

APP
Annual Report 2014-15

Index

1. Working of the Association	3
2. Key activities/critical issues undertaken by the Association in 2014-15	5
• Unviability concerns being faced by projects with locked in tariffs due to under recoveries of fixed and variable costs	5
• Bidding Documents	6
i. Standard Bidding Documents – Long Term Power Procurement	6
ii. Standard Bidding Documents – Short Term Power Procurement	7
• Coal Related Issues	8
i. Coal block auctions	8
ii. Change of name for linkage/LOA holders	9
iii. Supply of coal to projects without linkages	9
iv. Third party inspection agencies	10
v. Evacuation constraints of Railways in Eastern sector	10
• Gas based projects	11
• Regulatory Issues	12
• Environment and Forest Related Issues	12
• Transmission Issues	14
i. Transmission Congestion	14
ii. Transmission Planning, Connectivity and Open Access	15
iii. Compensatory Afforestation	15
• Hydro Issues	16
• Policy and Legislative Framework	16
• Other issues	17
i. Ease of doing business	17
ii. Mega Power Projects	17
iii. COD certification	18
iv. CPCB meeting	18
3. Agenda for 2015-16 : Critical issues to be taken up	19
• Unviability concerns being faced by projects with locked in tariffs	19
• Capacities commissioned with LoAs and recently acquired mines but unable to access coal because of condition of long term PPAs	19
• Linkage Policy framework	19
• Transmission Constraints	20
• Financing and RBI related interventions required	20
• E&F clearance related issues	21

1. Working of the Association

The Association ended the previous year 2013-14 with 29 members. Three members withdrew their subscription for 2014-15 (Shapoorji Pallonji Energy, SKS Power and Shree Cement & Power). However there was also an addition of 5 new members to the Association during 2014-15 - PTC India, Lalitpur Power Generation, KSK Mahanadi, GDF Suez (Meenakshi Energy) and PPP Power Generating Company. With this, the total strength of APP increased to 31 by the end of 2014-15.

During the AGM of the Association held on 21st May 2014, the Chairman for the previous year, Shri Rajiv Mishra stepped down and was succeeded by Shri K. Rajagopal (CEO, Lanco Power) who had given his consent for the post of Chairman. For the post of Vice Chairman, there was only one nomination and accordingly Shri Vneet Jaain (CEO, Adani Power) was nominated as Vice Chairman till the next AGM

During the AGM, it was discussed among the members that due to the Association growing in size significantly since inception (from 8 founding members to a present strength of over 30), a need was felt to increase the size of the Managing Committee of the Association. Pursuant to this, it was proposed by the Chairman and Vice Chairman that the Managing Committee would be expanded to have seven members (including the Chairman, Vice Chairman and Director General as ex-officio members). The criteria for selecting the 4 members were agreed to be as follows - 3 from among the past Chairmen of APP and any other member as finalized by Chairman and Vice Chairman, and 1 from debutant/newly enrolled member organizations. In addition to the Chairman, Vice Chairman and Director General, the following members were selected to be a part of the Managing Committee for 2014-15:

- Shri Anil Sardana (Tata Power)
- Shri Rajiv Mishra (CLP India)
- Shri Athar Shahab (Sesa Sterlite)
- Shri B.R Jaju (DB Power)

It was also discussed and agreed that due to the size of the Association growing so much, it would be crucial to follow the Rules and Regulations of the Association without any deviation unless absolutely necessary. In this regard, as per the Rules, the mailing list of APP was limited to 2 official representatives from each member organization.

Another aspect which was discussed during the AGM pertained to the selection of delegates during important meetings. It had been experienced in the past that due to external restrictions being placed on the size and level of the delegation, it was becoming increasingly difficult to choose the participants. It was decided that while all efforts would be made to enlarge the delegation, the Chairman, Vice Chairman and DG would decide the composition and in case of any difference in opinion, the Chairman's decision would prevail.

In order to increase the frequency of communication with the members and keep them abreast of latest happenings, a system of bi-monthly conference calls was put in place. The conference calls were timed to take in place between two general meetings so that interactions could be held on a monthly basis. However, after the first few conference calls it was noticed that there was a significant drop in participation and it was decided to host the conference calls only in case there were issues of significant importance to be discussed with the members.

During the first meeting of the Managing Committee held on 8th September, it was decided that the Budget Subcommittee would be reconstituted with the following members – Shri Vneet Jaain, Shri Rajiv Mishra and Shri Athar Shahab. It was agreed that the Budget Subcommittee would meet on a half yearly or felt need basis if deemed fit and oversee the expenditure of the Association and approve the annual budget before its presentation to the General Body. Accordingly the Budget Subcommittee met on 3rd March 2015 to review the summary of receipts and expenditure statement for FY 2014-15 and the Budget estimate for FY 2015-16. In this meeting it was decided that APP would look for alternate office premises in order to reduce the present expenditure on high rentals.

During further deliberations by the Committee it was also decided to prepare the following documents to ensure smooth functioning of the Association – Expenditure Policy, Treasury Policy and Governance Framework. These documents were discussed during the Budget Subcommittee meeting on 6th May and the final documents are being placed along with this Report for confirmation by the General Body.

2. Key activities/critical issues undertaken by the Association in 2014-15

The year 2014-15 can easily be termed as the year of rising expectations and optimism on the back of the new Government. Accordingly APP went all out and intensified its efforts to bring on table the critical issues impacting the sector and seek remedial measures/way forward.

In this context, **APP presented its views before Finance Minister, Power Minister, Advisory Group constituted under Shri Suresh Prabhu (multiple presentations made to the Group), RBI Governor, Parliamentary Standing Committee on Energy, Parliamentary Standing Committee on Finance, Expert Group of MoP and Forum of Regulators.** In addition to the above, regular meetings were held with concerned Secretaries and their functionaries to drum the necessary support for remedial measures.

The year in review clearly shows that the Government's efforts have borne fruits on the supply side and the Government has also announced very ambitious targets for the power sector – record annual capacity addition of 22,566 MW, record generation of 1048 BUs, timely auction of coal mines, increase in coal production by 7%, initiation of joint venture agreement between Railways, CIL and State Governments, focus on transmission and sub-transmission, scaling up of renewable energy targets and notification of scheme for operationalization of stranded gas projects.

However on the legacy issues of under-recovery and suppressed demand due to poor financial health of distribution utilities, the Government resolve is wanting. On the legacy issues, from the earlier inclined status the Government's stance has shifted to 'reluctance' on apprehension of political backlash. Accordingly they have adopted a cautious attitude of letting the legal process continue, notwithstanding the delays inherent in this process.

In the coming year we would need to convince the Government that the investments made on supply side would yield benefit to consumer only if the issue of artificially suppressed demand by the bankrupt distribution utilities is resolved. Further, the reluctance of Government to move forward on the stranded/under-utilized capacity and indications of retrospective policy changes in the coal linkage allocation framework has already affected private investors' appetite for any new generation capacity creation. This would have very adverse impact on the capacity addition programme for the 13th Plan. For the coming year the main issue for APP would be how to get Government to realize this flaw in their thinking process.

The key issues highlighted during these meetings and other representations are detailed below.

- **Unviability concerns being faced by projects with locked in tariffs due to under recoveries of fixed and variable costs**

The unviability issues due to under recoveries of fixed and variable cost for reasons beyond the control of developers has impacted almost all the projects which were concluded under the bidding framework. This issue has been with us since the inception of APP. Of all the factors detailed – shortage of coal supply by CIL, change in law in coal source countries, unforeseen and materially adverse changes in macro-economic factors, delays in land acquisition and clearances etc; the Government has only accepted the impact on prices due to short supply by CIL. Necessary notification in this regard was issued by Government however it has not been implemented across all States.

Initially the new Government showed inclination to accept the other factors too, however the process of effecting these changes without creating political backlash was the impeding factor.

Accordingly it was agreed to formulate a legally feasible and quickly implementable solution in place of the case by case approach which was turning out to be very long drawn as it was subject to appeals. In this regard, a legal brief for opinion was prepared regarding the possibility of migration of thermal plants from a competitive bid tariff under Section 63 to a regulatory determined tariff under Section 62. Based on the legal brief, legal opinions were taken from the following eminent jurists – Shri Soli Sorabjee, Justice Kapadia, Shri P. Chidambaram and Shri V. Moily

PwC was mandated to analyse the challenges and the report prepared by them was presented to the Central and all State Regulatory Commissions as well as State utilities. These reports were discussed extensively with senior functionaries of MoP and the Advisory Group under Shri Suresh Prabhu. This was also put forward during the meeting with the Financial Services Secretary and the bankers which led to the formation of the Working Group headed by Shri Santosh Nayar. APP was also asked to present its views on the same subject before Forum of Regulators. FoR subsequently appointed an internal committee in this regard, which decided to commission a study to analyze both the options of tariff determination - through competitive bidding and cost plus basis.

Outcome

- a. *To implement the fuel pass through in all states, necessary amendments are being made in the National Tariff Policy*
- b. *Government has yet not accepted APP's argument regarding all the factors which need to be considered by the Commission for redetermination of tariff. There is an emerging consensus among the Government officials that only incontestable change in law situations, such as related to excise duty, customs duty, coal cess etc should be allowed. However the Government's stance has changed from an earlier inclination for executive action through change in the Act/Tariff Policy to a view that this matter is best resolved on a case to case basis by Regulators.*
- c. *However, regarding the incontestable change of law principles, a formulation may be considered so that all cases do not come to Regulator. Regulators too at their level are advocating this*
- d. *Study commissioned by FOR to analyse both the modes of tariff determination.*

• Bidding Documents

i. Standard Bidding Documents – Long Term Power Procurement

All members felt that the proposed documents were overly restrictive and the key concerns with the documents were repeatedly highlighted to MoP, such as those relating to the DBFOT structure, possible under recovery of fuel charges, mismatch between fixed charge escalation formula and actual fixed cost trajectory, unrealistic operating

norms, intrusive nature of Independent Engineer, inequitable termination provisions etc. After numerous representations and discussions with MoP officials, APP was invited to a meeting of the Advisory Group to MoP in August to discuss the key concerns. Both the UMPP bid documents and the SBDs for future bidding were discussed. Regarding the UMPP bid documents, despite the developers' objections to the provisions in the documents, MoP and the Advisory Group felt that the ongoing bid process should be continued as the bids would test the market reaction to the new documents. However, soon after this, all the private bidders who had qualified for the RFP stage for both the UMPPs withdrew from the bidding process. With these withdrawals, MoP was forced to cancel the bidding process for the UMPPs - a clear validation of the stand taken by APP.

Regarding the future bidding documents, APP suggested to the Advisory Group that the previous bidding documents with certain modifications to take care of the known infirmities may be adopted in place of introducing a completely new bidding framework under the DBFOO and DBFOT models. APP engaged a consultant (KPMG) to incorporate the key takeaways from the past experience in the old SBDs - fuel availability and price risk, accounting for delays in pre-construction approvals due to Procurers' responsibilities not being met, providing flexibility in the contract to deal with material adversity, allocation of transmission risk, accounting for macro-economic factors affecting project viability etc. The marked up documents thus prepared, along with logic notes explaining the changes were sent to MoP.

After the earlier Advisory Group was dissolved, APP made a presentation on the SBDs to the newly formed Expert Group of MoP chaired by Shri Pratyush Sinha. While being initially sceptical of some of the changes proposed by APP, the APP delegation assisted by KPMG made strong arguments explaining the proposed changes related to fuel price pass through and provisions accounting for abnormal spikes in interest and FE rates, etc. The marked up documents were submitted to the Expert Group too and at present, the final report of the Expert Group is awaited.

Outcome

Government is presently reviewing the Case 2 and UMPP bidding documents. In the meanwhile, based on recent representations by APP, MoP has made a few changes in the SBDs under Case 1 DBFOO. The significant changes are:

- *Any deviation from the SBDs will require the prior approval of the Appropriate Commission instead of the Central Government*
- *Restriction of shortlisting maximum seven bidders for RFP stage has been lifted*
- *Concessional coal to be available for medium term PPAs too – contract period of PPA under DBFOO model changed from 25 years to 7 years and above, upto 25 years with provision for extension by 5 years at option of either party*
- *Requirement of seeking approval of Procurers for expansion and creation of Additional Capacity has been removed*

ii. Standard Bidding Documents – Short Term Power Procurement

Regarding short term procurement of power, MoP had introduced model bidding documents for short term in March 2014 and invited comments. It was felt by many

that these documents were overly restrictive and significantly misaligned to the very nature of the short term transactions. The documents were based extensively on the new long term and medium term model agreements and did not seem to account for the fact that the framework for meeting short term power requirements require to be flexible. A meeting was held in Ministry of Power in May in which APP was invited to present its views. APP representatives reiterated their stand and their view was also corroborated by other stakeholders including State utility officials. Ministry of Power agreed to study the model bidding documents and framework being followed by the States first before going ahead with the proposed model documents.

Outcome

The model short term bidding document was dropped after unanimous objection from the stakeholders.

- **Coal Related Issues**

- i. Coal block auctions**

Regarding projects linked with coal mines, APP had been asking for an alternative source of coal (new mines or long term linkage) for the mines which had been denied clearance and for tapering supplies to these projects till the time such alternative source was arranged. APP had also asked for tapering supplies to the mines whose development had been delayed. However, the Supreme Court judgements which led to cancellation of 204 coal blocks changed the captive coal block scenario completely.

Soon after the Government promulgated the Coal Mines (Special Provisions) Ordinance, a special member's meeting was held in October to discuss the provisions of the ordinance. As there were some crucial issues which needed to be addressed, a note outlining some important considerations to be kept in mind while finalizing the contours of the auction process was prepared and sent to MoC. Comments were also sent in November on the draft Coal Mines (Special Provisions) Rules. APP was invited to a meeting with the Coal and Power secretaries in December to further deliberate and provide view points on the way forward with regards to the auctions. Detailed comments on the Approach paper for coal block auctions were also submitted to MoC in December.

During the APP meeting held on 14th Jan 2015, some key concerns related to the standard auction documents were discussed among members, and APP agreed to make a representation to MoP and MoC requesting for removal of condition of allowing only top 50% of initial price offers to be qualified to submit final price offer and seeking clarification on issues such as process of review of energy charge under PPA, factoring of upfront payment in energy charge and treatment of transportation cost as the bidding documents do not provide option for quoting separate transportation cost for captive mines. Subsequent to the first two rounds of auctions, APP requested MoP to evolve a framework to ensure adequate opportunities to the winning bidders to conclude PPAs at the earliest.

Outcome

While many concerns outlined by APP prior to the start of the auctions were not eventually addressed by MoC, the Government went ahead with the auctions and two rounds were completed with some APP members emerging as successful bidders.

There is no doubt that developers have displayed irrational exuberance in making these bids and the sustainability of these bids is an issue. The problem will be further compounded due to notified changes in the Competitive Bidding Guidelines as per which future power procurement tenders will need to specify a ceiling on the fixed charges. Many of our members are thinking of legal action.

No further definitive timeframe has been announced by MoC for the next round of auctions. It appears they are waiting for pending court cases to get over.

ii. Change of name for linkage/LOA holders

MoC released a discussion paper in April on proposed guidelines for considering requests of coal linkage/LoA holders for change of name due to amalgamations, which sought to achieve a balance between the objectives of ensuring that the coal linkage granted to a developer is not traded for business purposes and to avoid hampering bonafide equity investment in the company holding the linkage/LoA. While APP agreed with the overall intent behind the guidelines, APP requested that the proposed measures, such as prior intimation to Ministry of Coal regarding any change in ownership etc, be implemented prospectively and not retrospectively on projects which have already made substantial investment in the projects but were required to dilute their shareholdings due to genuine reasons. This request by APP was again made to the Minister in June. MoC took cognizance of the request made by APP and the final guidelines in this regard has clearly stated its applicability only on requests made for change of name after the notification of the guidelines.

Outcome

APP's request for prospective implementation of the guidelines has been accepted.

iii. Supply of coal to projects without linkages

Through a letter written to the Minister of Power and Coal in November, APP requested that the CCEA approved projects without linkages (4,660 MW) and other similarly identified projects (4,095 MW) may be supplied coal under 'as is where is' basis from mines which have evacuation constraints. Subsequently MCL and SECL issued notifications in December inviting projects with FSAs and above mentioned category of CCEA approved projects for lifting of coal from the mines. However the notification did not extend the offer of lifting coal to those projects which had tapering linkages and APP sent a representation to MoC requesting for these projects to be included. Pursuant to APP's request, MoC issued a notification in January and extended the offer of lifting coal to the CCEA approved projects with tapering linkages. However, despite this notification, the coal companies rejected many of the applications made by the generators for various reasons such as absence of MoU with the coal companies or absence of Case 1 PPA. APP again requested MoC to intervene and ensure that no

arbitrary conditions are imposed by the coal companies to supply coal to projects approved by the Cabinet. This request is pending with the Ministry.

Outcome

As per APP's request, the offer of lifting coal from mine pithead was also extended to the projects with tapering linkage which were part of the CCEA approved list of 78,000 MW. Request to MoC to ensure that no arbitrary conditions are imposed by coal companies for allowing lifting of such coal is under consideration.

iv. Third party inspection agencies

As per the decision taken during the meeting with the Power Minister in June, APP was entrusted with the task of preparing a list of inspection agencies acceptable to all the private developers. This list was provided to MoP and MoC for finalization. Subsequently CIL circulated the Standard Operating Procedure for the sampling process which contained some deviations from what was discussed earlier - it was earlier decided that analysis would be carried out by third party agencies at their own independent laboratory, but the SOP recommended that the analysis may be carried out at laboratories of the coal company which are already equipped with necessary infrastructure. It was also decided that results of sampling and analysis by 3rd party agencies would be used for billing purposes but the same was not stated in the SOP. APP raised the issue of these deviations with MoC and CIL provided appropriate clarifications so that the SOP was in line with the original intent.

Outcome

Third party inspection mechanism has been operationalized and Coal India provided appropriate clarification to APP's representation stating that the SOP would be in line with the mechanism originally envisaged – analysis could be carried out at by the third party agencies at their own independent laboratory and the results of the sampling and analysis by the 3rd party agencies would be used for billing purposes.

v. Evacuation constraints of Railways in Eastern sector

APP had made many representations regarding the increase in landed cost of coal due to constraints imposed by Railway Board through their logistic plan. A review meeting was called by Secretary Power on 15th Dec in which Sh.A.K Maitra (Additional Member, Railway Board) was also present. During the meeting, the possibility of developers contributing funds for increasing the capacity of critical length of 60 kms was discussed, wherein the money invested would be repaid by Railways by way of freight rebates. However, since Railways expressed inability to provide any priority to these funding developers due to policy restrictions, the proposal could not be taken up.

The need for upgrading the R-V section in order to increase the availability of rakes for transporting coal from the eastern sector ports was also brought to the notice of the Project Monitoring Group headed by Shri V.P Joy. A couple of review meetings were called by the PMG and the PMG asked Railways to ensure completion of doubling of critical stretch of Titlagarh-Raipur section (60 kms) within a year and to explore ways

of completing the entire project (200 km) at the earliest. Railways subsequently informed that they had placed the project on fast-track and as per revised timelines, 50 kms out of the critical length of 60 kms would be completed within a year, the remaining 10 kms out of the critical stretch to be completed within 2 years and the remaining 200 kms to be completed within 3 years. A review meeting was held by Secretary Power in March wherein Railways were asked to ensure adherence to above timelines and indicate the phased availability of additional rakes on the concerned route. During this meeting, Railways also confirmed that they have approved APP's request of allowing traffic through longer route via Ballarshah for those developers who facing congestion on the western port routes.

Outcome

While Railways had initially stated that the doubling of the R-V section, which would enable IPPs located in hinterland areas closer to the east coast to import coal from eastern ports, would take about 4 years, regular follow up through PMG and MoP ensured that the Railways took up this project on fast track basis and has now committed to complete the most critical stretch within a year and the remaining project within 3 years.

- **Gas based projects**

As huge investment in gas based generation plants remained stranded, especially in the southern state of Andhra Pradesh, APP met the Chief Minister of Andhra Pradesh in July to discuss out of the box solutions to operate the gas based projects. Measures such as reduction in VAT, declared good status for gas, reduction in wheeling and cross subsidy charges for gas based power to incentivize open access, etc were discussed in order to make the price of gas based power viable enough for the State discoms and industrial consumers. In order to ensure that the projects stranded in the State without any gas allocation were in the queue for gas allocation by GoI, it was agreed that the State distribution companies would sign PPAs with the gas based generators with no obligation to pay any capacity charge till they are operational post gas allocation. A draft version of PPA incorporating these provisions was sent to the State's Principal Secretary and Secretary Energy in September.

While the Ministry of Power kept working on different options of gas pooling for rescuing the stranded gas based capacity in the country, APP took forward the efforts made by a member (M/s GMR Energy Ltd) with regards to the possibility of utilizing stranded gas based power for providing ancillary support services. GMR Energy commissioned a study by a consultancy firm in this regard and APP facilitated meetings with key stakeholders such as POSOCO and CEA. This was also discussed in the 19th Central Advisory Committee meeting of CERC and there was a consensus that gas based generation plants should be utilized for providing ancillary services and a market design needs to be developed for it. The final reports were submitted to MoP and other key stakeholders such as CEA, POSOCO and CERC. Further action is awaited.

A key suggestion always made by APP while deliberations were ongoing on the gas pooling proposals was that all stakeholders need to make some sacrifices in order to make any kind of pooling scheme workable. While MoP finally decided against taking gas 'pooling' forward, it introduced a new scheme towards the end of the fiscal year

wherein gas based power plants would participate in a reverse auction based on the least per-unit subsidy that a plant requires to make its power saleable. In line with APP's earlier suggestion, this scheme envisages all stakeholders making sacrifices, including the power plant developers who forego their RoE. While APP provided some initial inputs and suggestions on the auction methodology, the response by the bidders during the auction and their ability to convince the States to enter into PPAs with them will determine the success of the scheme.

Outcome

Not much action occurred during the year for the stranded gas based power plants. After many months of deliberations on a 'pooling' mechanism, MoP finally discarded the concept of 'pooling' and instead finalized an auction procedure with reverse bidding based on the least amount of support required from the PSDF fund to achieve generation corresponding to target PLF under a pre-determined ceiling tariff at which the power would be supplied to Discoms. The bidders' response to this scheme remains to be seen.

• **Regulatory Issues**

On the regulatory front, the CERC Tariff Regulations for 2014-19 contained provisions which had serious adverse impact on the generators. As the option for filing a review petition for removal of difficulties was possible only after the Regulations came into force, it was decided to pursue the legal option and a writ petition was filed in the Delhi High Court. The writ petition challenged some of the most critical provisions in the Tariff Regulations, such as:

- GCV being considered as 'As Received' instead of 'As Fired'
- Creation of separate category of plants commissioned between 01st April 2009 to 31st March 2014 and retrospective lowering of Heat Rate for these plants
- Change in computation of incentive from PAF to PLF
- Insufficient allowance for coal transit loss
- Unsustainable level of auxiliary consumption and secondary oil consumption
- Reduction in O&M expenses for transmission lines and increase in normative transmission availability factor

CERC was asked to provide a hearing to APP, and APP made a presentation to the Commission on 26th May 2014. Additional note containing details on 'as received' GCV vs 'as fired' GCV as well as other data requested by the Commission was sent to CERC on 28th May. CERC provided a written response to APP and filed a counter affidavit on 27th October with the Delhi High Court wherein they turned down all the prayers made by APP. APP's response to the counter affidavit was filed on 13th Jan 2015 and the judicial proceedings are currently ongoing.

• **Environment and Forest Related Issues**

During the presentation to the Power Minister in June, APP had highlighted that Environmental and Forest clearances have been one of the biggest impediments in the timely development of power projects and coal mines. In some cases, projects have been delayed for as many as 7 to 8 years (for example, those projects which fell in 'No Go'

areas). When the Ministry of Power constituted the Inter-Ministerial Committee to review the existing regulations, guidelines and procedures in order to improve the ease of doing business in the power sector, APP sent in detailed comments and suggestions related to environment and forest clearance related legislation and guidelines. APP recommended the compression of timelines for providing Environment and Forest clearances and suggested that maximum time required for clearance/approval at each stage would need to be specified with 'deemed approval' to be granted beyond such stipulated timeframes. It was also suggested that Environment, Forest and NBWL clearances would need to be de-linked from each other to expedite the development of projects and to avoid time and cost overruns. Apart from these, APP highlighted many other aspects which were adversely impacting power projects such as validity of TORs, requirement of multiple hearings, duplicate/unnecessary studies being stipulated by States, etc.

In August, MoEF constituted a High Level Committee to review the various Acts administered by MoEF, namely the Environment (Protection) Act 1986, Forest (Conservation) Act 1980, Wildlife (Protection) Act 1972, Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act 1981. APP submitted detailed comments on each of these Acts to the High Level Committee for consideration.

Outcome

Over the course of the year, the following suggestions/requests made by APP were acted upon by MoEF:

- **Delinking of Forest Clearance from NBWL Clearance** – APP had highlighted that in many cases the grant of forest clearance was being delayed due to delay in grant of clearance from the Standing Committee of the NBWL. Through circular dated 20th Aug 2014, MoEF delinked the approval under Forest (Conservation) Act from the grant of clearance from the Standing Committee of the NBWL.
- **Simplified procedure for grant of permission for felling of trees** – MoEF circular dated 8th aug 2014 stated that in the case of linear projects (such as transmission lines), the in-principle approval under the Forest (Conservation) Act, 1980 may be deemed as the working permission for tree cutting and commencement of work if all the compensatory levies as stipulated in the in-principle approval are realized from the user agency.
- **Restricting of additional conditions being imposed by States** – APP had highlighted that in many instances, the State governments specify additional conditions/studies which are over and above the requirements as laid out in the in-principle approval issued by MoEF under the Forest (Conservation) Act, 1980. Though circular dated 8th Aug 2014, MoEF instructed that any such additional conditions felt required by the States would need prior permission of the Central Government.
- **Creation of land bank** – APP had requested that in order to reduce the timelines involved in Forest clearance, the State Governments may identify and create Land Banks for the purpose of compensatory afforestation. APP had also requested that the State Governments take on the onus of afforestation upon being paid the monies in order to ensure a systemic and integrated approach to

afforestation. While this latter request has not yet been accepted, through circular dated 8th Aug 2014, MoEF directed the States to identify in advance suitable land for compensatory afforestation and create a 'land bank' for allocating to the user agency.

- **Approving authority for diversion of forest land** - Approval for the use of forest area for non-forest purpose was earlier accorded by the Central Government as per the Forest (Conservation) Rules, 2003, amended on 14th March, 2014. With that approval process, it generally took about 2-3 years for obtaining approvals for a typical transmission line project, resulting in cost and time overruns. Amendment has been issued by MoEF stipulating that the approval for diversion of forest land for transmission lines can be accorded by Nodal or Regional officers irrespective of the quantum of land to be diverted, depending upon whether the lines are within a State or crossing more than one State.

- **Transmission Issues**

- i. Transmission Congestion**

The 19th meeting of the Central Advisory Committee of the CERC was held on 12th May 2014 and was attended by the Director General in his capacity as member of the Committee. DG APP highlighted the need for greater transparency on declaration of transmission safety margins and mentioned the need for early implementation of General Network Access. It was also brought to other members' notice that the National Reliability Council for Electricity, constituted in pursuance of CERC's order for addressing issues related to total and available transmission capacity, should also have representatives from the private sector. This suggestion was accepted and a representative from APP was subsequently invited to be a part of the National Reliability Council. Also subsequently, CERC constituted a CAC sub-committee to examine issues related to transmission congestion and Director General, APP was included as a part of the sub-committee. A meeting of the sub-committee on transmission congestion was held on 22nd August wherein APP was asked to provide details of generating stations facing issues of despatch of power due to transmission issues. This list along with a brief concept note highlighting that there existed severe congestion between some of the WR-NR links and between the NEW and Southern Grid was sent to the sub-committee and MoP. Some crucial transmission lines were highlighted by APP and review meetings were held by MoP to track the progress of these lines.

It was felt by many members that power flow on the link from NEW grid to SR was getting impeded due to very high safety margins. This issue was raised before the Secretary and was also tabled in the Central Advisory Committee meeting.

Outcome

A committee under Shri R.V Shah was appointed to analyse the issue in detail and in this meeting APP was also represented. The report is presently under finalization.

ii. Transmission Planning, Connectivity and Open Access

In September, CERC came out with a staff paper on Transmission Planning, Connectivity, Long and Medium Term Open Access. Issues being faced both by the system planner/operator and the generators related to the extant provisions of Connectivity and LTA/MTOA were discussed in the paper. The staff paper outlined two possible alternatives for transmission network connectivity and access - the first alternative being to continue with the existing LTA regime with some changes and the second option being moving to the GNA (General Network Access) framework. With the help of transmission experts from the member companies, APP prepared a detailed response to the CERC staff paper wherein it was highlighted that though the GNA concept seemed to be better suited for the country, substantial changes were required in the concept to make it successfully operational and also to bring it in line with the National Electricity Policy and the Tariff Policy.

Many IPPs were also adversely affected by the existing regulatory provisions regarding LTA wherein they had been granted LTA on the basis of 'target regions' but were subsequently unable to tie up firm beneficiaries. These generators were having to pay LTA charges even without identified beneficiaries. The draft third amendment to the CERC (Sharing of inter-State Transmission Charges and Losses) Regulations provided some relief in this regard by allowing the charges paid for short term and medium term access to be offset against the LTA charges. However, these draft amendments were opposed by the CTU and APP had to make several requests for early implementation of the same.

Outcome

The third amendment to the Sharing of Inter-State Transmission Charges and Losses Regulations was finally notified on 1st April 2015. However there are variations between the final amendment and the draft amendment which was earlier circulated for comments – the changes need to be analysed.

iii. Compensatory Afforestation

It was requested that all transmission projects should be given the same exemption as given to Central Government projects, i.e, they should be required to pay only the cost of compensatory afforestation instead of having to give equivalent non-forest land to Forest Department. Also, the exemption of allowing compensatory afforestation over degraded forest land twice in extent of the forest area being diverted, should not be limited to 220kV transmission lines and should include all transmission lines. In July 2014, MoEF accepted the request made by APP and allowed compensatory afforestation over degraded forest land twice in area to all transmission line projects.

Outcome

MoEF accepted the request made by APP that the provision of allowing compensatory afforestation over degraded forest land twice in area instead of non-forest land of the same area may be extended to all transmission projects and not just transmission lines upto 220 kV.

- **Hydro Issues**

India has massive hydroelectric power potential and is ranked 5th globally in terms of exploitable hydro-potential. However, despite hydro power having many impressive advantages over power plants utilizing conventional fuel, the share of hydro power out of India's total installed generation capacity has been steadily deteriorating over the years. During the meeting with the Power Minister in June 2014, APP outlined the following key issues to be considered to achieve the required amount of hydro capacity addition in the remaining years of the 12th Plan and the 13th Plan:

- Ensuring higher return on equity for hydro projects which could be linked to the estimated construction period
- Rationalization of transmission charges to avoid higher landed cost of hydro power from far flung areas
- Hydro power purchase obligations and introduction of peak pricing incentive
- Infrastructure support in North Eastern areas with regards to speedier construction of roads, helipads etc.
- Streamlining E&F clearances and;
- Freeing hydro capacity from squatters

These above issues were also highlighted in a brief concept note sent to the Chairperson of the Parliamentary Standing Committee on Energy, Dr. Kirit Somaiya.

APP also continued its efforts to provide some relief for the hydro projects in Uttarakhand which received a stay order from the Supreme Court in light of the flood tragedy in the State. It was pointed out by APP that the expert group constituted by MoEF had inherently biased opinions against the development of hydro projects and MoEF was requested to examine the facts critically and submit a report to the Court recommending that projects which were granted Environment and Forest Clearance after a greater level of examination be permitted to proceed with construction. The matter is still sub judice.

- **Policy and Legislative Framework**

The Government tabled the **Electricity (Amendment) Bill** in Lok Sabha on 19th December, however it could not be taken up during the session. Subsequently, the Parliamentary Standing Committee on Energy initiated stakeholder discussions on the amendments sought to be introduced in the Act. APP was invited to the consultations held in Mumbai in January but could not present its views due to paucity of time. Subsequently APP was invited to present its views to the Standing Committee in March. Critical issues outlined by APP included segregation of carriage and content – it was highlighted that while segregation is welcome, many issues need to be addressed in more detail such as AT&C losses, cash deficit, PPA allocation, cross subsidy surcharge, regulatory assets etc; tariff determination – need to allow both modes of power procurement and provide a framework for redressal in case of material adversity; elimination of cross subsidy and enhancing of regulatory effectiveness.

In April 2015, MoP uploaded proposed amendments to the **National Tariff Policy** on its website. However, the Ministry did not initially invite comments from the industry – a stand which was later changed after media reports highlighted that the industry was being kept out of consultations. APP subsequently submitted comments after collating and compiling views from members.

- **Other issues**

- i. Ease of doing business**

Pursuant to the meeting with the Power Minister in June where this issue was first raised by APP, Ministry of Power put together an Inter-Ministerial Committee headed by Joint Secretary (Thermal) to undertake a review of legislations and regulations governing the power sector. APP was invited to the first meeting of the IMC where it was decided that APP would submit a detailed proposal within 3 weeks outlining which clearances/compliances/rules etc are not needed or need to be amended, and also suggest possible simplification of processes. This report was compiled and sent to MoP on 6th August. In a related matter, the Prime Minister had set up a committee headed by Shri R. Ramanajam, Secretary PMO and Shri V.K. Bhasin, Former Secretary, Legislative Department to identify the obsolete laws and regulations. APP's report was sent to this Committee as well. However, the status of the report which APP submitted to MoP remains unclear as there has been no response from the Ministry despite reminders.

In the meantime a new Committee has been set up by the Government under former industry secretary, Shri Ajay Shankar. The Committee has been asked to examine the possibility of replacing multiple prior permissions with a pre-defined regulatory mechanism.

Outcome

While an Inter-Ministerial Committee was constituted by MoP based on APP's request to review regulations and procedures to improve the ease of doing business and APP had submitted detailed suggestions, the recommendations of the Committee or action taken remains unclear. In response to the public notice for comments by Committee chaired by Shri Ajay Shankar, it is proposed to send the same set of comments for their consideration.

- ii. Mega Power Projects**

Recognizing the difficulty being faced by the power developers in tying up PPAs through competitive bidding, MoP had amended the Mega Power policy by providing a relaxation of 60 months in tying up PPA to obtain the Final Mega Power certificate. MoP also took cognizance of APP's representation regarding the projects which had to sign PPAs on regulated tariff basis with their host States and who were thus unable to fulfil the requirement of tying up at least 85% of their capacity through competitive bidding.

However, instead of allowing these regulated tariff PPAs to be eligible towards satisfying the requirement of tying up 85% capacity under competitive bidding PPA, MoP specified

that at least 65% capacity has to be tied up through competitive bidding and upto 35% through regulated tariff with host State. APP highlighted that this requirement of tying up entire capacity under PPA is not only difficult in practical terms but also differs from the spirit and intent of the National Electricity Policy which specifies that 15% of installed capacity of a power plant should be kept untied for development of competitive power markets. It was also highlighted that it would be very difficult to tie up 100% capacity with Discoms in light of the current coal shortage scenario. APP also further highlighted that the condition that the developers should submit Regulator's approval of PPAs executed on regulated tariff with the host States is also impractical since as per the Electricity Act, the Regulator can only "determine the tariff" and not "approve" the PPAs executed on regulated tariff basis.

Outcome

Unfortunately, the dispensation accorded by MoP to the projects with PPA tied up on regulatory tariff basis with the home States has not been in line with what was requested, i.e acceptance of the PPAs on regulated basis with home States as counting towards fulfilment of the requirement of 85% capacity to be tied up under competitive bidding. A representation for reconsideration of this along with request for increasing timelines for tying up PPA has been sent recently.

iii. COD certification

Some members had highlighted that CIL had been asking for COD certification from CEA before release of coal supply under FSA. In a representation to MoP, APP pointed out that since normally the COD certification is done by RLDC/SLDC based on the trial operation data from the project proponent, the RLDC/SLDC certification should suffice for coal companies. APP stated that the coal companies' insistence on COD certification from CEA and CEA's stand that it is not their responsibility to issue COD certificate was leading to a situation wherein the developers were unable to honor their obligation under the PPA and requested MoP to issue necessary instructions. Subsequently CEA issued confirmation that intimation of COD by CEA would be conveyed based on the confirmation letter by RPC or from concerned Load Despatch Centre.

Outcome

COD certification issue has been resolved with CEA agreeing to issue intimation of COD on the basis of confirmation letter by RPC or from concerned Load Despatch Centre.

iv. CPCB meeting

DG APP was nominated to the Sectorial Standing Committee and National Task Force for Thermal Power. The task force was constituted for a period of 3 years and is scheduled to meet twice a year. As the terms of reference of the Task Force includes review of plant wise compliance of emission and effluent standards and the review of existing emission limit of particulate matter and the need for developing SO₂ and NO_x emission standards, APP was requested to assist with data collection for SO₂ emissions and ambient air quality. APP is awaiting a data collection format to be circulated by CPCB.

3. Agenda for 2015-16 : Critical issues to be taken up

- **Unviability concerns being faced by projects with locked in tariffs due to under recoveries of fixed and variable costs**
 - Despite almost two years having passed since the CCEA approved the pass through of higher cost of imported coal to meet the deficit of CIL coal supply, the mechanism has not been implemented across the States.
 - The result is that all the affected projects are mired in litigation with no end in sight for a quick and speedy solution to stop the projects bleeding through under-recovery of costs.
 - The need of the hour is to evolve a structure by which this cumbersome and time consuming process can be simplified and expedited by introducing changes in Electricity Act/National Tariff Policy/Competitive Bidding Guidelines as suggested by jurists to allow re-determination of tariff under Section 62.
 - While the Government's intent on fuel price pass through is evident from the changes proposed in the National Tariff Policy, we hope that post this change in the Tariff Policy, the States will implement it uniformly
 - We need to further pursue the case of other factors such as change in law, abnormal variations in macro-economic factors etc, because these factors are also impacting the viability of the bid projects
- **Capacities commissioned with LoAs and recently acquired mines but unable to access coal because of condition of long term PPAs – unworkable as its fulfilment beyond developer's control; shortage of bidding opportunities (20,000 MW linkage based projects + 4,500 MW projects which have won mines in recent auctions)**
 - In the past 3 years, States have tied up less than 8,500 MW through bidding. In comparison, about 30,000 MW of coal based IPP capacity has been commissioned over the same time period.
 - Government needs to evolve a framework to ensure that adequate bidding opportunities are available to conclude PPAs to enable the projects to access coal under the LoA/FSA and to meet the auction conditions.
 - Till the Government ensures the bidding opportunities, the affected projects may be allowed to utilize such coal and supply power under short term. A window of 2 to 3 years may be provided to tie up capacity under medium/long term arrangement.
- **Linkage Policy framework**
 - Leaving aside 78,000 MW of projects approved by CCEA for signing of FSA and the balance 30,000 MW projects which have been issued LoAs, there is no clarity for the policy framework governing the projects without identified coal source – about 7,600 MW projects without linkage (including CCEA approved projects of

4,660 MW and similarly placed projects) and the projects impacted by coal block de-allocation.

- In all our correspondences with the Government we have requested that the new policy framework should not impact the above categories. MoP is in line with our thinking as informed by senior officials, however MoC would like the new framework (allotment of linkages through competition) to be operationalized for the balance projects (apart from 78,000 MW) – this would amount to a reversal of CCEA decision and retrospective change for those developers whose projects have been given linkages, i.e who are a part of the list of 108,000 MW.
- In the coming year this would be the most contentious issue as it would impact almost 90% of the upcoming private sector projects.

- **Transmission Constraints**

- Power generation capacities in the country grew by 50% as against only 30% growth in transmission in last 5 years, leading to substantially high congestion during last two years especially for the generation hub in eastern region and W 3 region.
- Delay in new transmission system will aggravate the situation day by day. In order to address the issue, POSOCO has already intimated to MoP regarding critical lines which needs to be expedited to ease congestion. Further, to ensure that the power gets carried to the consumer end, States would need to ensure adequate augmentation of intra-State wire network too. Regular monitoring of implementation progress of these lines are crucial.
- To strengthen the transmission system, the concept of transmission planning- from being reactive to pro-active with adequate provisioning for short term and medium term exchange of power is essential for development of competitive power market.
- General Network Access – in view of the fact that there is great uncertainty regarding flow of power from projects under Case 1, it is evident that the old framework of LTA is not appropriate. Accordingly to meet the changing circumstances we need to consider workable alternatives such as General Network Access as outlined by CERC in their Staff paper last year.

- **Financing and RBI related interventions required**

- Expedite implementation of recommendations of Working Group chaired by Shri Santosh Nayar. Some of the most important ones are:
 - Relaxation in time limit for obtaining DCCO for thermal and hydro projects – to be also extended to projects already classified as NPA due to shift in DCCO
 - Refinancing of standard loans – All viable projects irrespective of DCCO status/asset classification status should be allowed a one-time dispensation to be refinanced without any minimum threshold requirement of new lenders
 - Funding of cost overruns – Lenders may be allowed to decide on the quantum of cost over-run funding and revise the repayment schedule and D/E ratio
 - Extension in Buyer's credit period from 3 years to 5 years
- Allowing ECBs to be repaid out of fresh Rupee term loan in cases where tenor of Rupee term loan is extended on account of shift in DCCO or 5/25 restructuring.
 - Allowing banks to fund cash flow gap after DCCO.

- Allowing holding companies to raise ECB/FCCB to invest as equity in step down unlisted SPVs in infrastructure projects.
- Financial restructuring package for the stranded gas based projects consisting of the following:
 - Interest Rate to be at Base Rate and funding of interest till the optimum level of PLF is reached
 - Extend the applicability of 5/25 norms for the existing projects which are under implementation (yet to be commissioned) which have already Restructured once but retained the asset classification as “Standard”
 - Recent Government policy on e-bid RLNG allows gas based power plants to operate at 30% capacity which can service only part of the interest payable, the balance interest portion should be allowed to convert as a convertible cumulative Preferential Equity(CCPS) with necessary buy back arrangement by the promoter after a period of 10-12 years at pre-agreed terms
 - MCA in consultation with Power Ministry should provide special approval for gas based power projects that Interest incurred for the reasons beyond the control of the promoter due to non-availability of the gas shall be allowed to be capitalized

- **E&F clearance related issues**

- Many of the concerns and suggestions highlighted in detail by APP during its representations to the IMC set up to improve ease of doing business and the High Level Committee constituted by MoEF remain unaddressed. These need to be taken up appropriately.