



Annual Report 2018-19

Association of Power Producers

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SECTION I: WORKING OF THE ASSOCIATION

The Association of Power Producers (APP) ended the previous year 2017-18 with 26 members. Two members withdrew their subscription for 2018-19 (Haldia Energy Ltd, and ONGC Tripura Power Co. Ltd). However, there was also an addition of one new member to the Association during 2018-19 - Kalpatru Power Transmission Ltd. With this, the total strength of APP was 25 members at the end of 2018-19.

During the AGM of the Association held on 18-June-2018, the Chairman for the previous year, Mr. Lalit Jalan stepped down. Prior to the AGM, some of the members had initiated discussions on email that APP should try to avoid elections, and develop consensus on names of Chairman and Co-Chairman. Other members agreed and noted that as elections can potentially create situation of polarisation, it would be sensible to avoid elections. Finally, a view emerged that the DG, after consulting with some members, may shortlist suitable candidates for Chairman and Co-Chairman posts. Their names would be put forward by DG in AGM/GBM for seeking the concurrence of General Body.

Accordingly, after consulting some members, DG proposed the names of Mr Rajiv Mishra, CLP India as Chairman and Mr. Ashis Basu, GMR Energy as Co-Chairman till the next AGM. This was unanimously approved by the Members.

The Managing Committee and the Budget Sub-committee were reconstituted for 2018-19, in line with consultations held between Chairman and the DG. The Managing Committee for 2018-19 was constituted of the following members -

- Mr. Rajiv Ranjan Mishra, Chairman - APP
- Mr. Ashis Basu, Co-Chairman - APP
- Mr. K Rajagopal, Reliance Power
- Mr. Ashwani Kumar, IL&FS Energy
- Mr. Kandarp Patel, Adani Power
- Mr. Ashok Khurana, DG - APP

The Budget Sub-committee for 2018-19 was constituted of the following members -

- Mr. Ashis Basu, Co-Chairman - APP
- Mr. K Rajagopal, Reliance Power
- Mr. Ashok Khurana, DG - APP

SECTION II: KEY ACTIVITIES/ CRITICAL ISSUES UNDERTAKEN BY THE ASSOCIATION IN FY 2018-19

The year started on a note of concern and worry for the IPPs, all of whom had been facing varying degrees of stress due to a multitude of factors. The concern stemmed from the notification and implementation of a revised framework for resolution of stressed assets as per RBI's circular dated 12th February 2018. This circular mandated ending all existing schemes for forbearance – JLF, CDR, SDR, S4A, etc. It also contained stringent provisions – even a single day of default would require reporting to RBI and implementation of Resolution Plan, new prudential norms for Banks regarding asset classification & provisioning, providing insufficient timelines for resolution and then instructing Banks to refer failed resolution cases to NCLT, etc.

The onerous significance of this circular on the power sector was evident from the fact that as per list identified by Dept. of Financial Services, out of the potentially impacted projects with debt worth Rs 3.8 lakh crores, 34 projects with debt of Rs 2 lakh crore were from the power sector - the highest sectoral share of NPAs.

APP further estimated that stressed projects amounting to 52 GW were at risk of becoming mired in bankruptcy proceedings at NCLT and therefore APP stepped up advocacy efforts at all levels of the Government. It was highlighted by APP that bankruptcy proceedings would lead to significant erosion of value even while the stress inducing factors - long pending receivables from Discoms, lower availability of Coal, lack of Long Term/ Medium Term PPAs, divergence between policy & regulations on pass through of incontestable Change in Law factors, huge delays in regulatory orders etc., would be faced even by the new owners. This was validated by a report released by the Insolvency and Bankruptcy Board of India, as per which lenders were expected to recover less than a tenth of their dues if stressed assets were to be liquidated - this was attributed to the IBC's overemphasis on speedy resolution of bad loans over the recovery of maximum value from stressed assets.

Less than a month after the issuance of the RBI Circular, the Parliamentary Standing Committee on Energy released a report on stressed thermal power projects. Therefore the Government was well apprised and aware of the stress factors in the sector and supported the power producers in their stand that the circular was ill conceived at a time when the power sector was laid low by externalities beyond the control of the developers. However, despite requests for reconsideration of the Circular's provisions by various stakeholders, including the Government, RBI remained recalcitrant and was thus taken to court through various appeals against the impugned Circular.

APP met the RBI Governor on 07.03.2019 to highlight the increasing stress on IPPs and discuss possible solutions. The alarming pace of growth of Receivables from Discoms was discussed and its corresponding impact on the liquidity of private generators and debt sustainability. RBI was requested to provide flexibility in the working capital regime to save the projects from defaulting in their debt obligations. The Payment security mechanism through bill discounting by PFIs with backstop by RBI was also discussed along with other measures to ease financing avenues such as relaxation in the ECB framework, development of bond market etc.

On the aspect of litigation, this year marked a turning point for APP. Compelled by circumstance, the Association shed its reluctance to engage in legal challenges. APP was involved in litigation against the RBI circular in the Allahabad High Court and subsequently in the Supreme Court after the Court transferred all the petitions pending in different High Courts to itself. APP was also compelled to file an application before the Supreme Court after the National Green Tribunal imposed Environmental Restoration Damages on all power plants which were in non-compliance with the mandate of 100% fly ash utilization. On another environmental issue - related to compliance with revised emission norms as notified by MoEF&CC, the Supreme Court issued notice to APP to assist in the matter with regard to recommendations of EPCA's 81st and 84th report.

With support from its members and good legal teams, APP was able to bring about positive outcomes from all the legal cases it has been involved in, notwithstanding the fact that some of them are still ongoing:

- The RBI circular of Feb was struck down by SC, giving relief to many members who were on verge of being referred to NCLT;
- Environmental Restoration Damages which was imposed by NGT on all TPPs not in compliance with ash utilization norms has been stayed and matter has been referred to an Expert Committee;
- Supreme Court agreed to our request for adherence to the time lines as laid by CEA - no compression of time schedule as demanded by the applicant. Hearing continues for other norms and incentives / penalties for compliance/non-compliance, post the time lines as fixed by CEA.

The Supreme Court came out with its judgment on the RBI Circular on 02.04.2019 – the Court held that directions that can be issued under Section 35AA of the RBI Act can only be in respect of specific defaults by specific debtors, and therefore any directions which are in respect of debtors generally would be ultra vires Section 35AA. The circular was declared ultra vires as a whole. APP took this opportunity to suggest some points to be reconsidered in the revised framework, to take into account ground realities with the objective of value maximization for all stakeholders including banks and financial institutions.

Undoubtedly, the overruling of RBI's 12th February circular was just a temporary reprieve as the root causes of stress still need to be addressed. However, APP's approach of complementing policy advocacy with legal challenge has led to positive action being taken at the highest levels of the Government. The formation of the High Level Empowered Committee (HLEC) and subsequent acceptance of many of the HLEC's recommendations by the Group of Ministers and CCEA has initiated the process for resolution of many long pending issues - allowing usage of linkage coal for short term power sale, procurement of bulk power against pre-determined linkages, increase of quantum of coal for power sector through e-auction, non-lapsing of coal supply shortfall, improving availability of power procurement bids by aggregation of demand by PSUs, etc.

Unfortunately, the issue of payment security for IPPs - arguably the biggest stress point for the entire generation segment was not considered by CCEA despite HLEC giving a strong recommendation for putting in place a mechanism where public financial institutions may discount the receivables from Discoms and make upfront payment to the generators while realizing their dues from the Discoms subsequently with a backstop by RBI. APP again

reiterated that institutionalization of a rigorous payment security mechanism is imperative and without this being in place, all private investment in conventional and renewable energy space will always be under the threat of default as no developer can meet the perpetual and progressively increasing operational cash deficit by borrowing.

DG's discussions with Cabinet Secretary and Secretary Power indicate that there is an acceptance of the fact that a suitable security mechanism needs to be put in place. They are presently awaiting the formation of the new Cabinet before moving further. APP will keep pursuing this as this is a critical issue which needs to be resolved at the earliest, considering that as of 31st Jan 2019, the amount of outstanding receivables by the IPPs stood at about Rs 41,240 Cr. This figure could be broken down into the following components:

- Dues for power sold – **Rs 17,246 Cr** (This has increased from Rs 8,890 Cr at the start of FY 18-19)
- Change in Law items – **Rs 6,865 Cr** (This amount is unpaid despite adjudication by a competent authority)
- Dues stuck in litigation – **Rs 17,128 Cr**

Regarding 'change in law' items, on 27.08.2018, MoP issued direction under Section 107 to CERC, for pass through of additional cost due to Change in Law events. However these directions are not binding on the SERCs and it was highlighted to Secretary (Power) and Cabinet Secretary that in many cases it has taken more than 60 to 70 months for the Regulatory approvals on pass through of 'change in law' items, only to be challenged at the Appellate Tribunal, thereby further delaying the final approval by another 1 or 2 years on an average and even more in some specific instances. And these delays occur despite the fact that these 'change in law' items pertain to non-contestable factors such as increase in duties/taxes/royalties etc., levied by the Central/State Governments or Government instrumentalities.

A positive development in this regard has been Railways' acceptance of APP's request to subsume Busy Season Surcharge, Development Surcharge and Coal Terminal Surcharge in the Base Freight. For the remaining 'change in law' items that remain uncovered, APP has suggested a simple mechanism similar to the present process of automatic fuel cost adjustment under Section 62 of the Electricity Act. Post-adjustment of tariff and the truing up mechanism can be through the Regulator.

There was finally some positive movement in a long pending matter – mismatch between CERC coal price escalation and actual CIL coal prices. Despite MoCI finally accepting APP's suggestion of tri-furcating the coal index as per different grades of coal, it did not help the situation as CIL substantially raised the price of non-coking applicable for power when compared with the price of same grade non-coking coal applicable for other than power sector. APP had represented to CERC that the only way forward would be to stop relying on the WPI and frame their own index for the purpose of escalation. CERC finally came out with a staff paper wherein it has proposed to compile an index based on the price of Non-coking coal applicable for power sector.

Another long pending matter saw positive movement this year after countless requests and representations made by APP. The Cabinet finally approved proportionate release of Mega

Power benefits, in order to ease the liquidity crunch faced by several project developers. It however took another 5 months for the guidelines to be notified in this regard, and once the guidelines were notified, it was noticed that reference to Cheque Deposits was missed out. APP is presently pushing for inclusion of the same and several rounds of meetings have already taken place on this.

APP also highlighted to the Minister (Power), Cabinet Secretary and RBI Governor regarding the need for dismantling the prevalent framework of discrimination based on ownership where the PSUs enjoy preferential treatment in almost every sphere of operations – coal allocations, tariff determination, power off-take assurances, preferential payment terms and secured payment mechanisms.

The SHAKTI scheme for coal allocation as introduced in 2007 was a good example of discrimination and disparity on the basis of ownership, brought in through a policy framework. While PSU plants continue to enjoy preferential allocation of coal, the private sector plants are forced to bid twice – for coal linkages and power supply agreements. The level of desperation among the stressed projects was evident when the first round of auctions were finally initiated after several requests from APP to provide coal for projects with PPAs but stranded for want of coal – the entire offered amount of 27.2 MT was contracted with the bidders offering 1 to 4 paisa per unit discount on their already existing PPAs.

Beyond the allocation framework, discrimination also remained in coal supply materialization and commercial aspects such as the recovery of cost of additional coal (imported/e-auction/open market) to bridge the shortfall in domestic coal supplies. Many operational issues related to coal supply – generic as well as related to specific subsidiaries/coal fields were discussed during an interactive session with CIL Chairman and Managing Director in Feb 2019. Issues discussed ranged from third party sampling to payment modalities for special forward e-auctions, etc. A follow up meeting has been requested.

On the demand-supply front, it has been well known that thermal capacity additions have outstripped demand in the past 5-6 years. This is reflected from the fact that from the highs of 20 GW of new coal based power plants commissioned every year between FY13 to FY16, net capacity additions from coal over the past three years have been 7 GW, 5 GW and 1.2 GW, respectively. However it appears that this imbalance is poised to be corrected over the near future. With the Saubhagya scheme having almost met its target of providing power to all 2.62 crore households, it has been estimated by EY India that an additional 28,000 MW would be required every year to meet the additional demand created.

We have already seen a rise in the number of power procurement bids floated, even if they are for the medium term. Ministry of Power released tenders for Pilot Scheme-I in April 2018 for procurement of aggregate power of 2500 MW from commissioned coal based plants for 3 years. However there was less than enthusiastic participation due to restrictive bid conditions, and finally PTC received bids for the procurement of 1,900 MW at a discovered fixed tariff of Rs 4.24 per kWh. Telengana, Tamil Nadu, West Bengal, Bihar and Haryana were the States which signed PPAs under the Pilot scheme. Subsequently, MoP changed many of the restrictive provisions of Pilot scheme-I and came out with fresh bidding documents for Pilot scheme-II (2500 MW), wherein NHPC was designated as an aggregator of demand. Participation in Pilot scheme-II was much higher, gauging from the fact that 4400 MW of bids were received against 2500 MW tendered quantum. However the bids

remained high on account of risk perceived with provisions related to fuel cost, where fuel cost escalations were linked to unrealistic indices.

Going forward, MoP has sought APP's help in highlighting specific provisions which require to be modified in the bidding documents in order to improve the risk perception and lower the tariffs quoted for prospective bidding rounds. APP has already commenced on an exercise to combine the most workable provisions from the many different versions of bidding documents floating around at present, and present a comprehensive and updated version to MoP.

The brief and indicative list below summarizes some of the key positives of the past year, brought about through advocacy, deliberations and even litigation:

- Approval of most of the HLEC recommendations for stressed projects by the CCEA, with the major ones being:
 - Allowance of linkage coal to be used for short term power sales
 - Continued usage of linkage coal for short term sale of power in case of termination of PPAs due to payment default by DISCOMs.
 - Increase in quantum of e-auction coal for power sector
 - Non-lapsing of short supplies of coal
 - ACQ to be determined based on efficiency
 - Mandatory payment of Late Payment Surcharge
 - PPA/FSA/other clearances not to be cancelled in case of project being referred to NCLT or acquired by another entity.
 - PPA not to be cancelled in case of delay in commissioning of project for reasons not attributable to the generator.
- Quashing of the 12th Feb Circular of RBI
- Supreme Court stay on the Environment Restoration Damages imposed by NGT
- Proportionate release of Mega Power benefits
- Supreme Court allowing TPPs to follow CEA timelines for installation of FGDs
- MoP issuing directives under Section 107 for cost pass through of changes in taxes/levies/duties etc.
- Similar directive under Section 107 also issued for cost pass through of emission control equipment. However, benefit of these directives has been limited as they are not binding on the SERCs and are open to appeal by the Discoms.
- CEA was convinced to release benchmarking norms for emission control equipment.
- CERC staff paper on compilation of coal price index.
- Pilot-1 and Pilot-2 schemes for projects with coal but without PPA. Major changes were made to the Pilot-2 bidding documents after suggestions from APP & the developers.
- Modification in the Case-4 (flexible utilization of coal) bidding documents to make them more equitable.
- Pending receivables data being shared on PRAAPTI platform.

Details of key activities undertaken are highlighted in the following pages.

1. RBI Circular dated 12.02.2018 on Stressed Assets: Resolution of Stressed Assets - Revised Framework

RBI released a circular on 12-Feb-2018 titled “Resolution of Stressed Assets - Revised Framework”. As per the Circular, for all accounts with exposure of Rs. 2,000 Crore and above, even a one-day default in debt servicing would require reporting to RBI and implementation of Resolution Plan. This Resolution Plan would be considered valid only when all the consortium lenders agree. In case of any failure to formulate and implement Resolution Plan within 180 days from Reference Date, the case would be mandatorily referred to NCLT for Insolvency and Bankruptcy Code (IBC) proceedings. And even after restructuring of loan as part of Resolution Plan, the asset would remain sub-standard in the books, till 20% of the loan is repaid.

Further, no provisioning would be required in case the Resolution Plan involved change in control. Therefore, the circular essentially dis-incentivised any loan restructuring and pushed for ownership sale/change of control. It was estimated that in case the stringent conditions of this revised framework were not relaxed, about 75 GW capacity (52 GW operational and 23 GW under-construction) would find its way to NCLT.

APP requested RBI to consider special dispensation for the power sector with certain relaxations keeping in mind the genuine difficulties being faced by power projects - long pending receivables from Discoms, low availability of Coal, lack of Long Term/ Medium Term PPAs, divergence between policy & regulations on pass through of incontestable Change in Law factors, huge delays in regulatory orders etc. Representations were also made to the PMO, Ministry of Finance and Ministry of Power, to take up with RBI.

The issue of stressed assets was also discussed in depth with Developers, Bankers, Regulators, and officials of Ministry of Power & Coal by the ‘Standing Committee on Energy - Sixteenth Lok Sabha’, and after hearing all stakeholders they opined that mechanical application of the RBI circular by the lenders, as prescribed by RBI, would push the affected power projects further into trouble without any hope of recovery. However, despite requests for reconsideration of the provisions from PMO, MoF and MoP, RBI was not willing to provide any relaxations.

In view of the fact that the RBI Circular would have a cascading effect upon all Generators, the members resolved in the General Body Meeting on 18-Jun-2018, that APP should undertake legal challenge of the RBI Circular. In line with resolution passed by the members, a Legal sub-committee of APP was constituted, and it was decided to file a Writ Petition at Allahabad High Court after advice from legal counsel J. Sagar Associates.

Subsequently, Secretary (DFS) - as directed by the Allahabad High Court - held a meeting on 21-Jun-2018, wherein all stakeholders, including RBI, submitted written statements/ made presentations. APP’s main contention was that the timelines in the RBI circular were impractical and needed reconsideration. Accordingly, relaxation in timelines was asked for.

All stakeholders' views were examined in detail, and based on the deliberations, Secretary (DFS) began work on an exhaustive report detailing the issues, various viewpoints, and recommendations. In the meantime, considering RBI's refusal to take any action, APP filed a Writ Petition at Allahabad High Court on 6-Jul-2018.

As highlighted above, while hearing the challenge filed at the Allahabad High Court against the impugned RBI Circular, the bench directed Secretary (DFS) to call a meeting in June to hear the grievances of the power generators, and submit a report with recommendations.

Secretary (DFS) made two main recommendations in the report:

- Extension of time line by another 180 days (180 + 180), and
- Appointment of a High Level Empowered Committee (HLEC) to submit its report in time bound manner.

APP endorsed the recommendations of DFS-MoF, and urged that based on this report, and in the best interest of all stakeholders, banks and financial institutions, RBI should allow the necessary flexibility sought for.

On 2-Aug, the DFS report was submitted to the Allahabad HC, and detailed arguments commenced. In brief, APP's submissions were:

- The 37th Parliamentary Standing Committee has duly noted that the resources required for generation, being coal and gas are not available in sufficient quantities.
- Mechanical application of the impugned circular will lead to dissipation of national assets.
- The impugned RBI circular follows a blanket approach. It treats equals unequally and unequals equally. Thus, it is arbitrary in nature and violates Article 14 of the Constitution.
- Changing the management of a company can be the solution to the problem only if it can be concluded that the stress is caused due to the present management.
- The impugned RBI circular incentivises change in management. It leaves banks with no option but to automatically initiate proceedings under IBC.

Based on views of both sides, Allahabad HC pronounced its Order on 27-Aug-2018. In this order, the bench refused to grant any intermediate relief but made some very important observations:

- The Govt. is being ambivalent, by supporting RBI circular, while seeking extension of resolution timelines;
- RBI circular requires all lenders to approve Resolution Plan, but as per IBC, approval is required only from 66% of lenders;
- RBI notified Credit Rating Agencies more than 100 days after the issuance of the Circular itself;
- The judgement acknowledged the validity of arguments against application of RBI circular on NPAs, as also the extraneous reasons such as flawed implementation of

regulations, fuel supply crisis, inadequate Power evacuation systems, and delays in payments which eroded the financial stability of the Power sector.

While declining interim relief, the Court gave liberty to Petitioners or their members to apply for urgent interim relief, by placing the requisite factual details on record, vide Para 135 of the Order dated 27-Aug-2018. Subsequently, Supreme Court had given its order in the transfer petitions 1399-1404 of 2018, where RBI had asked for all petitions – in different High Courts across the Country – to be moved to Supreme Court. The order allowed transfer of petitions to the Supreme Court, and asked for ‘Status Quo’ to be maintained till next hearing on 14-Nov-2018. After that the matter of IBC and RBI Circular was split up, and IBC was taken up for hearings first. Hearings continued till 14th March 2019, after which judgement was reserved and written submissions were filed.

The judgment was delivered on 2.04.2019. The court held that directions that can be issued under Section 35AA can only be in respect of specific defaults by specific debtors, and therefore any directions which are in respect of debtors generally would be ultra vires Section 35AA. The circular was declared ultra vires as a whole.

2. Recommendations of the High Level Empowered Committee

Based on the recommendation of the DFS Report, the Government constituted a High Level Expert Committee under the chairmanship of the Cabinet Secretary, to address the issues of stressed thermal power projects.

APP submitted a representation to the High Level Empowered Committee, with brief overview of issues impacting the sector, and suggested way-forward. The issues submitted are listed here –

- Immediate timeframe – Time extension; Warehousing; Payment of outstanding dues; Resolving Coal related issues; Hiatus in building new Coal based capacity; Ease of funding for emission control equipment; Bids for aggregate demand Power procurement; Pass through of Change in Law items; and Continuation of E-RLNG Scheme for stranded Gas based plants.
- Medium-term timeframe – Institutionalising Tripartite Fuel Supply & Transport Agreement; Revising PPAs; Progressively ending the discriminatory policy framework; Commercial mining; Appointment of Coal regulator; Retirement of old and inefficient plants.
- Long-term timeframe – Amendment in Electricity Act to operationalise separation of Content and Carriage

The High Level Empowered Committee (HLEC) had multiple meetings, and the final meeting was held on 6-Nov-2018. Its report was released to public on 21-Nov-2018. HLEC recommendations cover many of the issues raised by APP representations:

A: Coal allocation/ supply

- Linkage coal may be allowed to be used against short term power sales.
- Generator should be able to terminate PPA in case of default in payment from the DISCOM with the facility to use linkage coal for short term PPAs for a period of maximum of 2 years or until they find another buyer of power under long/medium term PPA, whichever is earlier.
- Nodal Agency to be designated which may invite bids for procurement of bulk power for medium term for 3 to 5 years in appropriate tranches, against pre-declared linkage
- PSU to act as an aggregator of power
- Increase in quantity of coal for special Forward e-Auction for Power Sector
- Linkage to be provided at notified prices without Bidding
- Non-accrual of short supplies of coal – shortfall should not lapse and should be carried over to the subsequent months up to a maximum of three months.
- ACQ to be determined based on efficiency

B: To facilitate sale of power of the stressed Power Plants

- Retirement of old and inefficient Plants

C: On Regulatory & DISCOM payment issues

- Mandatory payment of Late Payment Surcharge (LPS) in the event of default in payment by the DISCOM.
- Payment Security mechanism for IPPs

D: Other Recommendations

- PPAs, FSA and LTOA for transmission of power, EC/FC clearances, and all other approvals including water, be kept alive and not cancelled by the respective Agencies even if the project is referred to NCLT or is acquired by any other entity.
- In case of any delay in the commissioning of a project, the DISCOMs to be advised not to cancel the PPAs signed with the Generator and the same be kept on hold for a certain period of time.
- In order to revive gas based Power Plants, Ministry of Power and Ministry of Petroleum & Natural Gas to jointly devise a scheme in line with the earlier e-bid RLNG Scheme.

Following the report from the HLEC, a Group of Ministers (GoM) was set up to examine the specific recommendations of the HLEC. The recommendations of the GoM was further considered by the CCEA in their meeting on 07.03.2019, post which the approved recommendations were notified vide MoP's OM dtd 08.03.2019. On perusal of the OM, it was observed that almost all of the HLEC's recommendations as listed above were accepted, except for:

- Coal linkage to be provided at notified prices without bidding;
- Retirement of old and inefficient plants
- Payment security mechanism for IPPs
- Revival of stranded gas based power plants.

APP again reiterated that institutionalization of a rigorous payment security mechanism is imperative and without this being in place, all private investment in conventional and renewable energy space will always be under the threat of default as no developer can meet the perpetual and progressively increasing operational cash deficit by borrowing.

DG's discussions with Cabinet Secretary and Secretary Power indicate that there is an acceptance of the fact that a suitable security mechanism needs to be put in place. They are presently awaiting the formation of the new Cabinet before moving further. APP will keep pursuing this as this is a critical issue which needs to be resolved at the earliest, considering that as of 31st Jan 2019, the amount of outstanding receivables by the IPPs stood at about Rs 41,240 Cr. This figure could be broken down into the following components:

- Dues for power sold – Rs 17,246 Cr (This has increased from Rs 8,890 Cr at the start of FY 18-19)
- Change in Law items – Rs 6,865 Cr (This amount is unpaid despite adjudication by a competent authority)
- Dues stuck in litigation – Rs 17,128 Cr

3. Coal Issues

3.1. *Pass through of additional cost of Imported/ E-Auction/ Open Market Coal to meet deficit of ACQ for prescribed normative availability as per PPA*

Based on a decision taken by the CCEA on 21.06.2013, the Ministry of Coal had amended National Coal Distribution Policy, 2007 (NCDP) on 26.07.2013 to cap Coal India Limited's (CIL) Domestic Coal supply obligation under Fuel Supply Agreement at CIL notified price against the assured 100% normative quantity, to 65-75% of the Annual Contracted Quantity (ACQ) in the 12th Five Year Plan i.e. till 31-Mar-2017. Accordingly, the IPPs have had to arrange the deficit Coal (Imported/E-Auction/Open Market) to meet PPA obligations.

Post the above change in NCDP, an Advisory was issued by MoP on 31.07.2013 for allowing the pass through of additional costs incurred in procurement of deficit coal from alternate sources under 'change in law' provision in the respective PPAs. However since the CCEA decision for reduction in supply obligation of CIL to 75% of ACQ, based on which the MoP advisory was issued, ended on 31st March 2017, some State Regulators are disallowing the pass through of deficit coal costs under 'change in law'. This is despite the fact that in the new coal allocation framework of SHAKTI, allocation against linkages has been kept at the same level – 75% of ACQ.

APP raised this issue with the Minister (Coal) during an 'Interactive Session on Coal' hosted by ASSOCHAM on 3rd April 2018. Further follow up was done during meetings with the Minister (Power) held on 16th March 2018 and 27th April 2018. However no action has been taken by MoP yet despite several letters also being sent.

Further, for arrangement of deficit Coal there is a great disparity in procedure for Public and Private sector Generators. For public companies, the additional cost of deficit Coal is pass through at actual, whereas Private sector Developers have to go through a lengthy process for getting approvals.

In this regard, APP has suggested to Secretary (Power) that a simpler mechanism needs to be implemented to avoid the long and torturous process of case-by-case regulatory approval. Such a mechanism could be similar to the present process of automatic fuel cost adjustment under Section 62 of the Electricity Act. Post-adjustment of tariff, the truing up mechanism can be through the Regulator. These issues remain on APP's agenda for the coming year.

3.2. Low materialisation of Linkage Coal, and its uneven distribution

Adding to the woes caused by coal supplies at trigger level of 75% of ACQ, private power generators have suffered further due to discrimination in quantum of loading between private and public generators. For Dec-2018, materialisation for Private Generators was 74%, compared to 99% for Public sector Generators.

This has been represented to MoP, MoC, as well as the HLEC.

3.3. Entitlement of Coal under ACQ needs to be adjusted

APP highlighted at multiple forums that the ACQ under FSA needs to be adjusted since the quantity of coal supplied gets reduced on account of the following:

- Regrading of Mines
 - After initiation of Third Party Sampling analysis of Coal by CSIR-CIMFR, a number of Coal mines were regraded due to consistent slippage of grades from the declared grade. However ACQ against these mines remain unchanged.
- Losses in washing of Coal
 - MoEF&CC mandates use of raw, blended, or beneficiated coal with 34% or less ash content by Power plants situated beyond 500 km from the source. As loss of Coal in case of Washed Coal is around 20% by weight and 10% in terms of energy, such losses need to be factored in while determining normative consumption of Coal.
- Grade slippage
 - FSAs only provide for commercial compensation in case of grade slippage. However, the loss of energy in case of grade slippage is not compensated for.
- Transit Loss
 - 1% to 3% of Coal is typically lost in transit from source to the Power plant, which should also be considered as a factor for readjustment of ACQ.

3.4. Lapsing of ACQ entitlement of linkage holders due to inability of Railways to make available Rakes as programmed

The supply of 75% of ACQ gets reduced further due to lapsing of un-lifted quantity, because of inability of Railways to make available requisite number of Rakes as per movement plan.

The quantum of un-lifted Coal is considered as Deemed Delivered Quantity, and is not adjusted against the ACQ. At the same time, there is no validity clause for Non-power sector, and quantity undelivered is carried forward to next month.

APP had represented in multiple meetings that no discrimination should be there between Power & Non-power sector, and Power Generators should also be allowed to carry forward the quantity to next month. This was also a part of our suggestions to HLEC and was subsequently accepted by the HLEC and included in its report as a recommended step. This recommendation was also accepted by the CCEA as informed by MoP vide its OM dtd. 08.02.2019.

Soon after the notification of CCEA approval, APP wrote to MoP, MoC and Railways stating that this decision may be implemented immediately as there were no modalities to be developed. MoP formed a Committee under the chairmanship of Additional Secretary (Power) to work out the methodology for implementation of this decision. The recommendations of the Committee are awaited.

3.5. Flexibility in conversion of offtake mode

SECL had earlier provided the facility to change offtake mode from Rail to Road/RCR (including washery) during the month. This facility was discontinued via SECL notice dated 18.01.2018.

Further, the onus was put on Power Generators to estimate for conversion in advance or accept reduced quantity of Coal supply by 25th day of preceding month – not practical.

After multiple representations and discussions, SECL has decided to withdraw the earlier notice on 22.09.2018, thereby again providing flexibility in conversion of offtake mode to Generators.

A request was sent to NCL for extending the same facility, and CIL Director (Marketing) had also written favourably to NCL for the same.

3.6. Reconsideration of SHAKTI provision of Two-step Auction

APP represented to MoP, MoC and Cabinet Secretary that linkage allocation to private sector under SHAKTI was very restrictive and discriminatory. The scheme is based on two step competition, (a) for securing linkage – forward auction, and (b) for usage of that linkage – participating in bidding for utilising that Coal for supplying Power in Long or Medium Term.

Further, a developer is mandated to get PPA within 2 years of linkage allocation, failing which, the linkage stands cancelled. Thus the developer is penalised for non-fulfilment of a condition on which he has no control. Therefore, this condition is self-defeating, and would deter developers from bidding under such a faulty design allocation mechanism.

3.7. *Easing the restrictive coal usage policy*

APP highlighted that the present policy framework of Linkage Coal is very restrictive and allows Linkage Coal only for Long and Medium Term PPAs. Linkage Coal should be allowed for use for Short Term PPAs too, as the price discovery in Short Term is also on basis of approved bidding guidelines by MoP.

APP also pointed out how price discovery in recent short term power procurement tenders were very high due to disallowance of linkage coal – for e.g., Gujarat ranged from Rs. 4.8 to 8.0 per kWh, which finally had to be called off in view of high tariffs. Other examples highlighted included - tender for Short Term procurement of Power called by Chhattisgarh saw bids from Rs. 5.49 to 6.97 per kWh, a Bihar tender saw bids from Rs. 4.5 to 6.87 per kWh, and Maharashtra saw bids from Rs. 3.9 to 7.4 per kWh.

Ministry of Coal was asked to remove this restrictive policy, especially when no long or medium term bids were forthcoming. APP also included this suggestion in its note to HLEC, which was subsequently accepted by the HLEC and also approved by the CCEA.

4. Mismatch between CERC Coal price escalation and actual CIL Coal prices

The new WPI index was published on 12-May-2017. In the new series, MoCI accepted APP's suggestion for tri-furcating the coal index to represent the true changes in the coal for power sector. However, this WPI series again failed to capture the actual price variations in coal used by power utilities even after trifurcation of non-coking coal. This was because CIL, through its notification of May 2016, substantially increased the price of non-coking coal applicable for power sector when compared with the price of non-coking coal applicable for other than power sector.

Meanwhile DIPP wrote to CERC that they will not issue any new series specifically for Power as customized compilation of WPI for any particular sector is not possible. As an alternative, the Ministry of Commerce and Industry suggested that CERC may develop its own index keeping in mind the specific needs of the power sector. APP then wrote to MoP for issuance of directions, at the earliest, on the following two issues:

- Rectification of Coal and Coal Transportation Index, based on actual pricing.
- Notifying change of periodicity of Indexation from six-monthly to monthly, to avoid lag effect.

By its notification dated 1-Jun-2018, CERC decided to adopt the new WPI series for G7-G14 grades of coal (notified from Apr-2012 onwards) for correction of payment index for the period Apr-2013 to Mar-2017. CERC further clarified that the escalation rates notified from April 2017 onwards based on new WPI series would be used for payment purpose.

Following this, CERC had come out with a staff paper which attempts to address the issue of lag in escalation rates application. While the proposed methodology could have resolved the issue of time lag partially, CERC itself was not comfortable with the methodology due to complexities involved in application of escalation rates on provisional and final basis for the same period. This issue was discussed in detail with members and there was a consensus that this mechanism of provisional and thereafter final notification needs to be simplified.

In this regard, CERC finally came out with a Staff Paper on methodology for compilation of coal price index for power sector in April 2019, wherein it has been proposed to compile an index based on the price of Non-coking coal applicable for power sector.

5. Disallowance of Incontestable Change in Law factors

The disallowance of incontestable Change in Law items, and the delay in admission, delay in issuance of order after final hearing, denial of change in law, subsequent appeals by Discoms/Developers and delay thereon – is a perennial issue, but now end is in sight.

APP represented to MoP on the above issue, and also brought to their notice the pendency of regulatory dues of Rs. 18,500 Cr. This representation came up for discussion in a meeting called by Minister (Power) on 20-Aug-2018, where some key issues were discussed – Change in Law being one of them. The Minister was positive in his response and assured of action on the discussed issues.

Subsequently, on 27-Aug-2018, MoP has issued direction under Sec. 107 to CERC, for pass-through of additional cost due to Change in Law events.

Now, as these directions are not binding on SERCs, APP has requested that a similar formulation needs to be incorporated in the Tariff Policy, so that the above directions get legal backing, and are binding on CERC/ SERCs.

6. Third Party Sampling analysis of Coal

The Third Party Sampling analysis is being undertaken by CSIR-CIMFR for testing Coal quality. CSIR-CIMFR is to be responsible for collection, preparation, and analysis of Coal, in context of all modes of Coal procurement – FSA, MoU, Forward & Special e-Auction for Power consumers.

In the recent months, some members had informed APP that CIMFR is consistently facing lack of enabling conditions, which has been hampering their operations and performance. APP was also made aware of regular instances of tampering with samples and interference by officials, and other such activities – especially at SECL and BCCL mines.

In the last Apex Committee Meeting, APP raised concerns over the delay in referee results for disputes raised by the Coal companies. It was also pointed out that in case of some members, referee results are pending even for Coal supplied in Mar-2017.

The issue of delay in submission of results by CIMFR has been raised before, and they cited some logistical and practical challenges which led to delays. Owing to such delays, Standard Operating Procedure (SOP) for Referee Sample analysis, with detailed timelines, was drafted by the Executive Committee, which was subsequently shared with all members.

Also, as the results have been delayed for long, it was decided that CIMFR would follow-up for the pending payment by the concerned Coal companies. In case of any further delay, the same would be communicated to Director (Marketing), NTPC.

Further to this, activities had begun on developing a web-portal for managing the Third Party Sampling analysis results. APP representative was also part of the process and development activities for the portal. In this regard, all members were requested to nominate suitable personnel for certain roles to be performed during the development of the web-portal.

A User Acceptance Training was also conducted for making the different profile of users familiar with the web-portal. The details of that training have been shared with members.

7. Issues with implementation of New Environment Norms

7.1. Financing issues impeding in the implementation of New Environment Norms

In view of the prevalent stress in the Sector and exhaustion of Banks' exposure limits to Power sector, Banks were reluctant to provide additional financing for installation of emission control equipment. APP wrote to IBA, MoP, MoF and all major Banks, requesting for financing support for the Power sector. IBA responded in Aug-2018, stating:

... we appreciate the fact that you have rightly observed the constraint faced by Banks in providing additional finance for installation of emission control equipment due to prevalent stress in the sector as well as other reasons...

... in order to meet the required funding, the ideal recourse in the present circumstances would be either in the form of equity, or alternatively soft loan by Ministry of Environment, Forest & Climate Change, and Ministry of Power...

Non-compliance with the New Environment Norms within the stipulated timelines would result in shut down of Plants. This scenario, in all likelihood, would lead to a new wave of NPAs in the Power sector.

APP sent a follow up representation to Ministry of Power and Ministry of Finance, informing them of IBA's views.

Subsequently, APP met with the Minister (Power) on 16-Oct-2018, for a discussion on the challenges being faced in the installation of Emission Control Systems. Also invited for this meeting were representatives from Banks, REC, and PFC. The major issues discussed were as follows –

- (a) APP submitted that Banks are reluctant to provide additional financing for installation of Emission Control Systems.

The Minister passed clear instructions to Banks to provide the required funding for all those Generators who are complying with all lending conditions, and are doing timely debt service.

- (b) APP informed that CEA is insisting on routing the approval of the feasibility studies/ project reports through CERC/ SERCs – thereby crating an unnecessary layer of approvals.

The Minister noted that the MoP directions to CERC state that any order in Change in Law will be treated as a generic order, and it should not be necessary for all Generators to file similar petitions. In view of this, CEA need not insist on a fresh referral from CERC/ SERCs in each instance.

- (c) APP also submitted that clarity is required regarding the payment of Fixed Charges in the downtime period.

Minister agreed that the demand is correct, however, the proposal needs further examination. Minister and Secretary (Power) agreed that this issue needs to be discussed with the Regulator, so that treatment of downtime could be understood in more detail.

- (d) APP proposed that for enabling cost recovery, CERC could consider uniform tariff increases based on minimum capital costs that are in accordance with CEA guidance.

The Minister agreed to consider this proposal. However, this too would require discussions with Regulator.

The official Minutes of this Meeting were shared with all members on 24-Oct-2018.

As noted in the Minutes, the Minister agreed that MoP directive has already been issued to CERC that an order in case of 'Change in Law' will apply ipso facto to all similar cases as a generic order, without needing case to case filing/ orders, and hence CEA need not insist on a fresh reference from CERC in each case.

The Minister also advised the Banks that debt should be provided to all Generators which are not under stress and are in operation, at least in proportion to their funding of capital cost in that project.

The other two issues will require further consultations with the Regulator. APP has written to MoP requesting for expediting these too.

Following this, the issue of payment of fixed charges in the downtime, and commencement of tariff increases on normative basis, were discussed with the CERC Chairman too. He accepted that in the increase of these charges, as the total cost is pass through (Change in Law), there is not much difference in Sec. 62 and 63 projects. The Chairman agreed to consider the idea of indicating a separate payment stream which can be termed as environment compliance surcharge. This may avoid recalculation of regulatory determined/ bid out tariff, post installation of Emission Control Systems.

7.2. Filing an affidavit at the Supreme Court for adhering to CEA Phasing Plan timelines

In an order dated 7-Sep-2018 in the ongoing case in Writ Petition (Civil) No. 13029 of 1985, Supreme Court asked APP to assist in the matter with regard to recommendations of EPCA's 81st and 84th report.

In line with the discussions during the 39th General Body Meeting, an affidavit would need to be filed by APP, representing private sector views. The services of Sanjay Sen, Senior Advocate, were finalised for representation at the Supreme Court hearing.

In line with the discussions during the previous General Body Meeting, an affidavit would be filed by APP, representing private sector views. The matter came up for hearing on 11-Oct-2018, where State Generators, APP, and the Private generators named in the Court's notice, were to submit their response on the EPCA suggestion on bringing the deadline for installation of Emission Control Systems forward from 2022 to 2019-20.

APP's stand was that the CEA Phasing plan was prepared by the Regional Power Committees, considering multiple parameters, including the demand scenario. Therefore, there can be no picking & choosing from the plan for early installation. Private Generators would abide with the CEA Phasing plan itself.

Supreme Court accepted the contention that Private Power Generators would comply with the MoEF&CC notification within the revised CEA timeline of 2022. However, all other aspects including the issues raised by APP as well as the matter on disincentive beyond 2022 have been kept open and will be heard on the next hearing in July.

7.3. *Availability of Good Quality Limestone (80+% purity) for FGDs & Disposal of Gypsum*

Through several letters to MoEFCC, APP highlighted the issue of lack of availability of high quality limestone for FGDs and difficulties associated with disposal of gypsum. In case of limestone, it was estimated that after installation of all 415 FGDs, approximately 22 Million Ton of lime stone would be required per year. Against this, the total production of chemical grade limestone (required for FGD), was around 3 MT. Disposal of gypsum produced as a by-product would also be difficult since it was estimated that about 35 MT of gypsum would be produced, against a total consumption of 10.3 MT in 2016.

These issues were also discussed with the Minister (MoEFCC) during a meeting on 11.07.2018. As an alternative, APP suggested the use of Efficient Ammonia based Desulphurisation (EADS) which would obviate the need for availability of sufficiently high quality Limestone and the disposal of Gypsum.

This suggestion was accepted by CEA, and the guideline for FGD as released by CEA contains provision for Ammonia based FGDs.

8. Operationalisation/ Revival of stranded Gas based plants

A proposal for operationalisation of stranded Gas based plants was sent to MoP, for factoring in the additional domestic gas availability of 7.0 MMSCMD from S1 & VA fields, East Offshore Asset, and continuation of PSDF support. Additional submissions -

- Continuation of E-RLNG scheme for 3 more years: The gas based plants are ideal candidates for stable grid operations, and thus take added significance with the growing share of RE power in the national power mix.
- Allocation of the Domestic gas to stranded gas plants: With phasing out of old inefficient plants & allocating gas to stranded plants, the domestic gas can be pooled with RLNG.

Following this, APP members were invited to appear before the Standing Committee on Energy on 14-Nov-2018, on the subject of stressed assets in Gas based Power plants. The Standing Committee requested a detailed note on the issue to be shared with them. After due consultation with members, the note was submitted to Standing Committee on 30-Nov-2018 - which suggests that there cannot be a single way to revive the Gas based projects, and revival of Gas based projects should involve a long term and an intermediate solution

9. Mega Power policy – Refund of Securities

The Cabinet decision regarding Mega Power Policy - for mega benefits to be released on proportionate basis - was taken on 31-Mar-2017. This decision was taken based on several

requests made by APP to ease the liquidity crunch being faced by several project developers. The guidelines for operationalizing this policy were to be prepared jointly by Ministry of Power, and the Department of Revenue, under Ministry of Finance. It took almost another five months before these guidelines were notified via an amendment in the Mega Power Policy, issued on 21st September 2017.

A discrepancy was observed in the guidelines, as it only referred to BGs and FDRs, and did not mention Cheque Deposits.. The Dept. of Revenue further published a notification on 24-Nov-2017, which covered refund of BGs and FDRs for payment of Customs Duty. Another notification was published on 26-Feb-2018, covering refund of BGs and FDRs for payment of Excise Duty.

APP wrote to Dept. of Revenue pointing out the exclusion of direct Cheque Deposits from these notifications for refund of security payments. This issue was also discussed during meetings at the level of Minister, Secretary and Joint Secretary at MoP and MoF, and also with officials from the Central Board of Indirect Taxes and Customs (CBIC).

This matter was brought up for discussion during a meeting with the Minister on 01.02.2019, where the Minister assured of appropriate action. Subsequently, APP received some queries from MoP, response to which was prepared with company specific information, and sent to MoP on 12.02.2019.

10. Pending receivables from Discoms

MoP has now launched a web portal – PRAAPTI, which tracks pending Discom dues. It is also understood that PFC and MoP have initiated a study “Implementation of a system for payment to IPPs by State Power Utilities, against IPPs receivables”. The Consultant for the study had a meeting with APP representatives on 5-Sep-2018 for preliminary discussions.

Analysis of the PRAAPTI portal shows that the dues to Generators are majorly from six States – Uttar Pradesh, Maharashtra, Karnataka, Rajasthan, Tamil Nadu, and Andhra Pradesh – which form more than Rs. 14,000 Cr, out of the pan-India figures of Rs. 25,000 Cr.

However, analysis also shows that only few members are uploading their dues’ data on the portal. Other members are also requested to upload their data on the portal.

MoP is also being pursued for a prompt payment mechanism through which payments for ‘Power sold’ and those pertaining to Change of Law items – as adjudicated by CERC/ SERCs during the pendency of subsequent challenge, unless the same has been stayed by the appellate authority – are paid without any delay.

Meanwhile, MoP constituted a committee to look into the issue of large receivables of Generators from Discoms. APP was also a member of this committee, and represented the Private sector views. The ToR of the Committee covers:

- Study of working capital cycles of Discoms and Gencos w.r.t. power procurement,
- Study of framework of rules/ regulations in regard to payment mechanism and transaction structures across the value chain, and
- Exploration of possibility/ mechanism for prepaid system of transaction for Power purchase.

APP's provided written submissions to the Committee and also attended the three meetings of the Committee held in Feb 2019. The Committee is presently finalizing its report.

11. MoEF&CC Notification on 100% utilisation of fly-ash

The National Green Tribunal came out with an order on 20.11.2018, imposing penalties on those Power plants which are not meeting the criterion of 100% fly ash disposal by the extended date of 31-Dec-2017.

Soon after the Order, Members informed APP that the regional PCBs had issued notices to them, for compliance with NGT Order.

After discussion with the Members, it was decided that APP would approach the Supreme Court for stay of this order, as Private Generators were not party to the proceedings of the NGT case.

APP filed an application before the Supreme Court on 10.12.2018, and the matter was listed on 13.12.2018. The SC granted liberty to applicants to approach NGT, as they were not party to earlier proceedings.

Accordingly, APP filed a detailed application at NGT on 30.12.2018, noting the various factors and issues which present challenge to the 100% utilisation of fly-ash. The matter was listed for 03.01.2019, where the NGT did not hear the appeal, but just noted that as all Generators are covered under the MoEF&CC notification on fly-ash, they all have to comply with it – and hence with the penalty provisions.

As NGT did not hear APP's submissions, SC was approached again via an application filed on 21.01.2019. During the hearing on 04.02.2019, SC noted that "basic issue which has to be addressed by the Tribunal, on a case to case basis, is as to whether there has been a breach in complying with the obligations ...".

SC also stayed the NGT Order dated 20.11.2018, and directed that no coercive action be precipitated against the Generators. The main factor on which stay was granted is mismatch of demand and supply, and the fact that Generators are doing all within their means to utilise 100% fly-ash.

Thus APP along with other petitioners, approached the NGT and the matters were heard on 12.03.2019. NGT passed on order directing that:

- Joint Committee to go into the grievance of the applicants that all steps for utilization of fly ash have been taken.
- Applicants to have the liberty of putting forward their view points to the Committee within one week from the date of order.
- Timeline for submission of action report by Committee extended to 31st May 2019 instead of 31st March 2019 as earlier fixed.
- Order of suspension of damages as per order of Hon'ble Supreme Court to continue.

APP and individual members sent in their representations to MoEF within a week from the order even though the Committee, under the chairmanship of Joint Secretary MOEFCC, was subsequently formed later in April.

12. Other issues

12.1. Pilot scheme for 2500 MW Medium Term Power Procurement for Aggregate Demand from States

Ministry of Power has introduced a pilot scheme for procurement of Power based on aggregate demand. The bidding is to be on variable cost only, based on own Coal source and fixed cost. There is no price escalation for 3 years, and tariff quoted at the time of bidding remains constant for this period.

A pre-bid meeting was organised by PFC in May-2018, where various members of APP have attended the meeting and submitted their respective points.

A review of the pre-bid queries and their responses by PFC reveals that there is no change in the already published bidding documents, and it appears that the bidding will move forward as is.

However, APP has discussed with MoP that Clause B (v) of SHAKTI framework appears to be tailor-made for this type of aggregate demand procurement, and it allows allocation of Coal. We have been informed that MoP will write to MoC for Linkages under this clause, to bring in fresh bids for Medium Term procurement of Power.

The next round of auction under SHAKTI B (ii) category is also expected soon.

12.2. Levy of Service Tax on activities essential to Generation & Distribution

APP was informed by some members that notices were issued and investigations were being done by Government agencies on applicability of Service Tax/ GST on Open Access and Deemed Generation, which are undisputedly integral to Electricity Generation & Distribution.

APP wrote to MoP for taking up the matter with Ministry of Finance on non-applicability of Service Tax on such activities which are integral part of Generation & Distribution of Electricity as per the terms of the Electricity Act, and the prevailing regulations.

MoP has issued a clarification on this subject in Jan-2018, that activities such as Wheeling Charges, Cross Subsidy Surcharge, and Deemed Generation should not attract levy of service charges.

12.3. Representation in Committee/Meeting/Forum

a) Public Hearing on draft Grant of Connectivity and General Network Access (GNA) Regulations: A public hearing was held on 4-Apr-2018, where APP has again submitted the following:

- In the evolving landscape of Power sector, linking transmission access with long term PPAs is deeply flawed.
- Onus of forecasting demand has to be on Distribution utilities.
- The new framework needs to factor in the increasing share of RE, and the fact that the RE capacity is concentrated in 6-8 states only.
- Keeping in view the present state of severe stress in the Generation sector, it is necessary that the GNA regulations should facilitate to provide adequate flexibility to accommodate the needs of all stakeholders, so that the Indian Power Market remains active and healthy.

b) CIL New pricing mechanism Meeting at Delhi and Kolkata: CIL proposed a new pricing mechanism for GCV based billing, which was proposed to be rolled out from Apr-2018. APP wrote to CIL that any such change in methodology can not be undertaken without stakeholder consultation. After various consumers represented the same, CIL held Consumer meet in Kolkata on 26-Mar-2018, stakeholder consultation in Delhi on 4-Apr-2018. Various comments were submitted. For the meanwhile, the rollout of the new pricing mechanism has been deferred to Jul-2018.

c) National Workshop on integration of RE, and transition period in the Indian Power sector: NITI Aayog, IEA and ADB organised a workshop on 20-Apr-2018 in New Delhi on integration of RE, and transition period in the Indian Power sector. This workshop was the summary and concluding workshop, being held after other regional workshops.

d) Meeting at CEA on Resolution of Stressed Assets: CEA had called a meeting on 23-Apr-2018 on the issue of Resolution of Stressed Assets, which was attended by CII, and FICCI, along with IBA and Bankers. A detailed note on the industry's view was formulated in consultation with CII and FICCI. The action plan proposed in the note

has been accepted and made a part of the CEA Minutes of Meeting. The official Minutes of Meeting have been shared with all members on 7-May-2018.

- e) **Interactive session with CMD, Coal India Ltd.:** APP members were invited for an interactive session with the CMD, Coal India Ltd., on 9-Feb-2019 at New Delhi.

The DG raised some generic issues in front of the CMD, and the members' representatives also raised some plant/ mine specific issues. The generic issues are as follows:

- **Low materialisation of Linkage Coal, and its uneven distribution:** A review of supply position by CIL from Apr-2018 to Dec-2018 shows that materialisation varies from 38% to 141% on average, and in some cases has been as low as 29%.
- **Change in Payment Methodology for Rake allotment from Jan-2018 onwards:** The revised method is playing havoc with the working capital management of Generators because of substantial amount of spillover advances (~Rs. 41 Cr on average per month) and considering the long gestation of the receivables from the Discoms.
- **LC as a mode of advance payment for Coal supplies:** A suggested way-forward – for resolution of issue of inordinate delay in E-Auction supplies – can be of allowing advance payments by way of LC, which will contribute significantly towards easing the liquidity position of Generators to some extent.
- **Lapsing of Coal quantity which remains Un-lifted/ Un-programmed for Dispatch:** Due to various reasons, there is always a shortfall in supply of Domestic Coal to Power utilities in a month, and the lapsing of indents further aggravates the situation and deprives the power plants of their entitled linkage/ allocation. HLEC has also recommended this measure to alleviate stress.
- **Grade slippage issues:** Generators facing consistent grade slippages suffer significant increase in cost, along with requirement of higher quantum of Coal to achieve normative availability. Also, CIL has not formalised any system for issue of Credit Notes within reasonable timelines.
- When grade slippage has been established by an independent Third Party agency, the ACQ needs to be enhanced to compensate for the Quantity loss.
- The issue of Refund of Royalty and Taxes on Grade slippage claims also awaits resolution.
- **Rationalisation of volumes of Coal being offered by CIL in SFEA:** Recent SFEAs bring out the fact that the Power sector companies are paying a higher premium over base price for the same grade of Coal when compared to the companies in the unregulated sector. The SFEA Coal offer for SECL and MCL companies should be increased to the levels of quantum on offer in 2016-17. HLEC has also recommended that at least 60% of the total Coal meant for E-Auction be earmarked for Power sector.
- **Coal auction under Shakti B (ii) category:** In the last round of auction, many of the Generators could not get Coal. Looking at the Coal supply situation, the second phase of auction needs to be expedited.

- **Contradictory operational conditions for mine void filling:** ECL was accorded environment clearance for expansion of mines, with a specific condition that there shall be no fly-ash utilisation in the mine voids. However, there are certain Generators whose fly-ash utilisation plan is primarily based on mine void filling. Some Members had approached MoEF&CC for resolution, to which they responded that ECL may have to go for amendment in the EC condition.
- **Sampling of Coal by CSIR-CIMFR:** Third Party Sampling is not taking place at all the mines as per the tripartite agreement. CIMFR is mainly covering supply through rail mode and not paying attention for road mode dispatches. Coal sampling must be done both at mine end and at the receiving end. Further, improvement in enabling conditions is required, and Sampling time needs to be increased for mines with dispatch of 24 hours from present 12 hours.

12.4. Policy/Regulations/Amendments shared with members for comments

- a) **CERC Staff Paper on Revised Methodology for Application of Escalation Rates:** CERC invited comments on a Staff Paper on “Revised Methodology for Application of Escalation Rates”. All APP members were requested to provide inputs/ comments. APP has submitted the detailed comments to CERC on 10-May-2018.
- b) **Draft notification for Amendment to Environment (Protection) Rules, 1986:** MoEF&CC has published draft notification for amendment to Environment (Protection) Rules, 1986. All APP members were requested to provide inputs/ comments. APP submitted the comments to MoEF&CC on 15-Dec-2017. Subsequently, a meeting was called at MoEF&CC on 17-May-2018, which was attended by CPCB, CEA, NTPC, MoP and APP, where relevant submissions have been made by APP.
- c) **MNRE proposal for permitting use of RE for meeting requirements of Auxiliary Power for Power Generating Plants:** MoP wrote to APP seeking their comments and views on the MNRE proposal for permitting use of RE for meeting requirements of Auxiliary Power for Power Generating Plants. All APP members were requested to provide their inputs/ comments. APP has submitted the consolidated views on the proposal to MoP on 23-May-2018.
- d) **Railways Draft Policy for Freight Advance Scheme:** Indian Railways had published a draft policy for “Freight Advance Scheme”, which aims to provide tariff certainty to Coal consumers against payment of freight in advance. All APP members were requested to provide their comments on this policy. APP has submitted the detailed comments to CERC on 1-Jun-2018.
- e) **MoP Proposed amendments to Tariff Policy, 2016:** The main submissions to MoP were –

- Reintroduction of cost-plus regime: The draft policy protects Central Sector Generating Stations from competition by reintroducing cost-plus regime - a discriminatory and anti-consumer provision. Mandatory PPAs, by assigning Power to states, pre-empt the entire space of PPA and Coal, thereby shrinking the space for private sector.
 - Compensating for Regulatory Delay/ Denial of Change in Law items: Regulators do not follow prescribed timelines for determination of tariff and for adjudication of disputes. Further, decisions of the Regulators are not honoured, especially in cases of Change in Law. Even after the directions have been passed by the Regulator, Discoms are reluctant to pay.
 - Pass through of cost of additional Coal for meeting deficit ACQ: Generators should be permitted to source additional Coal under circumstances where full ACQ is not supplied, and the cost on this account should be allowed to be recovered from the Procurers. An enabling provision is required to ensure that the benefit of pass-through of additional cost of Coal, which is being incurred due to shortfall of supplies by CIL, continues after 31-Mar-2017 as it was available before that.
- f) **Draft Amendments in the provisions relating to Captive Generating Plant in Electricity Rules, 2005:** MoP invited comments on draft amendments in the provisions relating to Captive Generating Plant in Electricity Rules, 2005, and all APP members were requested to provide inputs/ comments. APP submitted the comments to MoP on 18-Jun-2018. Subsequently, a meeting with all stakeholders was held on 30-Jul-2018, to discuss all received comments, and present the viewpoint of the Government.
- g) **Draft Amendment in Deviation Settlement Mechanism Regulations:** CERC invited comments on draft amendment in Deviation Settlement Mechanism Regulations, and all APP members were requested to provide inputs/ comments. APP submitted the comments to CERC on 31-Jul-2018.
- h) **Terms & Conditions of Tariff Regulations for tariff period 2014-19:** CERC invited comments on draft terms & conditions of tariff regulations for tariff period starting from 2014, and all APP members were requested to provide inputs/ comments. APP submitted the comments to CERC on 31-Jul-2018.
- i) **Draft Concept Note on Merit Order Operation-Flexibility in Generation and Scheduling of Thermal Power Stations:** MoP released a draft Concept Note on Merit Order Operation-Flexibility in Generation and Scheduling of Thermal Power Stations, and all APP members were requested to provide inputs/ comments. APP submitted the comments to MoP on 2-Aug-2018.
- j) **Discussion Paper on Re-designing Real Time Electricity Markets in India:** CERC invited inputs on the Discussion Paper on Re-designing Real Time
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Electricity Markets in India, and all APP members were requested to provide their views. APP submitted the inputs to CERC on 31-Aug-2018.

- k) Draft Amendment for Grant of Connectivity, Long-Term Access and Medium-Term Open Access in Inter-State Transmission Regulations:** CERC invited comments on draft amendment for Grant of Connectivity, Long-Term Access and Medium-Term Open Access in Inter-State Transmission Regulations, and all APP members were requested to provide inputs/ comments. APP submitted the comments to CERC on 31-Aug-2018.
- l) Submission of comments on the proposed amendments to Electricity Act, 2003:** MoP invited comments on proposed amendments in the Electricity Act, 2003, and all APP members were requested to provide inputs/ comments by 11-Oct-2018. Comments were received from 6 members, and a meeting was called on 17-Oct-2018 for all those who had shared comments, so as to discuss all views comprehensively. A few members sent comments after 17-Oct-2018 too. These newly received comments were circulated to all those who had shared with APP.

This necessitated another meeting on 2-Nov-2018, where APP drafted comments were discussed. It was APP's stand that the "segregation of Carriage and Content" is in proposal stage as of now, and therefore the concept should not be opposed. The details will be addressed later at the time of notification of transfer scheme.

APP Comments have been finalised, and submitted to MoP on 12-Nov-2018.

- m) Discussion Paper on Redesigning Ancillary Services Mechanism:** CERC invited comments on a discussion paper on redesigning Ancillary Services mechanism, and all APP members were requested to provide inputs/ comments. APP submitted the comments to CERC on 10-Oct-2018.
- n) Incentives to Thermal Power Plants for early installation of pollution control equipment:** MoP shared a CEA proposal with APP, with recommendations regarding incentives to Thermal Power Plants for early installation of pollution control equipment, and all APP members were requested to provide inputs/ comments. APP submitted the comments to MoP on 5-Nov-2018.
- o) Consultation Paper on Security Constrained Economic Dispatch of ISGS Pan India:** POSOCO invited comments on a consultation paper on Security Constrained Dispatch of ISGS, and all APP members were requested to provide inputs/ comments. APP submitted the comments to POSOCO on 20-Nov-2018.
- p) Draft Terms & Conditions of Tariff Regulations 2019:** CERC invited comments on draft regulations on terms & conditions of tariff regulations for the period starting from 2019, and all APP members were requested to provide inputs/ comments. APP submitted the comments to CERC on 29-Jan-2019.

- q) **Discussion Paper on Market Based Economic Dispatch:** CERC invited comments on a discussion paper on Market Based Economic Dispatch, and all APP members were requested to provide inputs/ comments. APP submitted the comments to CERC on 15-Feb-2019.

Annual Report for FY 2018-19

Presented at the Annual General Meeting

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