Delhi Electricity Regulatory Commission
<u>Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017.</u>

F.11(2034)/DERC/2022-23/7543

<u>Petition No. 55/2022</u>

In the matter of: **Petition under Section 86(1)(b) and (e) of the Electricity Act, 2003 read with Regulation 4,9, 10(1) & 15 of the Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2021 for carry forward of the renewable attributes of surplus Renewable Power of the FY 2021-22 in the subsequent FY 2022-23**

Tata Power Delhi Distribution Ltd. **…Petitioner**

Coram:
Hon'ble Dr. A. K. Ambasht, Member

<u>Appearance</u>:

Sri Venkatesh, Advocate, TPDDL

<u>ORDER</u>
(Date of Order: 28.03.2023)

1. The present Petition has been filed by Tata Power Delhi Distribution Limited (TPDDL) under Section 86 (1) (b) and (e) of the Electricity Act, 2003 ("Act") read with Regulation 4, 9, 10(1) and 15 of the Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2021 ("RPO Regulations, 2021") for carry forward of the renewable attributes of surplus 129.1 MUs Renewable Power procured during FY 2021-22 to meet the Renewable Purchase Obligation ("RPO") of FY 2022-23 to that extent. The Petitioner has prayed the following;

   a. Allow Petitioner to carry forward the renewable attribute of surplus Renewable power procured during FY 2021-22 in the subsequent Financial Year i.e., FY 2022-23.

<u>Petitioner's Submissions</u>

1. As per Regulation 4(1) of the RPO Regulations, 2021, the Petitioner is obligated to procure estimated 1885 MUs of Renewable power to meet the RPO target of 21.35% for the FY 2022-23. While pursuing its RPO for FY 2021-22, the Petitioner discovered a surplus of 129.1 MUs. However, due to the current availability of long-

term and short-term renewable energy sources, the Petitioner estimates that it will fall short of 706 MUs in compliance with the RPO for FY 2022-23. The assessment is provided as below;

Particulars	**As per DERC notified RPO trajectory**			
RPO Categories	Solar	Non-Solar	HPO	Wind RPO
Year	2022-23			
RPO (%)	10.50%	10.50%	0.35%	21.35%
Consumption excluding open Access	9640			9640
Large Hydro (B)	812			812
RPO to be met upon (A-B)	8827			8827
RPO requirement (MUs)	927	927	31	1885
RPO can be met through current Long/Short Term sources	685	475	19	1179
Shortfall	**242**	**452**	**12**	**706**

2. That the Petitioner will need to purchase Renewable Energy Certificates ("REC") from the Power Exchange in order to cover the anticipated shortfall of 706 MUs. However, buying RECs will only increase the burden on end users and bring about unnecessary volatility that is built into the REC pricing mechanism. However, if the Commission considers and allows for carry forward of the renewable attributes of surplus 129.1 MUs Renewable Power procured by Petitioner during FY 2021-22 to meet the RPO of FY 2022-23 to that extent, this approval will reduce the current estimated shortfall of 706 MUs to 576.9 MUs for FY 2022-23, ultimately reducing the burden on end consumers.

3. In terms of Regulation 10 read with Regulation 15 of the RPO Regulations 2021, in case of genuine difficulty in complying with RPO target, the Petitioner can approach the Commission for the removal of difficulty. Therefore, the Commission has the requisite jurisdiction under the Act as well as the RPO Regulations 2021 to adjudicate upon the subject matter of the present Petition. On 30.06.2022, the Petitioner submitted to the Commission, the status of RPO compliance for FY 2021-22 vide Letter No. TPDDL/REGULATORY/2022-23/270. The Petitioner was required to procure 1523 MUs of Renewable Energy in order to meet the RPO target of 19.18%

for FY 2021-22, as specified by this Commission in Regulation 4 (1) of the RPO Regulations 2021. However, the Petitioner procured a total of 1629.5 MUs of power from Renewable sources against the required 1523 MUs. Thus, even after making the adjustments required under Regulation 4(3), the Petitioner happened to procure a surplus of 129.1 MUs of power from Renewable sources for the Financial Year 2021-22.

4. On 13.04.2021, the Commission notified the RPO Regulations 2021, which is applicable to the Obligated entities like Petitioner operating in the NCT of Delhi. Following are the noteworthy provisions of the RPO Regulations, 2021:

(a) Under Regulation 4 (1) of the RPO Regulations, this Commission has specified RPO target for the Obligated entities like Petitioner for the FY 2020-21 to FY 2022-23 as follows:

<table>
<tr><th>S.No.</th><th colspan="2">Particulars</th><th>FY 2020-21</th><th>FY 2021-22</th><th>FY 2022-23</th></tr>
<tr><td rowspan="2">1.</td><td rowspan="2">Non-Solar</td><td>Other Non Solar RPO</td><td>10.25%</td><td>10.25%</td><td>10.50%</td></tr>
<tr><td>HPO (applicable only for Distribution Licensees)</td><td>-</td><td>0.18%</td><td>0.35%</td></tr>
<tr><td>2.</td><td colspan="2">Solar</td><td>7.25%</td><td>8.75%</td><td>10.50%</td></tr>
<tr><td colspan="3">Total</td><td>17.50%</td><td>19.18%</td><td>21.35%</td></tr>
</table>

(b) As per Regulation 9 (3) of the RPO Regulations 2021, the Petitioner herein is mandated to submit the necessary details regarding:

i. Total sales of electricity to the consumers in its area and purchase of energy from renewable sources for fulfillment of RPO to the State Nodal Agency ("SNA") and this Commission.

ii. Annual compliance of RPO through Bank Guarantee/Fixed Deposit Receipt, etc. w.r.t other obligated entities in their respective area of supply to SNA and this Commission within three months of the completion of the relevant Financial Year.

5. On 30.06.2022, the Petitioner submitted to this Commission, the status of RPO compliance for FY 2021-22 vide Letter No. TPDDL/REGULATORY/2022-23/270. The Petitioner was required to procure 1523 MUs of Renewable Energy in order to meet the RPO target of 19.18% for FY 2021-22, as specified by this Commission in Regulation 4 (1) of the RPO Regulations 2021. However, the Petitioner procured a total of 1629.5 MUs of power from Renewable sources against the required 1523 MUs. Thus, even after making the adjustments required under Regulation 4(3), the Petitioner happened to procure a surplus of 129.1 MUs of power from Renewable

sources for the Financial Year 2021-22.

6. On 22.07.2022, Ministry of Power ("MoP") vide its Order F. No. 09/13/2021-RCM, notified the pan India RPO trajectory for the FY 2022-23 to FY 2029-30 as mentioned below. Further, in the aforementioned Order, MoP made the following modifications with respect to the existing RPO accounting:
   (a) Solar and Non-solar categories have now been merged under "Other RPO" head.
   (b) A new category called Wind RPO has been introduced which would be met from Renewable Energy purchases from wind projects commissioned after 31.03.222.
   (c) All the power generated from Hydro Power Projects is now considered as part of RPO.

7. In order to achieve the RPO target for FY 2022-23 against the estimated shortfall of 706 MUs, the Petitioner will have to buy RECs from Power Exchange. However, if the Commission allows for carry forward of the renewable attributes of surplus 129.1 MUs Renewable Power procured during FY 2021-22 to meet the RPO of FY 2022-23 to that extent, it will reduce the estimated shortfall of 706 MUs to 576.9 MUs for FY 2022-23. In that case the Petitioner would only be required to buy RECs in order to meet balance estimated shortfall of around 576.9 MUs. This would ultimately help in reducing the burden on end consumers of the Petitioner.

8. If the Petitioner is not able to meet its RPO for the given year, then as per Regulation 12 of the RPO Regulations, a penalty of 10% of the weighted average Floor Price of Solar and Non-Solar REC as specified by the Hon'ble Central Electricity Regulatory Commission (CERC) for the relevant year will be imposed on the Petitioner for the quantum of RPO shortfall in the given year. Further, in case of shortfall in RPO Compliance, the amount of penalty imposed on a distribution licensee is reduced from the Aggregate Revenue Requirement ("ARR") during true up of the relevant Financial Year, which ultimately has an adverse impact on the finances of the Petitioner.

9. The Delhi Electricity Regulatory Commission (Business Plan) Regulations, 2019 ("BPR Regulations 2019") governing the control period up to FY 2022-23 also recognize the cost incurred towards exceeding the RPO target to be allowed as legitimate power purchase cost for the relevant year. In the present case, the Petitioner having already incurred the power purchase cost for FY 2021-22 and attained excess renewable power of 129.1 MUs will be entitled to the said power purchase cost in the said year. However, if the Commission considers the submissions of the

Petitioner for carry forward of this excess renewable power to FY 2022-23, the RPO target for FY 2022-23 shall be met without additional power purchase cost to be incurred thereby ensuring achievement of RPO target for next FY at optimized costs. This approach if permitted will result in balancing the interests of the consumers and licensee/petitioner as envisaged in section 61 of the Act.

10. The ambit and scope of 'Power to remove difficulties' provision of a delegated legislation have been interpreted by the Hon'ble Supreme Court in the case of M.U. Sinai Vs Union of India, (1975) 2 SCR 640 ("Sinai Judgement"). The Petitioner is facing genuine difficulty in fulfilment of its RPO target for the FY 2022-23 and it may have to purchase RECs to meet the entire estimated shortfall, which will ultimately affect the end consumers, therefore in terms of the Sinai Judgement, this Commission may be pleased to allow the Petitioner to carry forward the renewable attribute of surplus Renewable power of FY 2021-22 to meet the RPO of FY 2022-23 to that extent.

11. The Commission has regulatory powers under the Section 86 (1) (b) of the Act to provide requisite relief to the Petitioner. The Constitution Bench of the Hon'ble Supreme Court in its landmark Judgment of PTC India Ltd. v. CERC & Ors., (2010) 4 SCC 603 ("PTC Judgment") has inter alia enunciated the contours of regulatory powers as well as functions of the Central Commission under the Act. Notably, the powers exercised by the Central Commission under Section 79 and Section 178 are *pari materia* to the powers of this Commission under Section 86 and Section 181 of the Act.

12. The Petitioner has also filed an additional affidavit on 23.03.2023, wherein it has submitted the following:

    a) The Renewable Power Obligation (RPO) target requirement for FY 2022-23 is estimated to be 1778.5Mus. Till the end of Quarter 3 of FY 2022-23, the Petitioner has procured 1223 Mus of Renewable Energy and the balance RPO to be fulfilled during Quarter 4 is estimated to be 555 Mus. The said information has been submitted to the Commission on 12.01.2023 while providing the status of RPO compliance for Quarter 3 of FY 2022-23.

    b) The Average Rate discovered in Exchange for REC Purchase in January and February 2023 is Rs. 1000/REC (excluding GST) or Rs. 1180/REC (with GST). The Trading Rate of EC at IEX is given below for reference:

REC Date of Indian Energy Exchange

Year/Month/Type			Buy Bids (REC)	Sell Bids (REC)	Cleared Volume (REC)	Cleared Price (Rs./REC)	No. of Participants
2023	January	REC	478.169	2,280.064	394.791	1,000	356
		Non-Solar	-	-	-	-	-
	February	REC	432.000	3,432.747	373.500	1,000	-
		Non-Solar		-	-	-	-

c) If the Commission allow the carry forward of renewable attributes of surplus 129 MUs Renewable Power of the FY 2021-22 in the subsequent FY 2022-23, then the REC Purchase requirement will be reduced by 129 MUs resulting in saving of Rs. 15.2 Crore (0.129 * 1180) of REC Cost from Passing in ARR.

d) This will not only help in reducing the power purchase costs and will also help in fulfilling the RPO Compliance for FY 2022-23.

Commission Analysis

13. The instant Petition has been filed by TPDDL to carry forward of the renewable attributes of surplus 129.1 MUs Renewable Power procured during FY 2021-22 to meet the Renewable Purchase Obligation ("RPO") of FY 2022-23 to that extent. In this regard to carry forward of surplus, the Commission perused the Regulation 27 the Target for Renewable Purchase Obligation of (Delhi Electricity Regulatory Commission (Business Plan) Regulations, 2019 which stipulates as follows;

"27. TARGET FOR RENEWABLE PURCHASE OBLIGATION (1) The targets for Renewable Purchase Obligation (RPO) in terms of Regulation 124 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 of a Distribution Licensee from FY 2020-21 to FY 2022-23, shall be computed as a percentage of total sale of power, to its retail consumers in its area of supply, excluding procurement of hydro power. The target for RPO shall be met through purchase of power from various Renewable Energy sources or purchase of Renewable Energy Certificates ('REC') or combination of both, and shall be as follows:

Targets for Renewable Purchase Obligation

Sr No.	Distribution Licensee	2020-21	2021-22	2022-23
1.	Non Solar Target	10.25%	10.25%	10.50%
2.	Solar Target	7.25%	8.75%	10.50%
3.	Total	17.50%	19.00%	21.00%

(2) The Distribution Licensee shall comply with its RPO through procurement of Solar energy and Non-Solar energy:

…

Provided also that the Distribution Licensee may purchase power from various Renewable Energy sources or RECs or combination of both for any shortfall in meeting their total RPO targets for any financial year within three months from the date of completion of the relevant financial year."

14. The Petitioner has sought carry forward of 129.1 MU from FY 2021-22 to FY 2022-23 which will result in decreased shortfall of FY 2022-23 from 706 MU to 577 MU and consequential relief of Rs. 12.91 Crore considering avoided purchase cost of RECs.

15. However, by doing such activity, Energy Accounting gets altered. It is observed that 129.1 MU of Electricity has been supplied to consumers in FY 2021-22, Revenue has been billed and collected from consumers and such 129.1 MUs has also been utilized in Distribution Loss for FY 2021-22 itself. Now by carrying forward such 129.1 MUs from one Financial Year to another, leads to mismatch in Energy Account of both the years i.e., FY 2021-22 and FY 2022-23.

16. There are only two modes to comply RPO targets i.e., purchase of Physical Green Energy & purchase of RECs. In the present case, 129.1 MUs of Physical Green Energy was done in FY 2021-22 and it has served its purpose in FY 2021-22 itself of meeting demand.

17. Further, Petitioner has submitted that carry forward of surplus 129.1 MUs of FY 2021-22 in FY 2022-23 will result into avoidance of Rs.12.91 Crores of additional burden to the end consumers and further such carry forward has also been allowed by various SERCs in the past.

18. Further, TPDDL in its Petition filed for True-up of FY 2020-21, in table 3.21 has considered adjustment of Surplus Energy of FY 2021-22 of 71.4 MUs in FY 2020-21 and in this Petition they have sought adjustment of Surplus Energy of FY 2021-22 of 129.1 MUs in FY 2022-23.

19. In view of above and considering the interest of the consumers, the Commission allows the carry forward of Surplus Energy during FY 2021-22 in FY 2022-23 only for the limited purpose of RPO. Such Surplus Energy will be ascertained by the Commission during True-up of relevant Financial Year based on the Energy Accounting report from Delhi SLDC, as per past practice. However, for the purpose of Sales, Distribution Loss, Revenue Billed, Surplus Energy of FY 2021-22 shall be considered in FY 2021-22 itself.

20. Ordered accordingly.

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