

**Impact for Prior Period Issues decided in favour of the Petitioner by the Hon'ble Supreme Court/APTEL/the Hon'ble Commission not considered by the Hon'ble Commission:**

**1. Enforcement sales impact**

The Hon'ble Supreme Court in Judgment dated 18.10.2022 passed in *BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission*, 2023 4 SCC 788 ("**BSES Judgment**") has directed the Hon'ble Commission to consider assessed energy for calculation of enforcement sales and allow the impact of the same along with carrying costs. Therefore, the Hon'ble Apex Court has settled the principle with respect to computation of enforcement sales and its impact thereof.

In terms of the said judgment, the Hon'ble Commission *vide* its letter dated 31.05.2023 sought information relating to enforcement sale from all the distribution licensees of Delhi (including the Petitioner) for considering the assessed energy for calculation of enforcement sales. Copy of letter is annexed as Annexure III. Notably, the Hon'ble Commission in its letter dated 31.05.2023 had agreed that the Hon'ble Supreme Court in its judgement dated 18.10.2022 has decided a general principle on methodology of enforcement calculations and therefore, it is to be implemented for all the Distribution Utilities (including the Petitioner). The relevant portion of the letter dated 31.05.2023 is reproduced hereunder:

*"3) Since, vide about stated judgement, Hon'ble Supreme Court has decided a general principle for consideration of sales under enforcement which is thereafter utilized for AT&C computation, therefore, TPDDL and NDMC are also directed to furnish the details as sought above".*

Accordingly, the Petitioner through its letters dated 06.06.2023, 06.02.2024 and 10.05.2024, submitted the details of revision on billed sales of enforcement sales from FY 2007-08 to FY 2021-22 along with carrying cost, for consideration in the ensuing true-up orders. A copy of the letters dated 06.06.2023, 06.02.2024 and 10.05.2024 are enclosed as Annexure IV

However, the above submissions made by the Petitioner have not been considered by the Hon'ble Commission. It is pertinent to note that the non-consideration of the impact of

enforcement sales of Rs. Rs. 157.07 Cr has caused undue loss to the Petitioner. Year wise detail of impact is in table below:

Particulars	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	FY 21	FY 22
Enforcement sales impact	10.91	33.21	33.3	20.44	5.43	2.96	2.21	2.41	4.74	14.16	9.45	5.33	5.14	7.38

Further, it is humbly submitted that the Hon'ble Commission in the true-up orders dated 19.07.2024 passed for the other distribution licensees i.e., BSES Rajdhani Power Limited and BSES Yamuna Power Limited in Tariff Petition No. 03/2022 and Tariff Petition No. 04/2022 respectively has given effect to the above said judgment of the Hon'ble Supreme Court and has considered the enforcement units as assessed energy (as submitted by the BSES Rajdhani) on provisional basis. The relevant paragraph of orders dated 19.07.2024 passed in Tariff Petition No. 03/2022 and Tariff Petition No. 04/2022 is reproduced below:

(a) Order in Petition No. 03/2022

...

**"ENFORCEMENT**

...

*3.118 However, as per Hon'ble Supreme Court Judgement dated 18/10/2022 wherein it was directed to consider the Enforcement Sales as "Assessed Energy", accordingly, the Commission has considered the Enforcement units as 45.50 MU to arrive at the Truedup sales for FY 2020-21 subject to Prudence Check as stipulated in above paras."*

(b) Order in Petition No. 04/2022

**"ENFORCEMENT**

...

*3.104 However, as per Hon'ble Supreme Court Judgement dated 18/10/2022 wherein it was directed to consider the Enforcement Sales as "Assessed Energy", accordingly, the Commission has considered the Enforcement units as 9 MU to arrive at the Trued-up sales for FY 2020-21 subject to Prudence Check as stipulated in above paras."*

Therefore, it is requested to the Hon'ble Commission to consider the aforesaid submissions and allow the impact of enforcement sales along with carrying cost amounting to Rs. 473.37 Cr in terms of the principles settled by the Hon'ble Supreme Court in the BSES Judgement.

**IMPACT OF PRIOR PERIOD**

Particulars	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	FY 21	FY 22	FY 23
Enforcement sales impact	10.91	33.21	33.3	20.44	5.43	2.96	2.21	2.41	4.74	14.16	9.45	5.33	5.14	7.38	
Total Addition	10.91	33.21	33.3	20.44	5.43	2.96	2.21	2.41	4.74	14.16	9.45	5.33	5.14	7.38	0
Carrying cost rate	11.32%	10.17%	10.41%	12.20%	11.78%	11.88%	11.98%	12.08%	12.08%	10.33%	10.13%	10.21%	9.61%	9.30%	9.42%
Opening Balance	0	11.53	47.6	87.59	119.96	139.84	159.59	181.05	205.48	235.32	274.53	312.26	349.75	388.74	432.62
Addition	10.91	33.21	33.3	20.44	5.43	2.96	2.21	2.41	4.74	14.16	9.45	5.33	5.14	7.38	0
Carrying Cost Amount	0.62	2.86	6.69	11.93	14.45	16.79	19.25	22.02	25.11	25.04	28.29	32.15	33.86	36.5	40.75
Closing Balance (A)	11.53	47.6	87.59	120	139.8	159.6	181.1	205.5	235.3	274.5	312.3	349.8	388.7	432.6	473.4

**2. Allowance of impact on Carrying cost due to change in debt rate i.e. at SBI PLR rate –**

The Hon'ble Supreme Court in its order dated 15<sup>th</sup> October 2022 in the Civil Appeal No. 9003-9004 of 2011 titled BRPL vs DERC has decided the issue in favour of BSES and allowed the SBI PLR on 70% debt component for funding regulatory asset/revenue gap.

In the above said order, the Hon'ble Supreme Court has observed in issue no. 2 related to "Interest rate of Carrying cost" that the Hon'ble Commission has substituted the words 'prevailing market rate keeping in view the prevailing Prime Lending Rate' with the words 'actual interest rate paid by DISCOM on their loans' which is not permissible and has directed the Hon'ble Commission to allow SBI PLR on 70% debt component for funding regulatory asset/revenue gap in the ratio of 70:30.

The relevant portion of the judgement is reproduced below for reference:

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 judgment of the APTEL. A comparison of the two is given below:

Particular	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	FY 21
BRPL Rate of %	11.03	11.47	11.30	11.87	13.11	15.26	16.02	15.14	14.19	14.07	13.85	13.38	12.25	12.24
BYPL Rate of %	10.93	11.66	11.37	11.66	13.28	15.19	15.17	15.40	14.63	14.28	14.16	13.93	12.63	12.20
SBI PLR	12.69	12.79	11.87	12.26	14.40	14.61	14.58	14.75	14.29	14.04	13.68	13.68	13.68	12.27

The issue of rate of interest on carrying cost was first challenged by the Petitioner before the Hon'ble APTEL in Appeal no. 153 of 2009 against the Tariff Order of May' 2009 and the Hon'ble APTEL in its judgment dated 30<sup>th</sup> July' 2010 directed the Hon'ble Commission to reconsider the rate of carrying cost at the prevalent market rate keeping in view the prevailing Prime Lending Rate.

Further, the Hon'ble Commission has preferred a Civil Appeal No. 5845 of 2014 against the Order/Judgement of APTEL dated 28<sup>th</sup> Nov' 2013 challenging the following issue:

**"ISSUE 15 (c): Carrying cost should be allowed for financing the revenue gap on a debt equity ratio of 70:30"**

However, there is no stay granted by the Hon'ble Supreme Court in Civil Appeal No. 5845 of 2014 to the Hon'ble Commission. In the meanwhile, above said order of the Hon'ble Supreme Court has attained finality in case of similarly placed BSES DISCOM's and the issue has been decided in their favour.

Therefore, it is requested that the Hon'ble Commission may accordingly revise the interest rate of carrying cost for the debt portion on SBI PLR from FY 2007-08 to FY 2016-17 for the Petitioner and allow its impact in ensuing Tariff order.

Further, it is humbly submitted that the Hon'ble Commission in the True-up Orders dated 19.07.2024 passed for the other distribution licensees i.e., BSES Rajdhani Power Limited and BSES Yamuna Power Limited in Tariff Petition No. 03/2022 and Tariff Petition No. 04/2022 respectively has given effect to the above said judgment of the Hon'ble Supreme Court and

has allowed carrying cost based on SBI PLR and at debt/equity ratio of 70:30. The relevant paragraph of orders dated 19.07.2024 passed in Tariff Petition No. 03/2022 and Tariff Petition No. 04/2022 is reproduced below:

a) Order in Petition No. 03/2022

3.22 The Carrying Cost rate now considered 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 (As determined in DERC Compliance Order dated 10.07.23)	SBI PLR as directed to be considered by Supreme Court vide its Order dated 15/12/2022 in Para 13 in relation to BRPL and BYPL	Rate of return on Equity as considered by the Commission as per applicable Regulations	Carrying Cost rate as considered in True Up Order FY 20-21 (D:E:70:30)
FY 2007-08	10.34%	13.08%	12.69%	14.00%	13.08%
FY 2008-09	11.13%	13.15%	12.79%	14.00%	13.15%
FY 2009-10	11.49%	12.51%	11.87%	14.00%	12.51%
FY 2010-11	11.66%	12.78%	12.26%	14.00%	12.78%
FY 2011-12	13.17%	14.28%	14.40%	14.00%	14.28%
FY 2012-13	10.67%	15.03%	14.61%	16.00%	15.03%
FY 2013-14	10.82%	15.01%	14.58%	16.00%	15.01%
FY 2014-15	11.18%	15.13%	14.75%	16.00%	15.13%
FY 2015-16	11.12%	14.80%	14.29%	16.00%	14.80%
FY 2016-17	11.18%	14.63%	14.04%	16.00%	14.63%
FY 2017-18	13.62%	13.78%	13.68%	16.00%	13.62%
FY 2018-19	13.32%	13.78%	13.68%	16.00%	13.32%
FY 2019-20	12.59%	13.71%	13.58%	16.00%	12.59%

b) Order in Petition No. 04/2022

3.22 The Carrying Cost rate now considered 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 (As determined in DERC Compliance Order dated 10.07.23)	SBI PLR as directed to be considered by per Supreme Court vide its Order dated 15/12/2022	Rate of return on Equity as considered by the Commission	Carrying Cost rate as considered in True Up Order FY 20-21 (D:E:70:30)
FY 2007-08	10.90%	13.08%	12.69%	14.00%	13.08%
FY 2008-09	12.17%	13.15%	12.79%	14.00%	13.15%
FY 2009-10	12.13%	12.51%	11.87%	14.00%	12.51%
FY 2010-11	11.64%	12.78%	12.26%	14.00%	12.78%
FY 2011-12	13.36%	14.28%	14.40%	14.00%	14.28%
FY 2012-13	10.54%	15.03%	14.61%	16.00%	15.03%
FY 2013-14	10.77%	15.01%	14.58%	16.00%	15.01%
FY 2014-15	10.94%	15.13%	14.75%	16.00%	15.13%
FY 2015-16	10.96%	14.80%	14.29%	16.00%	14.80%
FY 2016-17	11.17%	14.63%	14.04%	16.00%	14.63%
FY 2017-18	13.76%	13.78%	13.68%	16.00%	13.76%
FY 2018-19	13.77%	13.78%	13.68%	16.00%	13.77%
FY 2019-20	12.57%	13.71%	13.58%	16.00%	12.57%

Therefore, the Hon'ble Commission is requested to consider the aforesaid submissions and allow carrying cost to the Petitioner in terms of the principles settled by the Hon'ble Supreme Court in the BSES Judgement.

- 3. Deferment of Capitalization of FY 2017-18 to FY 2018-19 due to EI not added** – The Hon'ble Commission in latest Tariff Order dt. 19.07.2024 has inadvertently allowed capitalization of Rs. 6.09 Cr in FY 2018-19 against EI Certificates as Gross Fixed Asset, disallowed earlier in prior period Table no. 3. 6.

Thus, the capitalization amounting to Rs. 6.09 Cr is being offered back by the Petitioner.

- 4. Impact of inadvertent allowance of Capitalisation** - The Hon'ble Commission in latest Tariff Order dt. 19.07.2024 has inadvertently allowed capitalization of Rs. 77.71 Cr in FY 17-18 and its consequential impact in ROCE, Depreciation and Income Tax for the period FY 17-18 to FY 20-21 in prior period Table no. 3. 1 and 3. 6.

Thus, capitalization amounting to Rs. 77.71 Cr. along with its consequential impact is being offered back by the Petitioner.

**TATA POWER DELHI DISTRIBUTION LIMITED**  
A Tata Power and Delhi Government Joint Venture

**IMPACT OF PRIOR PERIOD**

Based on all above submission, the issue wise and year wise impact along with carrying cost is computed as below:

S. No.	Particulars	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	FY 21	FY 22	FY 23
I	Enforcement sales impact	10.91	33.21	33.3	20.44	5.43	2.96	2.21	2.41	4.74	14.16	9.45	5.33	5.14	7.38	
	<b>Total Addition</b>	<b>10.91</b>	<b>33.21</b>	<b>33.3</b>	<b>20.44</b>	<b>5.43</b>	<b>2.96</b>	<b>2.21</b>	<b>2.41</b>	<b>4.74</b>	<b>14.16</b>	<b>9.45</b>	<b>5.33</b>	<b>5.14</b>	<b>7.38</b>	<b>0</b>
	Carrying cost rate	11.32%	10.17%	10.41%	12.20%	11.78%	11.88%	11.98%	12.08%	12.08%	10.33%	10.13%	10.21%	9.61%	9.30%	9.42%
	Opening Balance	-	11.53	47.6	87.59	119.96	139.84	159.59	181.05	205.48	235.32	274.53	312.26	349.75	388.74	432.62
	Addition	10.91	33.21	33.3	20.44	5.43	2.96	2.21	2.41	4.74	14.16	9.45	5.33	5.14	7.38	0
	Carrying Cost Amount	0.62	2.86	6.69	11.93	14.45	16.79	19.25	22.02	25.11	25.04	28.29	32.15	33.86	36.5	40.75
	<b>Closing Balance (A)</b>	<b>11.53</b>	<b>47.6</b>	<b>87.59</b>	<b>120</b>	<b>139.8</b>	<b>159.6</b>	<b>181.1</b>	<b>205.5</b>	<b>235.3</b>	<b>274.53</b>	<b>312.26</b>	<b>349.75</b>	<b>388.74</b>	<b>432.6</b>	<b>473.4</b>
II	Deferment of Capitalization of FY 2017-18 to FY 2018-19 due to EI not added											-6.09				
III	Impact of inadvertent allowance of Capitalisation										-6.68	-12.93	-12.23	-11.17		
	<b>Total Addition</b>	-	-	-	-	-	-	-	-	-	<b>(6.68)</b>	<b>(19.02)</b>	<b>(12.23)</b>	<b>(11.17)</b>	-	-
	Carrying cost rate	11.32%	10.17%	10.41%	12.20%	11.78%	11.88%	11.98%	12.08%	12.08%	10.33%	10.13%	10.21%	9.61%	9.30%	9.42%
	Opening Balance	-	-	-	-	-	-	-	-	-	-	-7.02	-27.72	-43.4	-59.28	-64.79
	Addition	-	-	-	-	-	-	-	-	-	(6.68)	-19.02	-12.23	-11.17	-	-
	Carrying Cost Amount	-	-	-	-	-	-	-	-	-	(0.34)	-1.67	-3.45	-4.71	-5.51	-6.1
	<b>Closing Balance (B)</b>	-	-	-	-	-	-	-	-	-	<b>(7.02)</b>	<b>-27.72</b>	<b>-43.4</b>	<b>-59.28</b>	<b>-64.8</b>	<b>-70.9</b>
	<b>Grand Total (A+B)</b>	<b>11.53</b>	<b>47.6</b>	<b>87.59</b>	<b>120</b>	<b>139.8</b>	<b>159.6</b>	<b>181.1</b>	<b>205.5</b>	<b>235.3</b>	<b>267.5</b>	<b>284.55</b>	<b>306.34</b>	<b>329.47</b>	<b>367.8</b>	<b>402.5</b>

\* Carrying cost rate taken as per previous rate allowed by the Hon'ble Commission. However, the carrying cost on above issues will change when SBI PLR rates are applied.

