



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

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No: F11(722)/DERC/2011-12/3050

**In re: In compliance to the directions of Hon'ble Supreme Court of India vide its Judgement dated 15/12/2022 in MA Nos. 633-634 of 2022 in Civil Appeal No. 9003-9004 of 2011.**

**In the matter of**

**BSES Rajdhani Power Ltd. (BRPL)**

**BSES Yamuna Power Ltd. BYPL)**

**Coram:**

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

**ORDER**

(Date of Order: 10.07.2023)

1. The Hon'ble Supreme Court vide its judgment dated 15/12/2022 in MA Nos. 633-634 of 2022 in Civil Appeal No. 9003-9004 of 2011 filed by BRPL & BYPL had passed following directions:

**Issue No.1 – Carrying Cost**

*"7. In Civil Appeals No.9003-9004 of 2011, DERC had specifically raised the question of law as regards funding of revenue gap in the Debt-Equity ratio 70:30 as under:*

*"Whether the Appellate Tribunal is right in directing the revenue gap to be funded in the debt equity ratio of 70:30 when such revenue gap funding does not add to the gross block of capital assets to be serviced through debt and equity is only a transitional funding to be serviced through debt and internal accruals of the distribution licensees"*

8. This Court has not accepted the contention of the DERC. As noticed above, the appeals filed by the DERC have been dismissed by this Court.

9. It is evident from the compliance affidavit/report dated 23.03.2022 that DERC has not applied the Debt-Equity ratio of 70:30. We are of the view that DERC ought to have allowed funding of regulatory asset/revenue gap on a normative Debt-Equity ratio of 70:30. There is no question of recomputing the carrying cost rate based on purported equity on the basis of net worth from the audited books and balancing figure as debt. Therefore, we direct DERC to allow funding of regulatory asset/revenue gap on a normative Debt-Equity ratio of 70:30."

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**WEAR FACE MASK**

**WASH HANDS REGULARLY**

**MAINTAIN SOCIAL DISTANCING**

**Issue No.2 – Rate of Interest on Carrying cost**

"10. On this question, the direction of the APTEL in its judgment dated 12.07.2011, is as under:

"11. The sixth issue is regarding interest rate for carrying cost.

11.1. This issue also had been dealt with in this Tribunal's Judgment dated 30.7.2010 reported in 2010 ELR (APTEL) 0891 between North Delhi Power Ltd. vs. DERC (Appeal No.153 of 2009). The relevant extracts of the Judgment are reproduced below:

45. The carrying cost is allowed based on the financial principle that whenever the recovery of cost is to be deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and/or promoters and/or accrual and/or internal accrual has to be paid for by way of carrying cost. The carrying cost is a legitimate expectation of the distribution company. The State Commission instead of applying the principle of PLR for the carrying cost has wrongly allowed the rate of 9% which is not the prevalent market lending rate. Admittedly, the prevalent market lending rate was higher than the rate fixed by the State Commission in the tariff order. Therefore, the State Commission is directed to reconsider the rate of carrying cost at the prevalent market rate keeping in view the prevailing Prime Lending Rate. "

11. The above view has been upheld by this Court.

12. It is evident from the compliance report that instead of taking the prevalent market lending rate, DERC has taken weighted average rate of interest on term loans for period FY 2007-2011 and for FY 2012-13 onwards and has considered normative rates as approved in the Tariff Order dated 13.07.2012.

13. In our view, it is clear that DERC has substituted the words 'prevailing market rate keeping in view the prevailing Prime Lending Rate' with the words actual interest rate paid by BRPL and BYPL on their loans' which is not permissible in view of the aforesaid judgement of the APTEL.

14. Therefore, we direct DERC to allow SBI PLR as provided in the Table above, on 70% debt component for funding regulatory asset/revenue gap in the ratio of 70:30.

15. In case DERC has failed to comply with any other direction(s) contained in the order of the APTEL, confirmed by this Court in the above appeals (C.A. No(s). 9003-9004 of 2011), liberty is reserved to the applications-BRPL and BYPL to move the competent authority/Tribunal

for appropriate relief(s) in accordance with law."

2. It is to be mentioned that the Commission had in terms of Hon'ble Supreme Court's Order dated 2/05/2023 wherein time was granted till 15/05/2023 to comply on the issue of Capital Expenditure and Capitalization, passed a Compliance Order on the directions of Hon'ble Supreme Court of India in its Order dated 15/12/2022 in MA 1261 & 1262 of 2022 and 918 & 919 of 2022 in Civil Appeal Nos. 884 and 980 of 2010. It was stated in the said order that the financial impact of the findings of the Commission's Order dated 14/05/2023 will be appropriately provided in the ensuing Tariff Order. It was also stated in the said Order that the impact, if any, in the ongoing physical verification of capex exercise for the issue dealt in the Order, will be considered separately.
3. The Carrying Cost Rate has been recomputed based on the principles decided by Hon'ble Supreme Court in its Order dated 15/12/2022 in MA No. 633-634 of 2022 in Civil Appeal No. 9003-9004 of 2011 i.e., Normative Debt-Equity ratio of 70:30 instead of Equity based on Net Worth from the Audited Books of accounts and SBI PLR on 70% Debt component of Regulatory Assets instead of Actual Interest Rate. Accordingly, the revised Carrying Cost Rate from FY 2007-08 to FY 2019-20 is as follows:

Financial Year	Carrying Cost Rate earlier allowed in various Tariff Orders		Carrying Cost Rate computed as per Supreme Court Order dated 15/12/2022	
	BRPL	BYPL	BRPL	BYPL
FY 2007-08	10.34%	10.90%	13.08%	13.08%
FY 2008-09	11.13%	12.17%	13.15%	13.15%
FY 2009-10	11.49%	12.13%	12.51%	12.51%
FY 2010-11	11.66%	11.64%	12.78%	12.78%
FY 2011-12	13.17%	13.36%	14.28%	14.28%
FY 2012-13	10.67%	10.54%	15.03%	15.03%
FY 2013-14	10.82%	10.77%	15.01%	15.01%
FY 2014-15	11.18%	10.94%	15.13%	15.13%
FY 2015-16	11.12%	10.96%	14.80%	14.80%
FY 2016-17	11.18%	11.17%	14.63%	14.63%
FY 2017-18	13.62%	13.76%	13.78%	13.78%
FY 2018-19	13.32%	13.77%	13.78%	13.78%
FY 2019-20	12.59%	12.57%	13.71%	13.71%

Note: Last True-up was of FY 2019-20 conducted in Tariff Order dated 30/09/2021

4. The Commission has filed Review Petition against the Order dated 15/12/2022 before the Hon'ble Supreme Court with a prayer to Review the directions passed in

paragraphs 9 and 14 of the said Order related to Normative Debt: Equity of 70: 30 and SBI PLR.

5. The Statutory Process mandated under Section 64 of Electricity Act 2003 has been initiated and comments / suggestions have been sought from various stakeholders on True-up Petitions of FY 2021-22 and ARR for FY 2023-24 filed by Power Utilities of Delhi including BSES DISCOMs (*BRPL & BYPL*). The said Petitions have been admitted and Public Notices have also been published by the Commission and Utilities in leading newspapers of various languages seeking stakeholders' comments/suggestions on the said Petitions.
6. It is noted that BSES DISCOMs (*BRPL & BYPL*) have sought impact of revised Carrying Cost based on normative Debt: Equity & SBI PLR and impact of Hon'ble Supreme Court Order dated 18/10/2022 in the said True-up Petitions.
7. Since, the Statutory Process for issuance of Tariff Order has already begun, therefore, the financial impact of Hon'ble Supreme Court Orders and Commission's Order dated 14/05/2023 along-with on-going Review of Physical Verification of Assets will be provided in Tariff Order subject to prudence check.
8. This Compliance Order is issued w.r.t. Hon'ble Supreme Court Order dated 15/12/2022 and is subject to Orders which may be passed by the Apex Court in the Review Petition filed by Commission in Order dated 15/12/2022 in MA No. 633-634/2022 in CA No. 9003-04/2011.
9. Ordered Accordingly.

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