



Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017.

F.11(2278)/DERC/2024-25/8281

Tariff Petition No. 68/2025

In the matter of: Petition for approval of True-up of expenses upto FY 2023-24 and Aggregate Revenue Requirement (ARR) & Tariff for FY 2025-26.

**BSES Yamuna Power Ltd.
Through its: CEO
BSES Bhawan, Nehru
Place,
New Delhi – 110019.**

...Petitioner/Licensee

Coram:

Sh. Surender Babbar, Member and Sh. Ram Naresh Singh, Member

Appearance:

1. Mr. Buddy A. Ranganadhan, Ld. Sr. Counsel for the Petitioner
2. Mr. Aditya Vikram Jalan, Ld. Counsel for the Petitioner
3. Ms. Isnain Muzamil, Ld. Counsel for the Petitioner
4. Mr. Kshitij Pandey, Ld. Counsel for the Petitioner

ORDER

(Date of Order: 24.03.2026)

1. This Order arises out of the Petition filed by the Petitioner for Approval of True-Up of Expenses upto Financial Year 2023-24 & Aggregate Revenue Requirement (ARR) for Financial Year 2025-26 by way of additional affidavit signed and verified on the behalf of the Petitioner on 26th December, 2025. Before proceeding to consider the Present Petition, it would be necessary to refer to the last Order dated 10.02.2026 in the present Petition passed by this Commission, which reads as under:

"1. Heard Mr. Buddy A. Ranganadhan, Ld. Senior Advocate, for the Petitioner. It was apprised to the Commission that the Petitioner has sought to modify certain Tariff parameters in the original Petition by placing reliance upon the Rules issued by the Ministry of Power (MoP), which, according to the Petitioner, are at variance with the extant Regulations framed by the Commission.

2. The Commission observes that, vide its Record of Proceedings dated 12.12.2025, the Petitioner had been specifically directed to file additional submissions limited to the impact arising pursuant to the Appeal(s) filed by the Petitioner and decided in its favour. However, upon perusal of the Additional Submissions, it is noted that the Petitioner has not limited itself to the impact of the said Appeal(s), but has also sought to modify its original Petition in respect of various Tariff parameters citing the MoP Rules, thereby substantially altering

the scope and extent of claim made by it in its original Petition.

3. *Upon a query by the Commission, the Ld. Senior Advocate submitted that a revised Tariff Petition would be filed before the Commission, if not already filed. Accordingly, the Commission would dispose of the Original Petition, and deal with revised Petition first at admission stage, so as to enable the Commission to issue True-up Order for the Financial Year 2023-24 within the time limit assured by the Commission before the Hon'ble APTEL.*

4. *Further, the Petitioner shall file the Executive Summary of the revised Petition after the revised Petition is considered for admission by this Commission."*

2. Now the Commission proceeds to examine and decide the present petition.

A. Facts relevant for the present Petition:-

- i. Initially, the Tariff Petition for Approval of True-Up of Expenses upto Financial Year 2023-24 & Aggregate Revenue Requirement (ARR) for Financial Year 2025- 26 was filed by the Petitioner on 25.11.2024 stated to be filed in accordance with the prescribed formats.
- ii. The Commission vide its Order dated 12.12.2025, admitted the above Tariff Petition dated 25.11.2024 and allowed the Petitioner two weeks' time to file additional affidavit in respect of the claims arising out of the appeals filed by the Petitioner which are in its favour.
- iii. The Petitioner filed the additional affidavit signed and verified on its behalf on 11.12.2025. However, instead of submitting the details of the claims arising out of appeals in its favour, for which only the Petitioner sought time and which was granted by the Commission vide Order dated 12.12.2025, the Petitioner instead sought to file additional affidavit towards revised projections/calculations, computed in accordance with the applicable rules citing the Judgement dated 06.08.2025 in WP(C) No. 104-105 of 2014 passed by Hon'ble Supreme Court of India and the Order dated 02.12.2025 in OP No. 01 of 2025 titled "*In Suo-Motu action under Section 121 of the EA v. Forum of Regulators & Ors.,*" passed by the Hon'ble APTEL.
- iv. On the next date of hearing on 10.02.2026, the Petitioner sought to modify its original Petition in respect of various Tariff parameters citing the Ministry of Power (MoP) Rules, and thereby to alter the scope and extent of claim made by it in its original Petition. The Petitioner submitted that the revised Tariff Petition would be filed for the True-Up of FY 2023-24. After hearing the Petitioner, the Commission passed the Order dated 10.02.2026 which has been reproduced above at the outset.
- v. Vide aforesaid Additional Affidavit signed and verified on behalf of the Petitioner dated 26.12.2025, the Petitioner filed the revised Petition for the True-Up of FY 2023-24 stating to have made the claims in the said affidavit based on Rules of MoP, Govt. of India and the CEA wherever the

Regulations of this Commission were not in accordance with the said rules.

- vi. Vide Record of Proceedings (ROP) dated 05.03.2026, this Commission reserved the Order on admissibility of the revised Tariff Petition filed vide aforesaid additional affidavit dated 26.12.2025. Accordingly
- vii. As per the original Petition for True-Up of ARR for the FY 2023-24 filed vide affidavit dated 25.11.2024, the Petitioner has claimed a sum of Rs.5923.66 crores as Trued-Up ARR (Table 3A.71 of the Petition), whereas as per the revised Petition filed vide additional affidavit dated 26.12.2025, the Petitioner has claimed a sum of Rs. 7170.19 crores as Trued-Up ARR (Table 3A.57 of the Petition). Thus, there is increase of claim for True-Up ARR for the FY 2023-24 by the Petitioner in its Revised Petition by the amount of Rs.1246.33 crores on account of claims mainly and basically as per MoP Rules and CEA Rules.
- viii. In Para 1B.15 of the Executive Summary "Part of the paper book of the present Petition, it is mentioned that while filing the present updated True-Up Petition for FY 2023-24, it has duly applied those provisions of the Tariff Regulations, 2017 and the Business Plan Regulations, 2023 that are consistent with the Electricity Rules, 2005 notified by the MoP (as amended from time to time). The Executive Summary has further stated that the updated ARR Petition for FY 2025-26 has been filed in compliance with the MoP Rules and the DERC Regulations, to the extent that the DERC regulations are consistent with the said Rules.
- ix. The Petitioner has submitted an additional submission in the matter on 17.03.2026 though the same was not sought to be submitted by it in the last date of hearing on 05.03.2026 when the order in the revised petition was reserved by the Commission for admission. However, the Commission allow the taking of these additional submissions on record. It is noted by the Commission that by these additional submission, the Petitioner wishes only to bring on record that the Civil Appeal (DFR) No. 5959 of 2026 was listed before the Hon'ble Supreme Court on 09.03.2026 and the Hon'ble Supreme Court by its Order dated 09.03.2026, dismissed the aforesaid civil Appeal, while observing as under :-

"...we are of the opinion that the Appellate Tribunal for Electricity has not committed any error in law or fact.

3. The civil appeal is, accordingly, dismissed and the accompanying interlocutory application (s), if any, stands disposed of.

B. Submissions made by the Petitioner in the additional affidavit dated 26.12.2025 (Revised Tariff Petition for True-Up for the FY 2023-24 and ARR for FY 2025-26):

The Commission considers it necessary to mention here the submissions made by the Petitioner in its additional affidavit dated 26.12.2025 (Revised

Petition/ Present Petition), which are relevant for decision on the Revised Petition/Present Petition. Therefore, the submissions of the Petitioner in aforesaid additional affidavit, only which are relevant for consideration by this Commission for the decision on this Petition are brought out as under:-

- i. The additional affidavit is being filed by the Petitioner in terms of liberty granted by this Commission in ROP dated 12.12.2025, while considering the additional affidavit dated 11.12.2025 of the Petitioner whereby the Petitioner sought the liberty for filing additional affidavit for placing on record updated projection/calculation, computed in accordance with the applicable rules. [para 2 of the additional affidavit]
- ii. Subsequent to the filing of the Original Tariff Petition, the Hon'ble Supreme Court of India passed the Judgement dated 06.08.2025 in WP(C) No. 104-105 of 2014 noting the primacy of rules framed by the Central Government under Section 176 of the Electricity Act, 2003, over the Regulations framed by this Commission under Section 178 of the Electricity Act, 2003.
- iii. Based on the above observation of Hon'ble Supreme Court of India, the Hon'ble APTEL passed order dated 02.12.2025 OP No. 01 of 2025 titled "In Suo-Motu action under Section 121 of the EA v. Forum of Regulators & Ors", wherein it was observed by the Hon'ble APTEL that the rule making power of the Central Government is above the Regulations making power of Regulatory Commission. In the said order, the Hon'ble APTEL further held that any prior Regulations made by the State Commission would cease to operate once rules to the contrary are made by the Central Government.
- iv. Pursuant to the Judgement dated 06.08.2025 in WP (C) 104 of 2014 & batch matters passed by Hon'ble Supreme Court of India and Order dated 02.12.2025 in OP No. 01 of 2025 of Hon'ble APTEL, it is now a settled law that the applicable rules will take primacy over the Regulations to the extent that the Regulations are in contravention with the rules and accordingly, the Petitioner is filing the updated projections/calculations as per the applicable MoP Rules in the present Petition and in terms of Business Plan Regulations (BPR), 2023, to the extent they are consistent with MoP Rules, as amended.
- v. In terms of the liberty granted by this Commission in its Order/ROP dated 12.12.2025, the Petitioner is filing its updated projections/calculations for (a) Truing-Up upto FY 2023-24; and (b) Aggregate Revenue Requirement for FY 2025-26.
- vi. The Petitioner craves leave of this Hon'ble Commission to take on record the revised Executive Summary and the updated Chapters annexed with the additional affidavit. Consider and read the updated Chapters 3A, 3B, 4 and 5 at page nos. 167-304, 305-323, 324-443 and 444-501 [Ref. Annexure A7-A10]

of the present affidavit instead of Page Nos. 167 to 304 of Chapter 3A, Page Nos. 305 to 323 of Chapter 3B, Page Nos. 324 to 443 of Chapter 4 and Page Nos. 444 to 501 of Chapter 5 which were filed as part of the Petition on 29.11.2024.

- vii. As per the table 3A.57 Aggregate Revenue Requirement for FY 2023-24, the Petitioner has claimed the amount of Rs. 14,629.65 crores as Trued-Up ARR.

C. Analysis and Findings:

- i. First of all, the Commission would like to clarify that this Order deals only with the maintainability and admission of the revised Petition (the Present Petition) filed by the Petitioner for the True Up of ARR for the Financial Year 2023-24 based on the statutory and legal position. Therefore, the Commission is not expressing any opinion/ views about the individual claims as well as the total amount of Trued Up ARR for & upto the Financial Year 2023-24 as brought out by the Petitioner in the present Petition vide the additional affidavit 26.12.2025.
- ii. The Commission observes that the claim made by the Petitioner in its Revised Petition (present Petition) based on the projections/calculations of Trued-Up ARR basically is mainly as per MoP Rules, whereby the Petitioner has increased its claim for Trued-Up ARR by Rs.1246.33 crores above the amount of Trued-Up ARR claimed in its original Petition filed vide affidavit 25.11.2025. In addition to the said increase in its claim, the Petitioner has also claimed the amount of Rs. 18,909 crores as the impact of "Past Period Claims" with carrying cost upto 31st March,2024 included as Chapter- 3 B of the paper book of the Present Petition. The Commission further notes that the said amount of Rs. 18,909 crores also include the amount of Rs 2,325 crores towards the impact of issues not yet decided in the appeal in the favor of the Petitioner.
- iii. The statement of fact made by the Petitioner in para 11 of the additional affidavit (Present Petition) that in terms of the liberty granted by this Hon'ble Commission, BRPL is filing its updated projections is ex-facie misleading and wrong in as much as the Commission has not given any liberty to revise the True-Up Tariff Petition as per the MoP Rules. The Commission vide its Order dated 12.12.2025 had allowed time to file additional affidavit only in respect of the claims arising out of the appeals filed by the Petitioner which are in its favour and the said order even has been reproduced by the Petitioner in para 10 of its additional affidavit. Therefore, it is observed by the Commission that the claims in the Revised Petition filed vide the additional affidavit dated 26.12.2025 based on the MOP Rules are not arising out of any liberty given by this Commission to the Petitioner as has been wrongly stated by the Petitioner in the additional affidavit dated 26.12.2025 (Present Petition).

- iv. Therefore, the Commission notes that the revised Petition (Present Petition) includes not only the claims based on the MoP Rules but also the claims giving effect to the appeals/ reviews filed by the Petitioner on different issues pertaining to past period even though the said appeals/ review have not been decided in favour of the Petitioner as the same are still under the process of adjudication.
- v. It is observed by the Commission that Petitioner has filed the revised Petition in the name of additional affidavit by which the Petitioner has structurally changed the original True-Up Petition filed vide affidavit dated 25.11.2024. In this pursuit, the Petitioner has bypassed and thus contravened the principles of tariff determinations as per the Tariff Regulations, 2017 and Business Plan Regulations, 2023 and has replaced the same with the MoP Rules while the said regulations hold the ground on the statute book.
- vi. It is a common principle of law that a petition cannot be filed by the petitioner under the provisions of a statute including the subordinate legislation for claiming/seeking the relief/claim/remedy available under the other statute/ subordinate legislation except in the case of Writ Petitions under the extra- ordinary jurisdiction of the High Courts or the Supreme Court. Therefore, the Petitioner is not allowed as per the principle of common law to claim the True-Up ARR based on MoP Rules by filing the present Petition under the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 and Business Plan Regulations, 2023).
- vii. The Commission also notes that even as per the Part 4 "Procedure for Tariff Determination" under DERC-Terms and Conditions for Determination of Tariff) Regulations, 2017 it is specifically provided that any Petition at variance or deficient with respect to these Regulations shall be returned to the Utility, for rectification and resubmission within the time specified in the communication by the Commission. Therefore, the Commission observes that the revised True-Up Petition (present Petition) filed by the Petitioner under the provisions of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 and Business Plan Regulations, 2023) for seeking the approval of the trued up ARR for the financial year 2023-24 based on the MOP Rules and CEA Rules on various parameters of ARR when the said regulations have the separate/ different provisions for such parameters of ARR is not maintainable and admissible.
- viii. The Petitioner has supported the revised True-Up Petition (present Petition) on the basis of Order dated 02.12.2025 in OP No. 01 of 2025 titled "In Suo-Motu action under Section 121 of the EA v. Forum of Regulators & Ors.," passed by the Hon'ble APTEL. In this Order, the Hon'ble APTEL has inter-alia stated that any prior regulations made by the Commission would cease to

operate once rules to the contrary are made by the Central Government. The Hon'ble APTEL then held that the DERC is required to provide, must also be in terms of the 3rd proviso to Rule 23 of the Electricity Rules, 2005 as amended on 11.01.2024, and not in terms of the earlier Business Plan Regulations (BPR) made by the DERC in the year 2023. In this regard, while the Commission admits that it is bound to comply with the said order of the Hon'ble APTEL in the context of the aforesaid suo-motu Petition in OP No. 01 of 2025 unless the said order is set aside by the appropriate Legal Forum/Hon'ble Supreme Court of India. But the said Order of the Hon'ble APTEL cannot be construed to have set aside the aforesaid Tariff Regulations and the BPR framed by this Commission as the proceedings in OP No. 01 of 2025 before the Hon'ble APTEL are not for the adjudication on the validity & vires of the said Regulations of the Commission but for the liquidation of the RA as per the Judgement dated 06.08.2025 of the Hon'ble Supreme Court of India. In this regard, the Commission refers to the settled law in PTC vs CERC (2010) 4 SCC 603 wherein it has been held by the constitutional bench of the nine judges of the Hon'ble Supreme court that the power to adjudicate about the validity of the regulations framed by the Commission does not lie with the Hon'ble APTEL and the Hon'ble APTEL cannot modify or decide the validity of the regulations framed by the regulatory Commissions which are subordinate legislation and not the statutory orders passed by the Commission which are appealable before the Hon'ble APTEL under Section – 111 of the Electricity Act, 2003. The commission notes that till date the said settled principle of law holds the ground. Therefore, the Order dated 02.12.2025 of the Hon'ble APTEL passed in OP No. 01 of 2025 in which it has been held that the rate of carrying cost on Regulatory Assets should be considered by this Commission as per the MoP Rules and not as per the regulations of this Commission, does not ipso-facto set-aside or modify the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 and Business Plan Regulations, 2023).

- ix. The Commission also notes that the Petitioner has already challenged the various provisions of the aforesaid Regulations of this commission before the Hon'ble High Court of Delhi acknowledging and recognizing the settled legal position decided by the Hon'ble Supreme Court of India in PTC Vs. CERC (supra). Therefore, while the challenge by the petitioner against the vires of the regulations is pending for adjudication before the Hon'ble High Court of Delhi, it cannot alter and modify the said regulations on the basis of the order dated 02.12.2025 of the Hon'ble APTEL in OP No. 01 of 2025.
- x. The Order dated 02.12.2025 of Hon'ble APTEL is an order in OP No. 01 of 2025 and the decision as per the said Order is required to be complied with by the Commission in respect of the proceedings in OP No. 01 of 2025 only and

the said order by itself does not strike off the regulations of the Commission namely the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 and Business Plan Regulations, 2023 from the statute book (Gazette). Therefore, the Petitioner is bound to comply with those regulations for filing the True Up Petition for the Financial Year 2023-24.

- xi. The additional submissions dated 17.03.2026 submitted by the Petitioner also does not alter or add the legal merits of the case in as much as the order of the Hon'ble APTEL dated 12.01.2026 is binding on the Commission as already clarified above in this order and therefore, the order dated 09.03.2026 of Hon'ble Supreme Court dismissing the Civil Appeal of the GNCTD by which the Hon'ble Supreme Court has held that the APTEL has not committed any error in law or fact vide its order dated 02.12.2025 does not change the legal merits of the case as discussed herein before in this order.
- xii. Therefore, this Commission observes that the revised Petition (Present Petition) cannot be filed by the Petitioner as required under the Tariff Regulations with the claims and calculations as per the MoP Rules & CAA Rules.

Conclusion:

3. In view of the above facts of the present matter, misplaced and wrong reference of the liberty given by the Commission to the Petitioner for filing the revised Petition (Present Petition) based on MoP rules and in contravention of the regulations of this Commission and the legal position including the provisions of Part 4 "Procedure for Tariff Determination" under DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 as referred above in this Order, the revised True Up Petition for the Financial Year 2023-24 and ARR for Financial Year 2025-26 is not maintainable for consideration by this Commission and is not admitted by the Commission for determination of the trued up ARR for the financial year 2023-24. In any case, the ARR for the financial year 2025-26 is not being considered by this commission as the financial year 2025-26 is getting over in few days and the Petitioner is recovering the tariffs as per the last order for tariff (ARR) passed by the Commission on 30.09.2021. However, the Commission grants liberty to the Petitioner to seek the determination of True Up Tariff for the Financial Year 2023-24 based on the original petition filed vide Affidavit dated 25.11.2024 and in this regard, the petitioner may file application, if it so desires for consideration by this Commission.
4. Ordered accordingly.

Sd/-
(Surender Babbar)
Member

Sd/-
(Ram Naresh Singh)
Member