL (TPDDL). It is observed that out of 453 line items worth Rs. 462.18 Cr., the purchase orders for 166 line items worth Rs. 217.48 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 no. of items. BYPL has not made any comparison with the data of GRN provided by NDPL (TPDDL). In order to compare more no. of equipment/items, the Commission has considered the data of GRN provided by NDPL (TPDDL), in cases where purchase orders were not available. From the data of GRN, it was established that 55 no. of line items, is comparable.
36. From the above, it has been noted that for the remaining 68 items [(577 – 166) (A1.1+ A1.2) - 97 (A2) - 246 (items comparable B.1 +B.2)], (being 43 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 68 line items (43 no. of unique items) for Rs. 26.96 Crore have either been consumables or the items have not been purchased by NDPL.
37. In summary, it has been found that 331 line items worth Rs. 287.66 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 BYPL 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	168.70	63.26	105.44
(ii)	Grid substations	48.78	18.29	30.49
(iii)	Items either consumables or not Purchased by NDPL	26.96	10.11	16.85
(iv)	Items not comparable with the purchases of NDPL due to different technical specifications	43.22	16.21	27.01
	Total	287.66	107.87	179.79

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 BYPL has made the comparison for Rs. 259.75 Crores. We fail to understand why BYPL 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. 168.70 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. 259.75 Crores submitted by BYPL, the comparison submitted by BYPL in Annexure-A of letter dated 15.03.2022 works out to be only Rs.92.74 Crore against which comparison with NDPL price works out to be Rs. 91.45 Crore.
40. Further, on detailed scrutiny, it is observed that for 79 line items worth Rs. 111.37 Crore, BYPL has not made comparison on the ground of mismatch in technical specification. However, it was observed that 57 line items worth Rs.92.72 Crore are comparable with NDPL equipment. Further, it was observed that BYPL has not made any comparison with the prices submitted by TPDDL in their GRN. It was noted that 55 items for which GRN has been provided by TPDDL are comparable with the items purchased by BYPL. In addition to above, 10 number of line item for Rs.2.30 Crore were also identified in Purchase Orders. Therefore, in total 246 no. of line items for Rs. 186.1 Cr. are comparable.

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

41. 124 no. of line items for Rs. 142.91 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. 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 (Nos.)	Amount as per BRPL (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	168.70	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	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 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. BYPL 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 BYPL in 2015, why the purchases made in FY 2004-05 & FY 2005-06 were not matched. Apart from the submissions made by BYPL on 08.02.2022, BYPL 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. BYPL 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 BYPL. Accordingly, the Commission has pro-rated the balance amount (purchased - 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:

(Rs. Crore)

Material Capitalisation										
	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 based on quantity capitalized	171.26	198.98	46.61	6.40	6.30	5.82	1.45	0.15	0.04	437.01

Balancing capitalisation	14.39	16.72	3.92	0.54	0.53	0.49	0.12	0.01	0.00	36.73
Total	185.65	215.71	50.53	6.94	6.83	6.30	1.57	0.16	0.04	473.74
Amount approved by DERC based on quantity capitalized	126.39	146.33	37.28	5.19	4.25	3.67	0.94	0.11	0.03	324.19
Balancing capitalisation	9.94	11.50	2.93	0.41	0.33	0.29	0.07	0.01	0.00	25.49
Total	136.33	157.84	40.21	5.60	4.58	3.96	1.02	0.11	0.03	349.68
Disallowance	49.33	57.87	10.32	1.34	2.25	2.34	0.56	0.05	0.01	124.06

Issue-2: Allowance of Capitalization pending Electrical Inspector Clearance

45. The Commission sought details from BYPL 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 BYPL, it was observed that application for Electrical Inspector clearance were made after the capitalization made in their books of accounts. Therefore, in compliance with the Hon’ble APTEL’s 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. The capitalization based on audited accounts of BYPL 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	225.79	360.79	237.36	249.23	276.75	188.31	208.86	96.96	69.13
2	Assets requiring EI certificate and capitalized in FY	170.94	231.03	120.14	52.17	80.14	40.66	60.57	12.70	10.19
3	Consideration of capitalization from 16 th day of filing of applications with EI*	119.02	110.86	153.45	25.14	197.18	59.48	66.95	13.63	12.89
4	Capitalization based on submission of EI application (1-2+3)	173.87	240.62	270.67	222.20	393.79	207.13	215.24	97.89	71.82
5	Disallowances	49.33	57.87	10.32	1.34	2.25	2.34	0.56	0.05	0.01

	on related party transaction									
6	Net capitalization (4-5)	124.54	182.75	260.35	220.86	391.54	204.79	214.69	97.84	71.81

*Note: Further capitalization from 16th 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
0.20	0.00	19.07	0.69

47. 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 other than the two issues dealt above, will be considered separately.

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

Sd/-
(Justice Shabihul Hasnain ‘Shastri’)
Chairperson