

Tata Power Delhi Distribution Limited

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IN THE MATTER OF:

Petition for Approval of Annual Revenue Requirement (ARR) for the FY 2022-23 and True up for FY 2020-21.

AND

IN THE MATTER OF:

Relevant Provisions of the Electricity Act, 2003 read with Delhi Electricity Reforms Act, 2000 and DERC (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011 and DERC (Terms and conditions for determination of Tariff) Regulations, 2017 read with DERC Comprehensive Conduct of Business Regulations, 2001 read with DERC Business Plan Regulations, 2017 and DERC Business Plan Regulations 2019.

AND

IN THE MATTER OF:

Tata Power Delhi Distribution Limited (Formerly known as North Delhi Power Limited) having its registered office at NDPL House, Hudson Lines, Kingsway Camp, Delhi-110 009

...Petitioner



AFFIDAVIT ON BEHALF OF PETITIONER/ TATA POWER DELHI DISTRIBUTION LIMITED (TPDDL)

I, **Anurag Bansal**, son of Sh. P.C Bansal, aged about 45 years, residing at C-160, Ashok Vihar, Phase- I, New Delhi-110052, do hereby solemnly affirm as stated hereunder:

1. I say that I am working as Head, Corporate Legal with Tata Power Delhi Distribution Limited, the Petitioner in the above matter, having its registered office at NDPL House, Hudson Lines, Kingsway Camp, Delhi-110009, and am duly authorised by the said Petitioner to execute the said affidavit on its behalf.
2. I say that the present Petition is being filed by the Petitioner in terms of the Electricity Act, 2003, Delhi Electricity Reforms Act, 2000 read with the Hon'ble Commission's (Terms and Conditions for Determination of Tariff) Regulations 2017, DERC Business Plan 2017, DERC Business Plan 2019, DERC Comprehensive Conduct of



Business Regulations, 2001 to seek approval of the Hon'ble Commission for undertaking determination of True up for FY 2020-21 and ARR for the FY 2022-23.

3. I say that the statements made and data presented in enclosed petition are true to the best of my knowledge and as per the records of the Petitioner Company and information, estimations received and believed to be true. Further, no material information has been concealed in this aforesaid Petition.


DEPONENT

VERIFICATION:

I, the Deponent above named, do hereby verify that the contents of my above affidavit are true to my knowledge and belief and no part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this 22 NOV 2021 day of NOV, 2021



DEPONENT

Delhi

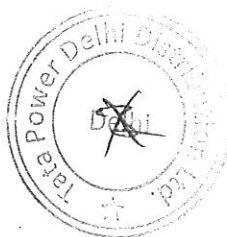
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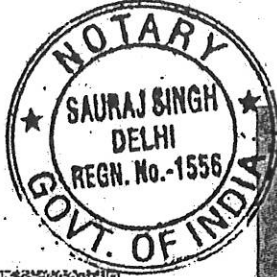
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Government of National Capital Territory of Delhi

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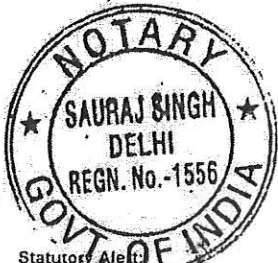
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Description of Document	: Article 48(c) Power of attorney - GPA
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: TATA POWER DELHI DISTRIBUTION LTD
Second Party	: Not Applicable
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Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



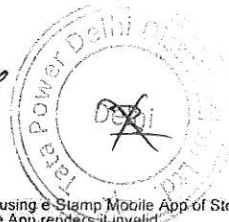
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St. No. _____
IN NOTARY REGISTER

.....Please write or type below this line.....

*This stamp paper has been used to sign this
Power of Attorney at New Delhi.*



[Handwritten Signature]



Statutory Alert

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate
3. In case of any discrepancy please inform the Competent Authority.

POWER OF ATTORNEY

By this power of attorney Tata Power Delhi Distribution Limited a body corporate incorporated under the Companies Act, 1956 and having its registered Office at NDPL House , Hudson Lines, Kingsway Camp, Delhi-110009 (hereinafter referred to as the 'Company') acting through Shri Ganesh Srinivasan S/o, Shri Srinivasan Appaswami (hereinafter referred as the 'Executant'), being the Chief Executive Officer (CEO) of the company and holder of Power of Attorney given by the Company and adopted by its Board of Directors on 22.10.2019 hereby appoints Sh. Anurag Bansal son of Sh. P C Bansal, aged about 45 years, resident of C- 160 Ashok Vihar Phase-1 Delhi - 110052 and working with the Company as Head – Corporate Legal vide Employee No. 91079 as the company's Attorney (hereinafter referred to as the 'Attorney' and to exercise following powers and authorities and to do and perform all or any of the acts , deeds , matters and things herein under specified on behalf of company that is to say :

1. To institute, verify and submit before any court of law or judicial / *Quasi*-judicial forum; any pleadings, documents or information including but not limited to petitions, complaints, criminal complaints, plaints, applications, eviction proceedings, representations, memoranda, appeals, statements of claim, counter claims, set off, execution petitions, replies, written statements, rejoinders, replications, evidence, affidavits, cross objections, counters, review, revision, application for withdrawal of cases, statements of defence, notices, references for arbitration, petitions for setting aside arbitral award and/or to commence, defend and prosecute any legal proceedings or use any other lawful means in order to safeguard the interest or enforce the rights of the Company;
2. To act, appear, plead, argue, file cases, before any Courts, State Electricity Regulatory Commission , Appellate Tribunal for Electricity , Central Electricity Regulatory Commission, Metropolitan Magistrates, Appellate Authority(ies), Forums, Tribunals, Commissions, *Quasi*-judicial bodies, authorities, boards, bureaus and/or any conciliatory, pre-litigative dispute resolution bodies, mediation cells, Lok Adalats, public hearing forums or other alternate dispute resolution channels dealing with matters pertaining to the Company :
to compromise, settle, withdraw, make plea-bargaining applications or compound any cases on behalf of and in the interest of the Company;
4. To file and receive documents; to obtain copies of the documents and court orders, awards or the like;
5. To act, appear, plead , argue and lead evidence, settlements or seek enforcement thereof on behalf of the Company before any Arbitral Tribunal, mediator, settlement body or conciliator

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Sr. No. ---
NOTARY REGISTERED



dealing with cases under Arbitration and Conciliation Act, 1996 and to examine and cross-examine witnesses therein and challenge awards;

6. To act, appear, plead and argue on behalf of the Company or its officers and employees before all Civil Courts dealing with matters pertaining to the Company or its officers or employee and to examine and cross-examine witnesses therein;
7. To do all other lawful acts and deeds which may be necessary to be done in relation to the above and the Company doth undertake to ratify all such acts, deeds and things as may be lawfully and reasonably performed by the said Attorney in terms of the authorization herein contained;
8. To sign '*Vakalatnama*' and appoint advocates or to represent the Company before the Courts as mentioned above;
9. To sign the appeal written statement or replies to the petitions / applications / complaints cross examine witnesses etc.
10. To do all other lawful acts and deeds which may be necessary to be done in the course of the proceedings before the Courts, and other authorities & Forums, tribunals as aforesaid and Company do hereby agrees that all the acts and deeds lawfully done and performed by the above said Attorney in that regard shall be constituted as the acts and deeds done by the Company itself. The Company again doth undertake to ratify and confirm whatsoever that the said Attorney shall lawfully do or cause to be done for the Company solely by virtue of the powers hereby vested.

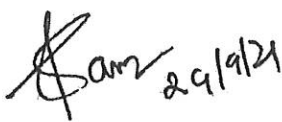
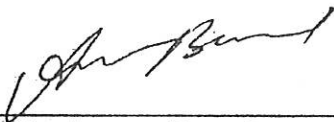
11. This Power of Attorney shall supersede any previous attorney and/or authorization executed by the Company (Formerly, North Delhi Power Limited) in favour of the Attorney to do and perform any of the acts which are authorized under this Attorney. Anything done or any action taken or purported to have been done or taken under any such previous power of attorney and/or authorization, shall, in so far as it is not inconsistent with this Power of Attorney, be deemed to have been done under the provisions of this Power of Attorney.

12. The Company ratifies any past lawful act of the Attorney in his lawful capacity as the Employee of the Company and anything done or any such action taken or purported to have been done or taken, shall, in so far as it is not inconsistent with this Power of Attorney, shall be deemed to have been done under the provisions of this Power of Attorney.



13. This Power of Attorney shall remain in force until revoked or till the time said Attorney is in employment of the Company, however, any such revocation shall not affect, any act, thing or deed lawfully done by said Attorney till then in *bonafide* exercise of authority conferred herein.

IN WITNESS WHEREOF THE EXECUTANT HEREBY SCRIBES HIS HAND TO THE ABOVE PRESENTS AT DELHI ON THIS 24th DAY OF September 2021

Executed by	Accepted by	Signatures of the Attorney are identified and attested by the Executant
		
Mr. Ganesh Srinivasan	Mr. Anurag Bansal	
Chief Executive Officer Executant	Head – Corporate Legal Attorney	

In presence of :

Witness :

Signatures 

Name

Shefali Sesti

Address NDPL House, Kingsway Camp, New Delhi.

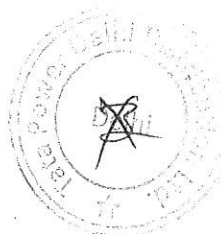
Witness :

Signatures 

Name

Lovika Jaiswal

Address NDPL House, Kingsway Camp, ND.



Notarial Authentication under Section 85 of Indian Evidence Act 1872

I Sauraj Singh s/o Sh. Latif H Jai & Raju
R/o 24/27 Wining 75 Hogen aged about 67 years, I am a
licensed Notary Public of the Government of India under the Notaries Act, 1952, and at present
operating in Delhi.

I was this 24-9 day of 2021 present at the Registered Office of the Company at
NDPL House , Hudson Lines, Kingsway Camp, Delhi 110009 along with the Executant namely
Shri Ganesh Srinivasan who is working there as Chief Executive Officer, the Attorney namely
Anurag Bansal and Shri Ajay Kalsie, the Company Secretary of the
Company.

The Executant has produced before me his original Voter's Identity Card/Passport/Driving License,
which bears his photograph, name, father's name, date of birth and present residential address.

The Executant has also produced before me the certified copy of Power of Attorney dated
29.01.2020 issued by Board of Directors of the Company affirming that the Executant is at the time
of execution of this Power of Attorney, duly authorized by the Board of Directors of the company to
execute the same being its constituted attorney and CEO.

The present Power of Attorney, executed by the Executant herein , authorizing Attorney to do all
the acts and deeds as recited therein was signed by the Executant and the rubber stamp of the
Company was affixed on the instrument in my presence so described and in the presence of Shri
Ajay Kalsie, the Company Secretary of the Company and that the signatures purporting to be that
of the Executant as subscribed at the foot of the foregoing Power of Attorney is in the proper
handwriting of the said Executant .

I, therefore, certify and authenticate that this Power of Attorney is in due form of law, in witness
whereof, I have hereunto set my hand and affixed my Seal on this 24/9 day of 2021.

ATTESTED

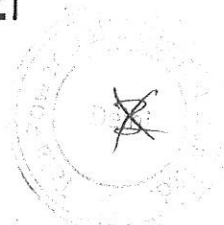
Notary Public
Delhi



NOTARY PUBLIC
DELHI (INDIA),

24 SEP 2021

Mr. Ajay Kalsie
Company Secretary
Tata Power Delhi Distribution Limited



PETITION SEEKING (i) TRUE UP OF ARR for FY 2020-21, the FIRST YEAR of 4th MYT CONTROL PERIOD 2021 to 2023, (ii) Approval of ANNUAL REVENUE REQUIREMENT FOR FY 2022-23. the THIRD YEAR of 4th MYT CONTROL PERIOD 2021 to 2023 IN TERMS OF THE DELHI ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS FOR DETERMINATION OF TARIFF) REGULATIONS, 2017, THE DELHI ELECTRICITY REGULATORY COMMISSION (BUSINESS PLAN) REGULATIONS, 2019, DELHI ELECTRICITY REGULATORY COMMISSION (BUSINESS PLAN) REGULATIONS, 2017 DELHI ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS FOR DETERMINATION OF WHEELING TARIFF AND RETAIL SUPPLY TARIFF) REGULATIONS, 2011, extended for FY 2015-16 and 2016-17, AND IN TERMS OF THE DELHI ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS FOR DETERMINATION OF WHEELING TARIFF AND RETAIL SUPPLY TARIFF) REGULATIONS, 2007, read with ELECTRICITY ACT, 2003 & THE DELHI ELECTRICITY REFORM ACT, 2000 and DERC (COMPREHENSIVE CONDUCT OF BUSINESS REGULATIONS), 2001 and directions issued by the Hon'ble Delhi Electricity Regulatory Commission from time to time.

THE PETITIONER RESPECTFULLY SHOWETH:

- 1. The Petitioner Tata Power Delhi Distribution Limited (formerly known as North Delhi Power Limited) was incorporated under the provisions of the Companies Act, 1956 with its corporate office at NDPL House, Hudson Lines, Kingsway Camp, Delhi - 110 009. During financial year 2011-12, the Company applied for change in its name from North Delhi Power Limited to Tata Power Delhi Distribution Limited. Subsequently, a fresh certificate of incorporation consequent to the change in name to Tata Power Delhi Distribution Limited (the "Company") was issued by the Registrar of Companies, N.C.T of Delhi & Haryana on 29 November, 2011 under section 23(1) of the Companies Act, 1956.**

The Company is primarily engaged in the business of distribution of electricity in North and North-West Delhi was set up in terms of Delhi Electricity Reforms (Transfer Scheme) Rules 2001. The undertaking of the erstwhile Delhi Vidyut Board (DVB) engaged in distribution and retail supply of electricity in the North & North-West

districts in the National Capital Territory of Delhi together with the personnel employed therein were transferred to the Company with effect from 1 July, 2002 which also marked the commencement of commercial operations for the Company.

The Company has been granted a License under section 20 of the Delhi Electricity Reform Act, 2000 (Act No. 2 of 2001) by the Delhi Electricity Regulatory Commission (DERC) on 11 March, 2004. The License is valid for a period of twenty five years.

2. TPDDL w.e.f. July 1, 2002 has been carrying out electricity distribution and retail supply in its Area of Supply as defined in schedule H, Part-III of the Delhi Electricity Reform (Transfer Scheme Rules), 2001 and the Distribution and retail supply license issued by the Hon'ble Commission. The Petitioner has also undertaken generation of electricity (solar and gas based) through its generation wing. However due to curtailment of gas by Ministry of Petroleum and Gas, the gas based generation plant is not operational.
3. The Hon'ble Commission is a **statutory body** and is empowered to regulate the electricity distribution business and determine tariff under section 62 of the Electricity Act 2003.
4. **After completion of 2nd MYT Control Period, the Hon'ble Commission enacted the new MYT Regulations, 2017 vide its gazette notification dated 31.01.2017 specifying Terms and Conditions for Determination of Tariff after undertaking the public hearing and stakeholders consultation, to be effective from 01.04.2017.**
5. For sake of convenience and brevity, the said regulations have been referred as the 3rd MYT Regulations 2017 and the Hon'ble Commission has issued operational norms for Distribution Utilities vide Business Plan Regulations, 2019 which was released on 27th December 2019 to be read along with 3rd MYT Regulations, 2017.

6. The Hon'ble Commission has issued the tariff order for FY 2021-22 dated 30th September, 2021 published on 12.10.2021 in terms of the Delhi Electricity Regulatory Commission (Terms And Conditions for Determination of Tariff Regulations) 2017 for determination of ARR for FY 2021-22 and True up of FY 2019-20 as per the Terms and Conditions for determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2017 and Business Plan Regulations, 2019.
7. In compliance with the directives, and without prejudice to the Petitioner's rights, remedies available to it under various laws, and pending provisional true up of various claims, review orders, implementation of various judgments before the Hon'ble Commission and pending adjudication of various matters before higher judicial forums, Tata Power Delhi Distribution Ltd. (the Petitioner) is filing this petition seeking for the True Up for FY 2020-21 on the basis of the 3rd MYT Regulations, 2017, Business Plan Regulations, 2019 and principles laid down in various judgments given by Appellate Tribunal of Electricity, judicial authorities, past practice etc.
- 8. The following major matters are pending adjudication before the Hon'ble Commission/ Hon'ble APTEL/ Hon'ble Delhi High Court and Hon'ble Supreme Court against various petitions/ clarifications letters/writ/ appeals/Tariff Orders related to Tata Power - DDL for previous years (collectively referred to as Pending Matter).**

Forum	Number	Brief Description
DERC	P 29/2020	Petition regarding various issues/differences having arisen between TPDDL and the State Generating Utilities, i.e., IPGCL and PPCL on the reconciliation of the outstanding dues including the incorrect levy of Late Payment Surcharge.
DERC	P 25/2020	Petition filed under section 142 of the Electricity Act, 2003 regarding complaint on non-release of STOA charges against SLDC/DTL.
DERC	Yet to be Listed	Review petition against tariff order FY 2021-22
DERC	P 32/2021	Petition for seeking approval for charging tariff (Green Power Tariff) for supply
APTEL	DFR 408/2021	Appeal against Modification order of DERC dated 29.09.21

Forum	Number	Brief Description
APTEL	A 301/2015	Appeal against the Tariff Order for FY 2015-16
APTEL	A 168/2018	Appeal against the Tariff Order for FY 2017-18
APTEL	A 213/2018	Appeal against the Tariff Order for FY 2018-19
APTEL	A 403/2019	Appeal against the Tariff Order for FY 2019-20
APTEL	A 249/2021	Appeal against the Tariff Order for FY 2020-21
APTEL	A 71/2016	Appeal against the order of the Hon'ble DERC dt. 09.01.2016 against Petition 39/2015 filed by TPDDL challenging the methodology adopted by the Hon'ble Commission towards de-capitalization of TPDDL assets
APTEL	A 350/2019	Appeal against RPO obligation penalty u/ 142 EA 2003. The penalty is pertaining to FY 2013-14 & FY 2014-15. Hon'ble DERC's order dated 18.9.2019 has been challenged, wherein RPO penalty has been imposed on TPDDL for the FY 2012-13, 2013-14 and 2014-15, however the same was complied with in the year 2017.
APTEL	A 213 /2020	Against the Final order of the DERC dt. 27.12.2019 in Petition No. 26 of 2019 regarding Financial exigencies faced by the Petitioner with respect to the three gas based stations of NTPC i.e, Anta, Auraiya and Dadri in respect of which the power purchase costs had been recently allowed by this Hon'ble Commission.
APTEL	A33 /2020	Challenging certain directions contained in the Order dated 11.11.2019 passed by Ld. Delhi Electricity Regulatory Commission in Petition No. 51 of 2017 for True up of expenditure for FY 2010-2011 to FY 2016-17 and for FY 2017-18 of its 94.8 MW Rithala Combined Cycle Power Plant.
High Court	WP (C)3573 of 2020	Petition filed challenging the legality and validity of Regulation 23 of the Delhi Electricity Regulatory Commission (Business Plan) Regulations, 2019 framed by Ld. DERC in relation to legal, professional and O&M expenses.
High Court	WP nos. 4167/2020 and 10026/2020	Petitions seeking declaration from Hon'ble Delhi High Court on interpretation of Regulation 17 of CERC tariff regulations 2019 for NTPC plants whose useful life has expired being more than 25 yrs, Declaration of PPA having expired, non-scheduling of power after 30.11.2020, no liability for fixed charges etc.
Supreme Court	C.A. 7910/2011	Appeal Against the Judgment of the Hon'ble APTEL in Appeal No. 52/2008
Supreme Court	C.A. 4343/2014	Appeal Against the Judgment of the Hon'ble APTEL in Appeal No. 14/2012
Supreme Court	C.A. 6169/2015	Appeal Against the Judgment of the Hon'ble APTEL in Appeal No. 171/2012

Forum	Number	Brief Description
Supreme Court	C.A. 12287/2016	Appeal against the judgment of Hon'ble Delhi High Court in W.P. 203/2012 which challenged the 2 nd MYT Regulations, 2011
Supreme Court	C.A. 12/2020	Appeal against the judgment of the Hon'ble APTEL in Appeal 246 of 2014
Supreme Court	SLP No. 31434/2014 (TPDDL Vs GAIL)	Petition has been filed against the order of the Hon'ble Delhi High Court dated 11.09.2014 in HC WP C 3698/2013 regarding the challenge to the guidelines framed by PNGRB with respect to ship or pay charges.
Supreme Court	WP 1005/2021	Petition filed for recognition and liquidation of regulatory asset and road map by Hon'ble DERC.

In the event that any of the above Pending Matters are decided before the issuance of next Tariff order, the Hon'ble Commission is requested to consider/implement the outcome of the said judgment in the next Tariff Order.

In the event of order/(s) being declared after the issuance of the tariff order, it is submitted that the impact of the same be allowed forthwith along with the carrying cost. This suggested approach as stated above shall be in the Petitioner's and in the Consumer's interest since it will avoid any delays caused in giving timely effect to Judgments of the Superior courts and reduction in grant of carrying costs to utilities.

It is further submitted that since some of the issues were provisionally/partially/not allowed in various previous Tariff Orders, and therefore in accordance with prevalent Regulations, the Petitioner is seeking true up of FY 2020-21 and further requesting to the Hon'ble Commission to allow the remaining impact of any such issues along with carrying cost [which is related to previous years i.e. before FY 2020-21] so that determination of Retail Tariff for upcoming years not only becomes cost reflective for the year but is also able to liquidate past Revenue Gap in the benefit of consumers and the Petitioner.

It is submitted that the Hon'ble Commission has provisionally trued up the Revenue Gap up to FY 19-20 and present petition is being filed for true up of FY 20-21.

The Hon'ble Commission has provisionally recognized Revenue Gap of Rs. 1,763 Cr upto FY 2019-20. The Petitioner in this current Petition is seeking truing up of revenue gap on provisional basis of Rs. 3,564 Cr. up to FY 2020-21 pending final True up of capitalisation till FY 20-21, implementation of various already decided issues by the Hon'ble Commission, APTEL and the Hon'ble Supreme Court wherever there is no stay granted.

The Hon'ble Commission is aware that the aforesaid revenue gap has associated carrying cost liability, therefore, in larger consumer interest and to minimise the burden of such carrying cost on consumers, it is requested to the Hon'ble Commission to formulate realistic plan for early amortization of the accumulated Revenue Gap.

9. In compliance with the direction of the Hon'ble Commission, the Petitioner is submitting in compliance with THE DELHI ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS FOR DETERMINATION TARIFF) REGULATIONS 2017, AND The DERC (BUSINESS PLAN REGULATIONS), 2019 , the present petition seeking:

- (i) Allowance of Impact of Judgment pronounced by the Hon'ble APTEL in various Tariff appeals**
- (ii) Allowance of Impact of Judgment pronounced by the Hon'ble Commission in its various Petitions**
- (iii) Allowance of Impact of final True up Capitalisation for FY 2004-05 to FY 2016-17 and FY 18-19**
- (iv) Allowance of Impact of final True up of O&M expenses for FY 2017-18 & FY 2018-19**
- (v) Allowance of Impact of Rithala Tariff Order pronounced by the Hon'ble Commission for True up upto FY 2017-18**
- (vi) True up of ARR for FY 2020-21**

- (vii) **Determination of ARR and Wheeling Tariff & Retail Supply Tariff for FY 2022-23**
- (viii) **True up for Rithala for FY 20-21**
- (ix) **A realistic and time bound amortization plan to liquidate provisionally trued up Revenue Gap upto FY 2020-21 considering that the Wheeling & Retail supply License granted to the petitioner as expiry after 8 years**

The present Petition is subject to the outcome of various review/ appeal/ writ petitions pending adjudication before various judicial Forums. The Petitioner in this present Petition seeks the following reliefs from the Hon'ble Commission:

- i. Undertake final true up of pending issues which have been provisionally/partially approved in various previous tariff orders; and
- ii. Ensuring timely recovery of accumulated provisional Revenue Gap up to FY 2020-21 along with carrying cost in a time bound manner. The Revenue Gap as per financial books of account as on 31.03.2021 is Rs 5,512 Cr and Rs. 5,222 Cr as on 31.03.2020 against provisionally true up Revenue gap by the Hon'ble Commission Rs 1,763 Cr. till FY 19-20. The difference of Rs 3,459 Cr between books of accounts and trued up by the Hon'ble Commission is mainly due to provisional truing up capitalization (Rs 1209 Cr), non-implementation of Rithala Tariff order (Rs 454 Cr) and various other issues decided in favour of the Petitioner by the Hon'ble Commission/APTEL & other miscellaneous issues (Rs 1410 Cr including carrying cost). The non-recognition/ delay in recognition of the issues is against the true spirit of privatization where despite performing better than target on all parameters, the Petitioner is not able to realize assured RoE ; and
- iii. Continuance of deficit revenue recovery surcharge @ 8% presently or at such higher percentage as determined by the Hon'ble Commission for ensuring recovery of past Revenue Gaps in a time bound manner; and
- iv. Implementation of the issues decided in various Appeals, and any other judgment, if tendered by the Hon'ble APTEL/ Hon'ble High Court/ Hon'ble Supreme Court, before issuance of Trued up Order for FY 2020-21, and

- v. Consider the new initiatives proposed and undertaken by the Petitioner and allow the same; and
- vi. Consider the actual and/or expected additional expenses including incremental expenses due to change in law/ statutory levies etc. undertaken by the Petitioner on account of O&M expenses and which are beyond the control of Petitioner licensee for the previous year & ensuing years respectively as per the clause 11(9) of 3rd MYT Tariff Regulations 2017; and
- vii. Allowance of the given below Incentives in the true spirit to be read with statement of reasons elaborated while issuance of 3rd MYT Regulations, 2017
 - Reduction in Distribution Loss Level
 - Higher Collection Efficiency
 - Higher Sale rate of short term surplus power
 - Lower debt cost for capex loans/working capital
 - Lower debt cost for revenue gap loans
- viii. Allowance of expenses, if incurred, on arms-length price for the related party transactions.
- ix. All expenses, fees incurred including filing, publication of ARR/True up petition in media, preparation of stakeholder responses etc. for current petition ARR FY 2022-23
- x. The Hon'ble Commission has enacted the Business Plan Regulations, 2019 for 4th MYT control period (comprising of three years FY 2020-21; 2021-22; 2022-23) in December 2019. The Hon'ble Commission laid down the business plan norms for the various generating, transmission, distribution utilities in Delhi.

During the process of finalization of Business Plan Regulations, 2019, the Petitioner furnished its comments, views to the Hon'ble Commission on various parameters including "*Operation and Maintenance Expenses*". However the Hon'ble Commission while releasing the final norms of Business Plan Regulations, 2019 has ignored the submissions of the Petitioner on O&M expenses. The Hon'ble Commission has also vide the said DERC Business Plan Regulations 2019 specifically on O&M expenses, Legal Expenses enacted a Regulation which is not in accordance with the provisions of the Electricity Act, 2003 and violates the spirit of the National Tariff Policy. The said 2019

Regulation further ignores certain factors, business realities, practical aspects which have direct bearing on the incurring of O&M expenses, legal expenses which are not in control of the Petitioner. In view of the Petitioner, the DERC Business Plan Regulations 2019, needs re-consideration and judicial review, therefore the Petitioner has filed a writ Petition No. 3573/2020 before the Hon'ble Delhi High Court. Thus, the Petitioner without prejudice to its rights, contentions is filing the ARR for FY 2022-23 with the Hon'ble Commission. This ARR petition for FY 2022-23 will be subject to the outcome of the aforesaid proceedings initiated by the Petitioner before the Hon'ble Delhi High Court. Accordingly, the Petitioner shall seek consequential orders, revision from the Hon'ble Commission based on the observations, findings, the Hon'ble Delhi High Court, as the case may be pursuant to such Legal proceedings.

- xi. The Petitioner thus seeks, reserves its right to raise its claims in relation to the interpretation/mandate of Business Plan Regulations 2019 , once the same is decided by the Hon'ble Delhi High Court, competent court.

- xii. **However, it is being specifically clarified by the Petitioner that by filing the ARR petition for FY 2022-23, such methodology should not be construed as any waiver or concession, omission at the end of the Petitioner in later claiming any consequential orders, based on outcome of the Writ Petitions which has already been instituted by the Petitioner against such DERC Business Plan Regulations 2019, or other Regulations. It is the submission of the Petitioner that present Petition is being made in line with present DERC Business Regulations 2019 and subject to outcome of the proceedings in Writ Petition No. 3573/2020 which has a direct bearing on the provisions of DERC Business Plan Regulations, 2019, other Tariff Regulations in Force and ARR determination as well as on the principles enunciated for Wheeling, Retail Supply Tariff as may be decided by any Court, Tribunal or otherwise.**

11. This Petition includes the following documents:

- a. Affidavit verifying the Petition and the Power of Attorney for filing the same.
- b. Computation of True up of FY 20-21

- c. Forms for FY 2020-21
 - d. Computation of ARR for FY 2022-23 & determination of Tariff for FY 2022-23
 - e. Forms for FY 2022-23
 - f. Demand Draft no. 000511 dated 24th Nov 2021 drawn on Axis Bank for Rs. 1,00,000/- as Filing Fee in favour of Secretary, Delhi Electricity Regulatory Commission.
12. It is submitted that apart from the other issues mentioned in this petition, the present petition is being filed with specific mention and consideration of the Hon'ble Commission on following issues:

1) Amortization of Accumulated Revenue Gap

It is submitted that there was negligible Revenue Gap up to 31.03.2009 amounting to Rs. 161.43 Cr but due to delay in release of tariff order or non-availability of cost reflective tariff, there has been a huge amount of built up Revenue Gap up to FY 19-20 amounting to Rs. 1,763 Cr. as provisionally trued up by the Hon'ble Commission in its Tariff Order dated 30th September, 2021 as against Rs. 5,472 Cr. as per the financial books of account as on 30th September, 2021.

The judgment of OP1 of 2011 has dealt with sensitive and crucial aspects governing the electricity distribution sector specifically. The Hon'ble APTEL issued various binding directions, while reminding that the Electricity Act 2003 has conferred necessary powers on the Hon'ble Tribunal/(APTEL) to ensure the statutory functions of the SERC's as contained under Electricity Act, 2003 are performed by them. The following **directions** have been issued by the Hon'ble APTEL in its aforesaid order, which is reproduced below for the guidance of the Hon'ble Commission:

- a) *Every State Commission has to ensure that Annual performance Review, **true up of past expenses and Annual Revenue Requirement and tariff determination is conducted year to year basis** as per time schedule specified in the regulations*
- b) *It should be the endeavour of every State Commission to ensure that **the tariff for the financial year is decided before 1st April of the tariff year.** Consider making the tariff applicable only till the end of the financial*

year so that the licensees remain vigilant to follow the time schedule for filing of the application for determination of ARR/tariff.

- c)
- d) ***In determination of ARR / tariff, the Revenue Gaps ought not to be left and Regulatory Asset should not be created as a matter of course except where it is justifiable, in accordance with the Tariff Policy and the Regulations. The recovery of the Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within Control Period. Carrying cost of the Regulatory Asset should be allowed to the utilities in the ARR of the year in which the Regulatory Assets are created to avoid problem of cash flow to the distribution licensee.***
- e) *Truing up should be carried out regularly.....*
- f) ***Fuel and Power Purchase cost is a major expense of the distribution Company which is uncontrollable. Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62(4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula / mechanism in place must within 6 months of the date of this order must put in place such formula / mechanism.***

Para 66: The said directions are to be strictly adhered to and periodical reports of the compliance to be sent to the Secretary, Forum of Regulators by 1st June of every Financial Year, who will send the status report to the Hon'ble APTEL and publish it on their respective websites.

It is submitted that the Hon'ble Commission has provisionally trued up the Revenue Gap of Rs. 1,763 Cr up to FY 19-20. The present Tariff petition is being filed for true up of FY 20-21 along with the impact of some of the prior period issues decided in

favour of the Petitioner upto FY 2020-21. Thus, the Hon'ble Commission is requested to kindly consider the closing value of provisional revenue gap (i.e. Rs. 3,564 Cr) upto FY 2020-21 for the purpose of making liquidation plan.

The concern on creation of regulatory assets in future and the need for timely liquidation of the Regulatory has also been emphasized in the National Tariff Policy issued vide Gazette Notification dated 28th January, 2016. The relevant extracts of the relevant clause 8.2.2 has been reproduced below:

"8.2.2 The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as a very rare exception in case of natural calamity or force majeure conditions and subject to the following:

- a. Under business as usual conditions, no creation of Regulatory Assets shall be allowed;*
- b. Recovery of outstanding Regulatory Assets along with carrying cost of Regulatory Assets should be time bound and within a period not exceeding seven years. The State Commission may specify the trajectory for the same."*

It may be appreciated that the major part of the regulatory asset has been hovering on the Petitioner for more than 10 years and recovery of the high accumulated gap continues to remain a concern for the financial health of the Petitioner, given that there is no clear roadmap stipulated for recovery of the same.

The early amortization of such huge built up Revenue Gap would help in improving the credit rating of the company, ultimately resulting into lower cost of debt and save the burden of the carrying cost in the benefit of the consumers.

The Hon'ble Commission in its Tariff Order dated July, 2012 introduced 8% Deficit Revenue Recovery Surcharges for the recovery of past cumulative Revenue Gap and carrying cost and continued the same rate of 8% for FY 2020-21 also. The following reliefs are sought in respect to Deficit Recovery Surcharge determination:

- I. Considering that the Hon'ble Commission has already provisionally recognized a Revenue Gap of Rs. 1,763 Cr up to FY 2019-20 vide Table 5.3 of the Tariff Order September, 2021. Therefore, in light of the mandate of National Tariff Policy, 2016, whereby maximum 7 years' of time period has been defined for recovery of outstanding Regulatory Assets, which has already lapsed in the case of the Petitioner, therefore, the Hon'ble Commission may take measures for immediate liquidation of the provisionally recognized revenue Gap till FY 19-20 and further true up of FY 2020-21.
- II. The National Tariff Policy notified by the Union of India unequivocally states that Regulatory Asset if created must be amortized in a maximum period of 7 years. However, in the present case the distribution license granted to the Petitioner being Distribution License No. 01/2004 was granted for a period of 25 years. The period of 18 years has already elapsed, and the balance license period remains for only 7 years. Therefore, the Petitioner is likely to face massive under recovery at the end of its License period due to unrecovered Regulatory Asset. Further, owing the above pendency, the lenders who have been funding the Regulatory Asset, will not provide the lines of credit beyond 3 - 4 years. Hence, in such pressing circumstances, it is necessary that the liquidation of Regulatory Asset must be concluded within the next 3 years.**
- III. This 8% deficit recovery surcharge percentage ought to be reviewed in line with the Hon'ble APTEL Judgment in OP 1 of 2011 thereby ensuring that the Petitioner not only recovers the carrying cost on the Regulatory Asset during the year but also liquidation of the outstanding Regulatory Assets so as to avoid the problem of cash flow to the distribution licensees such as the Petitioner.
- IV. An amortization schedule with annual recovery amounts of the provisionally recognized Revenue Gaps up to FY 20-21.
- 2) Additional allowance of O&M expenses for new initiatives/ compliance of statutory levies/regulatory orders/saving in cost to the benefit of consumers**

Regulation 87 of Tariff Regulations, 2017 provided that " *The Utilities shall be allowed Operation and Maintenance expenses on normative basis including expenses for raising the loan for funding of Working Capital and Regulatory Assets as specified by the Commission in the Business Plan Regulations for the respective Control Period.*

Provided that the Normative O&M Expenses for the respective Control Period shall not be trued up.

Provided further that the water charges, statutory levy and taxes under O&M expenses if indicated separately in the audited financial statement shall not form part of Normative O&M Expenses."

Further, Regulation 26(4) of the Business Plan Regulation, 2017, specify that "Impact of any statutory Pay revision on employee's Cost as may be applicable on case to case basis shall be considered separately, based on actual payment made by the Distribution Licensees and shall be allowed by the Commission after prudence check at the time of true up of ARR for the relevant financial year."

Therefore, in view of the above clauses, the Petitioner is seeking truing up of the following expenses over and above the normative O&M expenses due to its special nature

Final Payment towards Interim Relief/Contribution to Leave Salary/Pension Trust paid/payable to FRSR Employees on account of Impact of 7th Pay Commission; and

- a) New initiative; and
- b) For compliance of regulatory orders issues from time to time; and
- c) For the benefit of consumers on cost benefit analysis concept; and
- d) Sudden increase in these O&M expenses due to change in regulatory requirement or compliance to statutory provisions.

Therefore, the Hon'ble Commission is requested to kindly consider allowance of statutory increases including 7th Pay Commission Impact, minimum wage, service tax, GST, land license fee etc. on actual basis over and above normative O&M expenses as

the same is not in the control of the Petitioner and these expenses are incurred either for the benefit of consumers on cost benefits analysis and/or for compliance purpose.

3) Demand Raised by NDMC for charging Way Leave usage charges

TPDDL challenged the imposition of the Way Leave charges by way of the W.P. (C) No. 5293 of 2016. Subsequently, MCD revised and lowered its demand but was still asking for the same from retrospective effect. TPDDL challenged this demand vide WP(C) No. 1113 of 2017.

Thereafter, Secretary Power intervened and the Commissioner, North DMC in a meeting held on 03.02.2017 under the chairmanship of Chief Secretary, GoNCTD had consented to defer the imposition of Way-Leave Charges on TPDDL and allow the works. Till date, there has been no variation in the decision recorded in the Minutes of Meeting 03.02.2017. However, the North DMC in defiance of the same has raised the Demand requiring TPDDL to deposit way leave charges from retrospective effect. Vide letter dated 26.05.2020, North DMC raised a fresh Demand seeking TPDDL to deposit Rs. 11.45 Cr towards Way-Leave charges.

TPDDL filed Applications seeking interim reliefs as the North Delhi Municipal Corporation had refused to grant road cutting permissions with respect to Applications/permissions sought by TPDDL to conduct electrical works required for continuity and reliability of supply. It linked the grant of permission to payment of Way Leave Charges and required TPDDL to deposit Way Leave Charges for various financial years by its Demand Letter/s.

The Hon'ble High Court vide order dated 20.07.2020 recorded contentions of MCD that it has not given up its claim for Way Leave Charges, which will be subject to the outcome of the case pending. However, the Hon'ble High Court directed that the same would not hold up the decision on the application for commencing of work.

Thus matter will be decided on merits and the Hon'ble Commission is being apprised that the liability may come in the event it is decided against TPDDL. Being a new levy, statutory charge it will require pass through in Tariff as per BPR regulations of the Hon'ble Commission. Once TPDDL is aware of the amount of way leave charges

demand and basis of demand (annual/monthly) accordingly the same will be sought in future ARR's, true up.

Therefore, the Petitioner requests the Hon'ble Commission to take cognizance of the facts as above, and in case later on it is found/ decided that these demands are payable, the Hon'ble Commission is requested to allow in ARR as additional expense along with any interest or penalty if payable.

4) A) Treatment of Retirement of Assets for FY 2002-03 to FY 2016-17

The Hon'ble Commission vide its letter dated 26.11.2014 has issued adhoc methodology for Retirement of Assets without considering the merit of de-capitalisation of assets and its consequential impact on RoCE and other relevant factors. In response to the above said methodology, the Petitioner vide its letter dated 28.09.2016 has suggested correct accounting treatment of retired assets and consequential impact on RoCE and other parameters. It is also pertinent to mention that the Petitioner has challenged the said methodology vide Appeal No. 71 of 2016 before the Hon'ble APTEL in the year 2016. The said Appeal is pending for adjudication. The Hon'ble Commission is requested to allow the impact of the same in the ensuing Tariff Order till the finalization of capitalization by the Hon'ble Commission.

B) Allowance of Loss on retirement from FY 2017-18 onwards

Regulation 45 to 47 of the Tariff Regulations, 2017 deals with the methodology of allowance of Loss or gain due to De-capitalization/Retirement of Fixed Assets. As per the aforesaid Regulations, the Petitioner has sought net loss of Rs 2.21 Cr (as per Audited Financial Statement) for FY 2020-21 in this True up of FY 2020-21 and for previous years in the respective tariff petitions. The Hon'ble Commission is requested to allow the impact of the same in the ensuing Tariff Order till the finalization of capitalization by the Hon'ble Commission.

5) Cost Reflective Tariff to avoid further addition of Revenue Gap and ensure liquidation of existing Accumulated Revenue Gap

Under the aegis of Electricity Act, 2003, National Tariff Policy, 2016 and Tariff Regulations, Business Plan Regulations prescribed by this Hon'ble Commission during various control periods had the potential for designing cost reflective tariff for Distribution licensees.

Besides above statutory provisions, in its various judgements Hon'ble APTEL has also observed that Electricity Tariff must be cost reflective True up and tariff order exercise should be completed at due point of time by respective state electricity regulatory commissions. It was also mandated by Hon'ble Tribunal that Regulatory Assets accumulation should not be there on routine business as usual basis. Abstract of one of important judgement from APTEL in OP1 of 2011 given below:-

- g) *Every State Commission has to ensure that Annual performance Review, **true up of past expenses and Annual Revenue Requirement and tariff determination is conducted year to year basis as per time schedule specified in the regulations***
- h) *It should be the endeavour of every State Commission to ensure that **the tariff for the financial year is decided before 1st April of the tariff year. Consider making the tariff applicable only till the end of the financial year** so that the licensees remain vigilant to follow the time schedule for filing of the application for determination of ARR/tariff.*
- i)
- j) ***In determination of ARR / tariff, the Revenue Gaps ought not to be left and Regulatory Asset should not be created as a matter of course except where it is justifiable, in accordance with the Tariff Policy and the Regulations. The recovery of the Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within Control Period. Carrying cost of the Regulatory Asset should be allowed to the utilities in the ARR of the year in which the Regulatory Assets are created to avoid problem of cash flow to the distribution licensee.***
- k) *Truing up should be carried out regularly.....*

- l) *Fuel and Power Purchase cost is a major expense of the distribution Company which is uncontrollable. Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62(4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula / mechanism in place must within 6 months of the date of this order must put in place such formula / mechanism.*

Para 66: The said directions are to be strictly adhered to and periodical reports of the compliance to be sent to the Secretary, Forum of Regulators by 1st June of every Financial Year, who will send the status report to the Hon'ble APTEL and publish it on their respective websites."

Further, the concern on creation of regulatory assets in future and the need for timely liquidation of the Regulatory assets has also been emphasized in the National Tariff Policy issued vide Gazette Notification dated 28th January, 2016. The relevant extracts of the relevant clause 8.2.2 has been reproduced below-

"8.2.2 The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as a very rare exception in case of natural calamity or force majeure conditions and subject to the following:

- a. Under business as usual conditions, no creation of Regulatory Assets shall be allowed;*
- b. Recovery of outstanding Regulatory Assets along with carrying cost of Regulatory Assets should be time bound and within a period not exceeding seven years. The State Commission may specify the trajectory for the same."*

The observation of the Hon'ble Appellate Tribunal, in one of its judgment (Appeal No. 36 of 2008 where the Hon'ble Commission was the Respondent, is reproduced below:

*"117) All projections and assessments have to be made as accurately as possible. Truing up is an exercise that is necessarily to be done as no projection can be so accurate as to equal the real situation. **Simply because the truing up exercise will be made on some day in future the Commission cannot take a casual approach in making its projections. We do appreciate that the Commission intends to keep the burden on the consumer as low as possible. At the same time one has to remember that the burden of the consumer is not ultimately reduced by under estimating the cost today and truing it up in future as such method also burdens the consumer with carrying cost.**"(Emphasis Supplied).*

Contrary to the above binding directions, provisions and observations, since last few years, it has been witnessed that tariff fixation in respective tariff orders not found cost reflective apart from delay in release of annual tariff orders, true up orders etc. Because of which there is un-liquidated Regulatory Assets of Rs.1,763 Cr at the end of FY 19-20 as provisionally trued up in Tariff Order dated 30th September, 2021.

Corresponding figure as per audited books of accounts of Tata Power DDL, the un-liquidated Regulatory Assets stands to the tune of Rs. 5,222 Crores as on 31st March' 2020. Whereas the Regulatory Assets as on 31st March' 2009 was amounting to Rs. 161.43 Cr. only. The year wise trajectory mapping creation of Regulatory Assets as per respective tariff orders of the Hon'ble Commission and corresponding figures appearing in our books of accounts are as under:

Financial Year	Cumulative RA as per Books (Rs/Crores)	Provisional RA As per DERC (Rs./Crores)	Difference (Rs./Crores)
09-10	1016	725	-291
10-11	2172	1604	-568
11-12	3954	3060	-894
12-13	4712	3376	-1336
13-14	5146	3351	-1795

Financial Year	Cumulative RA as per Books (Rs./Crores)	Provisional RA As per DERC (Rs./Crores)	Difference (Rs./Crores)
14-15	5358	3194	-2164
15-16	4720	2454	-2266
16-17	4574	2395	-2179
17-18	4400	2255	-2145
18-19	4579	1890	-2689
19-20	5,222	1763	-3459
20-21	5,512	--	Yet to be trued up

It may be appreciated that the regulatory asset is present for more than 10 years hence recovery of the high-accumulated revenue gap continues to remain a major concern, given that there is no clear roadmap stipulated for assured recovery of the same. This is the outcome of non-cost reflective in past and hence needs to be addressed immediately; as the situation has reached at alarming proportions making financial condition of the company fragile, which is evident from the following facts:-

1. **Credit rating Agency warning:** Credit rating agency ICRA in its last rating has also expressed its concerns on the liquidation prospects of regulatory assets. Even a one notch down in credit rating from existing level will affect our interest rate by around 100 basis points, thereby affecting the customers with a higher cost burden. The early amortization of such huge built up Revenue Gap would first help in reducing carrying cost burden on the consumer and also in improving the credit rating of the company, which may further result into lower cost of debt and again the benefit of that will go to consumers. Relevant extract from Rating perspective is reproduced below which clearly depicts that rating may be downgraded in case the regulatory asset is not timely liquidated. This could severely affect availability of funds and pricing of debt, which will further add burden on consumers.

"Scenarios for Rating Downgrade

Negative pressure on TPDDL's rating could arise if lack of adequate tariff hike significantly delays liquidation/leads to creation of RA."

2. **Mobilizing Financing a Challenge:** Seeking finance against Regulatory Assets from lenders has now become virtually difficult as Regulatory scrutiny before grant of loan at financial institutions end has been made more stringent and prudent. Rising trend of Regulatory Assets, uncertainty about its liquidation plan, absence of cost reflective tariff and non-resolution of distribution related important issues are eroding our capacity to borrow any loans against regulatory assets. The bankers and financial institutions are reluctant to extend any further finance against such assets which have uncertainties associated with timeline and extent of realization and are hence demanding rate enhancements on already financed funds due to increased risk owing to "Uncertainty" and its "Creations going against statutory Provisions". With the balance license period of around seven (7) years, the situation may become more alarming as the financial institutions/banks may not be ready to fund the gap beyond 3-4 years.
3. **Uncertainty about liquidation :** The Hon'ble Commission in its Tariff Order dated July, 2012 introduced 8% Deficit Revenue Recovery Surcharge for the recovery of past cumulative Revenue Gap or Regulatory Assets and corresponding carrying cost and continued the same rate of 8% till now which (with passage of time and further accumulation of Regulatory assets) has become absolutely insufficient considering the accumulated quantum of Rs. 5,222 Cr as on 31st March,2020 as evident from the table given below:

Year	Regulatory Assets	DRRS Projected by DERC (Rs.)	DRRS Actual Trued up by DERC	Carrying cost as per DERC*	Difference	Carrying Cost as per Books of Accounts (Rs.)
FY 12-13	3376	284	237	358	-121	460
FY 13-14		416	391	377	13	507
FY 14-15		453	446	367	79	610
FY 15-16		499	473	316	157	542

FY 16-17			499	260	238	467
FY 17-18	2255	534	516	226	289	413
FY 18-19	1890	547	540	201	339	417
FY 19-20	1763	559	535	171	364	441
Total		3292	3637	2276	1358	3857

DRRS- Deficit Revenue Recovery Surcharge

From the above table, it can be seen that from FY 12-13 to FY 19-20, so far Deficit Revenue Recovery Surcharge @ 8% collected & trued up was Rs 3,637 Cr, whereas Carrying cost as per books is Rs 3,857 Cr upto FY 19-20. Thus, the DRRS is not even enough to meet the carrying cost which was the main objection of introducing the DRRS. With this, no actual liquidation of regulatory asset happening, it is just getting deferred and burden to consumers.

The Hon'ble Commission hence needs to urgently revisit the determination and levy of current rate of 8% towards Deficit Revenue Recovery Surcharge which is only sufficient to service carrying cost obligation as per books of account and very little is hence remaining for liquidation of the principle amount. An upward revision of current DRRS @ 8% to at least 15% is required to address the real intent envisaged at the time of introduction of the same so that DRRS is not only able to cover carrying cost but also liquidates some portion of principle amount every year.

The Petitioner reiterate here that unless a certainty in the form of concrete liquidation plan is brought in the system, Bankers & financial Institutions are clearly showing reluctance to finance against such assets.

4. **Mismatch in Regulatory assets figures:** Another uncertainty and challenge TPDDL is facing is the difference in figures of Regulatory Assets as depicted in Table above. The difference is mainly due to (i) Provisional true up of capitalization (ii) Rithala Power Plant related financial impact (iii) Pending implementation of various judgments pronounced by this Hon'ble Commission, APTEL and Supreme Court or pending adjudication of various matters before higher judicial forums.

The Regulatory assets claims thus vary in our books in contrast to the records of the Hon'ble Commission which does not accept or recognizes these factors affecting buildup

of Regulatory Assets. This huge mismatch / difference is a cause of great concern and does not depict the correct state of affairs when we approach Lenders for loans against such regulatory assets.

While we were dealing with the aforesaid challenges and concerns, the financial situation of the organization further severely impacted by the occurrence of Covid19 pandemic and consequent lockdown across India and in Delhi. Our entire revenue mix, units sold and corresponding recovery has been badly affected resulting in non-recovery of our monthly running fixed cost comprising mandatory O&M expenses and fixed capacity charges, transmission charges etc. payable to Gencos/Transcos.

6) Tariff Structure related issue

Based upon the guidelines set out in National Tariff Policy, 2016, the Hon'ble Commission's own tariff regulations, various research papers from renowned consulting firms like PWC etc. and in order to adopt prudent financial practices, a tariff rationalization exercise was undertaken by this Hon'ble Commission during designing the electricity tariff as announced by Hon'ble Commission on 28.03.2018. The Hon'ble Commission has rightly conceived at that point of time that (a) fixed cost of DISCOM be recovered from fixed charges (b) variable cost from energy charges (c) cross subsidy should be minimized. This was also extremely necessary from **business sustainability** point of view. Accordingly, fixed charges for all category of consumers was increased and energy charges was reduced.

While increasing the fixed charges in FY 18-19 tariff order, it was thought prudent in line with the sector requirement that the rate of fixed charges be brought to the close of fixed charges of Discoms like O&M Expenses, Network creation to meet the energy demand supply, Fixed charge/capacity charges paid to Gencos/Transcos etc and energy should be close to variable expenses of Discoms i.e. fuel charges etc. This progressive step taken by Hon'ble DERC was an endeavour towards matching the cashflow of the distribution licensee with the monthly liability. Distribution licensee has to pay capacity charges and transmission charges to generation companies and transmission licensee based on the capacity contracted. This has no linkage with the actual power scheduled during any time period. Hon'ble DERC had published an approach paper on the subject matter before the finalisation of increase in fixed

charges to match the liability of the distribution licensee with the cashflow from tariff. Relevant extract from the approach paper is as follows:

"Ideally the fixed cost should be recovered through fixed charges and variable cost should be recovered through energy charges of the tariff respectively. However, the present retail tariff applicable in most of the states in India includes only a part of the fixed cost into recovery as fixed charges, whereas major portion of the fixed cost is recovered through energy charge component of the retail tariff. This kind of tariff structure leads to mismatch in the cash flow of the utilities as the Distribution Licensee have obligations to pay fixed monthly charges to GENCOs & TRANSCO's irrespective of the quantum of power procured besides their own fixed cost liabilities.

As the major part of fixed cost is recovered through energy charges and the monthly collection on account of energy charge is dependent on sales, which varies by more than 50% due to seasonal/weather conditions i.e., sales is maximum in Summer season & minimum in Winter season, therefore there is always a mismatch between the real fixed cost liability v/s the amount collected thereof through tariff.

.....

the Commission has analyzed the present cost and revenue component of the distribution licensees prevalent in the state of Delhi and it is observed from the ARR that total fixed cost in the ARR is 45% to 55% against revenue from fixed charges of 8% to 10% only. Whereas variable cost component in ARR is 45% to 55% against revenue from variable charges of 90% to 92%."

Contrary to this, while announcing the tariff order dated 31.07.2019 the aforesaid revision was rolled back/ reversed for large category of domestic consumers but corresponding energy charges in that category was kept low as against the energy charges fixed for tariff order FY 17-18 without assigning any reason for the rollback of increased fixed charges. However, in order to narrow the revenue gap there was marginal increase given in the energy charges applicable to high-end domestic consumers, commercial, industrial and public utility consumers etc. Such reduction in the fixed charges again in FY 19-20 and FY 20-21 tariff order is not in line with the principles published in the approach paper as well as the intent of tariff policy for determination of tariff and has resulted into further burden on the consumer with carrying cost on the increase in revenue gap during FY 20-21. As Covid-19 has been declared as a Pandemic and its consequent restrictions lead to sharp under recovery of fixed cost for FY 2020-21 due to lesser demand, there is major mismatch in the cash flow of the distribution

licensee as part of capacity charge of transmission licensee and generation companies were supposed to be recovered with revenue from energy charges of the Consumers.

This reversal in fixed charges, now creating serious financial trouble to the Discom. This lowering of revenue from Commercial & Industrial consumers will further dent our financial position, as there would be less fixed cost recovery resulting into increase in Regulatory Assets. Consequently, it is requested to increase in the fixed charges in order to match the fixed costs towards power purchase costs, fixed assets etc. being paid by the distribution licensee on an annual basis.

7) Cross-Subsidisation In Tariff Structure

Cross subsidization: is the practice of charging higher prices to one type of consumers to artificially lower prices for another group. A product is receiving a cross-subsidy if it is priced below its average incremental cost, and a product is generating a cross-subsidy if it is priced above its per unit stand-alone costs. In context of electricity, it is the difference between the applicable average tariff of a consumer category and the cost of supply to that consumer category. It is said that the domestic consumers are cross-subsidised by industrial consumers. Cross subsidy for a particular category of customer can be computed as:

$$\text{Cross-subsidy} = \text{Cost to Serve} - \text{Average Tariff Realisation}$$

Regarding Cross subsidy, Clause 8.3 of the National Tariff Policy 2016 states as follows:

"8.3 Tariff design: Linkage of tariffs to cost of service

It has been widely recognised that rational and economic pricing of electricity can be one of the major tools for energy conservation and sustainable use of ground water resources.

In terms of the Section 61(g) of the Act, the Appropriate Commission shall be guided by the objective that the tariff progressively reflects the efficient and prudent cost of supply of electricity. The State Governments can give subsidy to the extent they consider appropriate

as per the provisions of section 65 of the Act. **Direct subsidy is a better way to support the poorer categories of consumers than the mechanism of cross subsidizing the tariff across the board.** Subsidies should be targeted effectively and in transparent manner. As a substitute of cross subsidies, the State Government has the option of raising resources through mechanism of electricity duty and giving direct subsidies to only needy consumers. This is a better way of targeting subsidies effectively.

For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the Appropriate Commission would notify a roadmap such that tariffs are brought within $\pm 20\%$ of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy.

Following is the table depicting ABR, ACoS and Approved Power purchase cost for domestic category from FY 17-18 onwards:

As per Tariff Order					
FY	PPC per kwh	ACOS per kwh	ABR - Domestic	ABR / PPC	ABR / ACOS
FY 17-18	5.63	7.63	5.87	104%	77%
FY 18-19	5.19	7.34	5.42	104%	74%
FY 19-20	5.44	7.32	4.96	91%	68%
FY 20-21	5.34	7.40	4.73	89%	64%
FY 21-22	5.55	7.64	4.35	78%	57%

From the above table it is evident that ABR to ACoS has reduced from 77% in FY 17-18 to 57% in FY 21-22 (i.e. cross subsidy is increasing from 23% to 43%). Moreover, projected ABR in FY 21-22 is Rs 4.35/unit which is not even sufficient to meet projected power purchase cost at Rs. 5.55/unit by the Hon'ble Commission.

Thus, it is requested to the Hon'ble Commission to revise the tariff structure among different category of consumers to be within $\pm 20\%$ of the average cost of supply to for the particular consumer category in line with Tariff Policy.

8) Final Truing up of Capitalization based on physical verification

The Hon'ble Commission in its previous tariff orders has trued up ARR of the Petitioner based on provisional capitalization. The Hon'ble Commission in para no 3.24 of its Tariff Order for FY 2018-19 has stated that:

"3.24 Further, the Commission has appointed consultants for physical verification of the assets of the Petitioner. Therefore, the Commission is of the view that once the physical verification of the asset is finalized then the Commission will consider the impact of Return on Equity, Interest on Loans, Depreciation & De-capitalization at the time of final truing up of capitalization."

It is worth to mention that due to pending physical verification other components of ARR which are linked to capitalisation are also being allowed provisional, which again is causing effect on cash flow and leading to non-cost reflective tariff allowed by the Hon'ble Commission.

Therefore, it is requested to the Hon'ble Commission to do the final true of capitalization from FY 05-06 to FY 16-17 & FY 18-19 and allow the impact of Return on Capital Employed, Interest on Loans, Depreciation, De-capitalization, O&M expenses and incentive along with the carrying cost in the upcoming tariff order.

9) GAIL – Ship or Pay charges

After 31.03.2007, the obligation to procure power and, make suitable arrangements for the same was to be fulfilled by the Petitioner and the other Discoms in Delhi, in terms of this Hon'ble Delhi Commission's reassignment order dated 31.03.2007.

As a result of the same, Long Term demand-supply gap analysis was carried out. It was projected in the analysis that NCT of Delhi would continue to have significant demand supply deficits (shortfall) over the entire LT projection period.

Therefore, on 11.06.2007, the Petitioner issued a communication GoNCTD requesting the latter to grant approval to temporarily use 6 acres of land lying vacant with it at CENPEID, Sector 11, Rohini to set up Rithala CCPP.

On 08.01.2008, Hon'ble Supreme Court issued an Order in Writ Petition (Civil) No. 328 of 1999 titled as Power Crises in the NCT of Delhi vs. Union of India & Ors directing Discoms to take all necessary steps to ensure adequate supply of power. Thereafter, GoNCTD forwarded to the Petitioner NOC dated 23.11.2007 issued by DDA for establishment of Rithala CCPP in Sector 11, Rohini. The NOC noted that ownership of the land will continue to be that of GoNCTD.

On 09.05.2008, GoNCTD by its letter recommended that the Petitioner may be allowed to import the 108 MW second hand Gas Combine Cycle Power Plant along with associated equipment from China.

On 17.05.2008, the Petitioner issued a letter to Ld. Delhi Commission and intimated its intention to establish and operate the Rithala CCPP in terms of the relevant provisions of its Distribution License, Electricity Act, relevant regulations etc. The Petitioner also informed the Ld. Delhi Commission that necessary land use clearance from DDA was obtained and the environmental clearances from the competent authority was under process.

On 29.08.2008, Appellant issued a letter to MoP regarding gas allocation for 108 MW Combined Cycle Power Plant at Rithala.

Thereafter, necessary agreements for gas supply, transportation were executed including the Gas Transmission Agreement (GTA) dated 08.09.2008 with GAIL for transportation of KG D6 basin gas to the Petitioner's Generation Rithala Plant in Delhi.

The Ministry of Petroleum and Natural Gas (Ministry) issued a communication on 12.07.2010 wherein it directed that 'on the days that KG D6 production is not sufficient to cater to all the customers with firm allocations, pro rata cuts should be imposed on all firm customers. On 30.03.2011 Ministry issued another communication wherein it referred to its earlier letter dated 12.07.2010 and observed that there has been significant reduction in the production of

natural gas from KG D6 fields, which has led to substantial cuts being imposed on customers. Hence, the Ministry applied pro rata cuts on the allocation.

Meanwhile On 04.09.2011, the Petitioner declared COD of the Rithala CCPP in combined cycle mode and on 24.10.2011, the Petitioner also filed Petition before the Ld. Delhi Commission seeking determination of provisional Generation Tariff for Rithala CCPP.

However, since the end of 2011, disputes arose between the Petitioner and GAIL since the Supply of gas to the Petitioner had been dwindling on account of Low production and Governmental intervention under Gas Utilization Policy of Government of India which gives less priority to power sector companies.

On 05.03.2012, the Petitioner issued separate letters, regarding additional gas allocation for the Petitioner's Rithala CCPP, to Ministry of Petroleum and Natural Gas, CEA and RIL.

The reduction in supply against the allocation had almost reached 45-50% and with those levels of gas supply, the Petitioner was not able to operate even one of the gas turbines at full load. Any further reduction in volumes could have led to further deterioration in the Plant Heat Rate and would make it impossible to operate the plant in an efficient manner.

Due to the constraints, the Petitioner wrote several letters dated 09.12.2011, 08.08.2012 & 06.09.2012 to GAIL for exemption from payment of 'Ship or Pay charges' On account of factors beyond the control of the Petitioner.

The Petitioner under the circumstances had no other alternative gas pipeline to transport the gas allocated to it except using the existing pipeline of GAIL. The said Gas Transportation Agreement mandates for imposition of fortnightly 'Ship-or-Pay Payment'

The Hon'ble PNGRB on 15.11.2012, took note of the substantial reduction in gas supplies and the consequential penalties being imposed by the transporters on the shippers / consumers, framed the PNGRB (Development of Model GTA) Guidelines, 2012 (Model GTA Guidelines) to address the situation. Clause 1(c)(v) of Schedule-A to the Guidelines specifically exclude Ship

or Pay charges on account of 'quantities which have been reduced due to directions of Central / State Government or any Government agency which is beyond the control of shipper and transporter'.

In view of the Model GTA Guidelines, the Petitioner on 26.11.2012 requested GAIL not to charge Ship or Pay charges from the date of issuance of the said Guidelines, i.e. 15.11.2012. However, GAIL on 30.11.2012 refused the Petitioner's request and raised an invoice of Rs. 0.80 crores in violation of the Model GTA Guidelines. Being constrained by this, the Petitioner challenged the demand raised by GAIL by filing a Complaint under Section 25 read with Section 12(b) of the PNGRB Act, 2006.

The GTA has a 'Force Majeure' clause which provides that an event arising on account of acts of the Government or compliance with such acts, directly affecting the ability of the shipper or the Transporter to perform its obligations under the Agreement shall be treated as a Force Majeure event and any failure or omission. The agreement, under clause 6.1 further deals with the transmission charges including ship or pay charges determination.

Despite specific request of the Petitioner through various communications to comply with the guidelines of the PNGRB, GAIL failed to take appropriate measures. The GAIL kept on demanding ship-or-pay charges without considering any requests of THE PETITIONER and neither amended GTA nor complied with the Model GTA Guidelines, 2012 formulated by PNGRB.

On 08.04.2013, the Petitioner filed a complaint case before PNGRB (PNGRB 42/2013) against GAIL for the illegal invoices raised on the Petitioner. GAIL issued a 'Default Notice' on 13.04.2013 to the Petitioner and claimed an amount of Rs. 3.04 crores under the GTA and stated that the failure of payment would enable GAIL to invoke the letter of credit issued by the Petitioner.

The Petitioner's Complaint was heard by the PNGRB and on hearing both the parties, the PNGRB directed GAIL via order dated 23.04.2013 to not take any coercive or precipitative steps to enforce payment for invoices which are raised and outstanding after 15.11.2012.

At this juncture, in order to wriggle out of the interim orders passed by the PNGRB, GAIL filed Writ Petition (Civil) No. 3698/2013 before the High Court of Delhi on 22.05.2013 challenging the exercise of power by the PNGRB in framing the Model GTA Guidelines and other Guidelines. As a result, notice was issued on the Writ Petition and interim order was passed restraining PNGRB from passing any final orders on the Complaints against GAIL.

Impugned Order dated 11.09.2014 was passed by the Hon'ble High Court of Delhi in W.P. (C) No.3698/2013 inter alia holding that the provisions of the Model GTA Guidelines in as far as affecting the Ship or Pay charges which GAIL is entitled to collect from shippers under the Agreements entered into with the shippers and insofar as varying the Force Majeure clause in the said Agreements, has an impact on the transportation tariff and is in the nature of fixing the transportation rate and/or regulating the transportation rate and/or laying down the transportation tariff and the manner of determining such tariff. Hence, the High Court held the provisions of the Model GTA Guidelines, though issued by PNGRB but otherwise than by way of Regulations, to be bad. The Hon'ble Delhi High Court also directed that the Complaints filed against GAIL be disposed of by the PNGRB in terms of the findings in the impugned Order.

The Petitioner on 17.11.2014 challenged the judgment dated 11.09.2014 of the Hon'ble Delhi High Court before the Hon'ble Supreme Court in SLP (C) 31434/2014. Pursuant to the directions issued by the Hon'ble Supreme Court, the recovery of the ship or pay charges at the moment is stayed. The matter is at the stage of final hearing before the Hon'ble Supreme Court.

Meanwhile on 31.08.2017 this Hon'ble Commission passed an Order disposing of the Petitions for determination of various costs of Rithala Plant such as Capital cost, depreciation etc.

On 03.10.2017, the Petitioner in view of the aforesaid Order, filed Petition No. 51 of 2017 before DERC seeking True Up for FY 2010-11 to FY 2016-17 and ARR for FY 2017-18. On 11.11.2019, DERC passed Order disposing of Petition No. 51 of 2017

Further it is noteworthy that in Petition 51/2017 before Hon'ble DERC for Rithala True-up, Petitioner categorically disclosed about the fact of aforesaid pending litigation before Hon'ble Supreme Court on liability qua Ship-or-Pay charges levied by GAIL on the Petitioner, which are reproduced herein below:

"3.57. It is worthwhile to bring to the notice if the Hon'ble Commission that the gas based generating stations of Delhi like Bawana (PPCL-III) have been claiming the full ship-or-pay charges including the taxes as per actuals from the distribution licensees. The Hon'ble commission is requested to allow the Ship-or-Pay charges based on the same principle. The Hon'ble Commission is further apprised that the Petitioner has filed a case in the Hon'ble Supreme Court against GAIL for the Ship-or-Pay charges claimed for the period Nov 2012 to Mar 2014. Based on the actual decision, the Petitioner shall claim charges for the remaining period based on actual liability incurred.

3.58. In view of the above, the petitioner requests the Hon'ble Commission to allow the Ship-or-Pay charges for the Petition FY 2012-2013 on actuals. The details of Ship-or-Pay charges as per above table. "

Therefore, the Petitioner requests this Hon'ble Commission to take cognizance of the sub-judice matter and the aforementioned facts. It is pertinent to mention that in case the matter is decided against the Petitioner and these demands become payable, the Hon'ble Commission is requested to allow the same in upcoming ARR/tariff proceedings under the generation tariff fuel costs along with any interest, if payable.

Though the Petitioner has made all efforts and has tried diligently to ensure a comprehensive Petition, it may be possible that some aspects/components/claims have not been dealt in detail and/or may have been inadvertently omitted. Such lack of detail/ omission, if any, is only inadvertent and ought not to be treated as a waiver of any entitlement. The Petitioner craves leave of this Hon'ble Commission and reserves its rights to supplement the present Petition with additional facts, additional affidavits, additional submissions and claims, if any. Nothing presented in the Petition should be treated as restricting, estopping, waiving or

limiting the rights of the Petitioner to claims and entitlements which it is permitted to recover under law.

The filing of the Petition shall not be treated as curtailment of any right or claim of the Petitioner, which it is permitted to recover in terms of its License and Orders of the Hon'ble Commission, the Hon'ble APTEL (including the principle of parity / equality in treatment of DISCOMs but excluding the matters where the Hon'ble Tribunal has exclusively granted relief to the Petitioner only) and or any other proceedings relevant to the entitlement of the Petitioner;

The filing of the present Petition is without prejudice to the rights, objections, contentions of the Petitioner with regard to Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017 & The DERC (Business Plan Regulations) 2019. The filing , submission of the Petition shall not be treated as curtailment of any right or claim of the Petitioner, to challenge/ initiate appropriate legal action against any final order resulting from this Petition which has been filed on the basis of the 2nd MYT Regulations, 3rd MYT Regulations read with the DERC Business Plan Regulation, 2017, and DERC Business Plan Regulation, 2019 as well as any orders/judgments of the Hon'ble Appellate Tribunal of Electricity, the Hon'ble High Court of Delhi, the Hon'ble Supreme Court of India as well as any other forum.

Prayer

In view of the above, the Petitioner respectfully prays that the Hon'ble Commission may be pleased to:

- a) **Admit the Petition:** Tata Power-DDL requests the Hon'ble Commission to kindly admit the petition for True up of FY 20-21. Any clarifications, additional information, details sought by the Hon'ble Commission shall be provided as and when directed by the Hon'ble Commission; and/or

- b) **Undertake prudence check and approve the True up of FY 2020-21**

- c) **Approve the ARR for the FY 2022-23**, based on the submissions made in this Petition and determine the cost reflective tariff for the same period apart from trajectory to recover past accumulated Revenue Gap; and/or
- d) To device, a concrete plan for liquidation of Regulatory Assets of Rs 5,512 Cr (As per books of accounts till FY 20-21 based on the assumption that the Hon'ble Commission will true up Rithala, implementation of already decided issues by Hon'ble Commission/APTEL and finalization of capitalization related issue) preferably aimed to be liquidated by giving suitable increase in Deficit Revenue Recovery Surcharge (DDRS). For assistance TPDDL have suggested various level of DDRS % is given below for meeting the said objective:-

Particulars	DDRS Billed	DDRS at difference % Level (Rs./Crores)	
		@ 12%	@ 15%
For FY 2020-21 at existing Tariff	472.50		
DRS at proposed level		708.76	885.95
Incremental amount in comparison to 8% DDRS		236.25	413.44
Expected years to liquidate the entire RA of Rs 5,512 Cr	Present surcharge has not been able to liquidate accumulated revenue gap in last 7 years	Present surcharge has not been able to liquidate accumulated revenue gap in last 7 years	Expected liquidation in FY 27-28 and in line with National Tariff Policy guidelines.

From the above, it is very clear that liquidation of Regulatory Assets well within 7 years as laid down in National Tariff Policy, 2016 is possible only if DDRS rate increased to 15%.

- e) Allow the Petitioner for recovery additional payout of 7th Pay Commission through additional surcharge (which will be over and above all the current applicable surcharge) as deemed fit by the Hon'ble Commission; and/or
- f) To restore fixed charges as announced in the Tariff Order dated 28th March, 2018 or else, increase energy charges in domestic category and make it equivalent to tariff order of FY 17-18 so that revenue gap could be reduced to some extent. This correction shall be the compliance of National Tariff Policy, 2016 and the Hon'ble Commission's own Approach Paper issued in Feb'2018. Further, this shall also reduce cross subsidy to some extent.
- g) Approve the final true up of Capitalization**
- h) Implement the orders, directions/issues decided in favour of the Petitioner,** in Appeals disposed by Hon'ble APTEL and the Hon'ble Commission, notwithstanding the fact that further appeal against the order has been preferred unless there is a specific stay against such implementation.
- i) In the event of any issues raised by the Petitioner in Appeal or Petitions referred above get adjudicated prior to issuance of the Tariff Order, by the Hon'ble APTEL/ Hon'ble High Court/ Hon'ble Supreme Court and the Hon'ble Commission, the impact of the same may be taken into consideration along with carrying cost while effecting Truing Up exercise; and/or
- j) Exercise its inherent powers or powers of relaxation if any sought by the Petitioner or in cases where so deemed fit suo-moto by the Hon'ble Commission in the interest of determination of Tariff; and/or
- k) Allow the expenditure incurred and to be necessarily incurred as sought by the Petitioner to comply with various directions issued by the Hon'ble Commission and

vide coming into force of the DERC Supply Code & Performance Standards Regulations 2017; and/or

- l)** To give due consideration to the issues enumerated above which have been represented through various letters, communications from time to time; and/or
- m)** To allow any benefit of reduction from the Tariff determination/revision carried out by the Hon'ble Commission for Delhi Gencos, and Delhi Transco Limited; and/or
- n)** To approve Green Tariff, modify the TOD mechanism and notify the same for winter months

Any other order(s) it may deem fit.

Tata Power Delhi Distribution Limited

Petitioner

New Delhi