

Key Activities/Critical Issues taken up by APP in FY 2020-21

While the power sector has been no stranger to stress and turmoil, the past financial year turned out to be unprecedented in terms of the impact and sheer scale of the crisis which unfolded in front of us. With a national lockdown implemented on 24th March in an effort to contain the spread of the COVID-19 infections, electricity consumption fell steeply – peak demand crashed by 36% and 31% in the high consumption Western and Northern Regions and national electricity demand fell by as much as 25%, 15% and 10% in the subsequent months. **This fall in electricity demand and revenue collection of Discoms affected their ability to make payments to the already financially stressed generators and many Discoms resorted to issuing back-down instructions and Force Majeure notices and to the IPPs, jeopardizing the fixed cost recovery of the generators.**

Faced with this unprecedented and ‘never experienced before’ situation, the option before APP was either to lie low and let the adverse time pass over, or to mount an aggressive advocacy. **APP chose the latter approach, leaning heavily on the Government’s proactive stance to mitigate the impact of the pandemic.** Accordingly, APP resorted to a flurry of representations seeking immediate relief – **extending funds to the Discoms to clear the mounting power receivables, deferment of loan repayments, credit facilities against coal and freight payments, extending of coal payment and lifting timelines, etc.** This strategy, coupled with tactical/selective legal interventions, has paid rich dividends. It would not be out of place to mention here that specific intervention by influential members at appropriate times helped to wrinkle out certain stubborn elements.

The list of pending issues which were resolved in the past year, or witnessed significant action towards resolution, is lengthy. A summary of some notable action points is provided in the following pages.

1. Liquidity Infusion Window

The spread of the coronavirus pandemic in India and the resulting lockdown coincided with the period of usually concerted efforts by electricity departments to reach revenue targets in the last month of the fiscal year, with the collections during this month usually being 1.5 to 2 times the average recovery in preceding months. Recognizing that Discom's revenue recovery would be severely impacted due to adverse impact of the lockdown on household livelihoods in many cases and the shutting down of shopping malls, schools, universities, office complexes, etc, APP requested the Government to urgently provide a liquidity window to enable developers to make timely payments for coal supply and rail transportation.

In accord with our request to ease the cash flow situation for the generators, GoI announced a Rs 1.2 Lakh Cr liquidity infusion window for the Discoms to clear their outstanding dues. MoP was extremely helpful and accepted our request for direct fund disbursement to Generators despite objection by many states. MoP also extended the coverage period of this window to cover dues up to June 2020.

While this announcement was a big relief for the cash starved sector, the IPPs also had to deal with additional trouble emanating from a few intransigent States which tried to arm twist the developers into offering huge discounts on the pending dues. **Advocacy from APP and a firm stance taken by MoP that disbursement of funds to generators must be made strictly in a non-discriminatory manner and in proportion to their outstanding dues, have helped the IPPs to get the ball rolling in these States.** As on 31st March 2021, Rs 75,555 Cr has been disbursed under this window against the sanctioned amount of Rs 136,000 Cr, with Uttar Pradesh, usually one of the most troublesome States when it comes to releasing payments, having the maximum share of Rs 20,940 Cr. It is surprising as to why the States are not taking full disbursement under this sanctioned window. We request the concerned members to find out the reason for this since the biggest obstacle to our request for extending the coverage of liquidity window to include dues up to 31st March 2021 would be the amount of unutilized funds under the first tranche of liquidity window.

2. RBI's COVID-19 regulatory and resolution framework

Soon after the commencement of the national lockdown, APP wrote to the RBI Governor to highlight the unprecedented impact of the pandemic on the cashflow situation of the generators and requested for regulatory forbearance by way of a moratorium on payment of interest and principal, along with other mitigatory measures. **The subsequent COVID-19 regulatory package released by RBI provided temporary relief for industry as it included measures such as moratorium on loan repayment and enhancement of working capital facilities.** However, the circular was silent on the treatment of interest payment post completion of the moratorium period. As it was soon evident that recovery would take time, **APP requested for further extension of the moratorium period by another 3 months, which was granted by RBI. APP also followed up with IRDAI to ensure that similar moratorium on debt servicing was made applicable to loans given by LIC as well, one of the largest lenders to the power sector.**

As some members wanted further concessions from RBI, they requested APP to join other petitioners in Supreme Court seeking additional benefits. The petition filed by APP before the Supreme Court sought measures such as **extension of moratorium for an additional 6 months, extension of circular to restructured accounts which are under monitoring period, extension in invocation period, extension of COD for under-construction projects, directions not to charge interest on interest, etc.**

During the course of hearings at the Supreme Court, GoI decided to form an expert committee (under Sh Rajiv Mehrishi) for assessment of relief to bank borrowers. An expert committee (under Sh K.V. Kamath) was also formed to make recommendations on the sector specific benchmark ranges for financial parameters under the RBI's resolution framework for COVID-19 related stress. APP made presentations to both these committees.

The combined impact of all the above resulted in the following – **a) Supreme Court granted stay on declaration of all accounts as NPA vide order dated 03.09.2020 which continued till final judgement was pronounced; b) Supreme Court held that there would not be any charge of interest on interest/compound interest/penal interest for the period of moratorium; and c) the RBI Relief packages were made mandatorily applicable to all banks, NBFCs and other financial institutions.**

3. Coal supply related measures

With cash flow from Discoms coming to a complete stop, APP requested for extending supplier's credit for coal purchases and railway freight. While we were supported by MoP, both MoC and Railway were stubborn. However, as the fall in electricity demand and inability of IPPs to pick up coal led to rising stockpiles of coal at the mine yards, **MoC operationalized our long standing request for Usance LC with immediate effect. Many IPPs utilized this mechanism to tide over severe cash flow constraints, however widespread adoption was limited due to onerous financial implications and operational difficulties.**

APP was also able to extract several other relaxations from Coal India - the timelines for advance payment for coal were extended multiple times and waiver was granted on performance obligations under the FSA till June 2020 by invoking the force majeure provision of the respective FSA, while the mandatory timeline for claiming the relief under the Force Majeure provision was waived. Reserve price under SFEA was kept at base price for the period from April to September 2020 and ACQ under FSA was increased to 100% for the cases where the normative requirement was reduced to 90% based on SLC(LT) decision in 2008. Trigger level for penalty was increased to 80% and the levy of Performance Incentive on supply beyond the ACQ level was removed. The timelines for entering into PPA as per conditions precedent under FSA were extended till 31.12.2021. With the help of these measures, IPPs which were battered by the double whammy of dried-up cash flows and low demand during the first 2 quarters were able to ramp up once the demand started picking up.

There was also a lot of traction on the coal policy front. **Commercial mining of coal was finally implemented**, and the second tranche of auctions has been initiated after modest response under the first round. In order to reduce the burden of additional costs on the consumers, **MoEFCC removed the mandatory requirement of washing coal for supply to TPPs beyond 500 kms and also allowed all TPPs to change their coal source without seeking amendment to their Environmental Clearance** – a long pending request made by APP. **Rationalization of coal linkages was allowed to be extended to projects winning auctions under SHAKTI B(ii)**, leading to further savings in landed cost for the consumers. Some coal transportation modalities were smoothed by grant of extension in timelines for application of conversion from rail to road

mode. **After repeated requests by APP, MoP has taken up the issue of delinking of PPA and FSA very strongly with MoC. This issue has been discussed at the Ministerial level, however MoC is still sticking to its stand despite a meeting at the Principal Secretary to the Prime Minister. Our efforts would continue in this regard.**

4. Timelines for FGD installation

During a virtual Supreme Court hearing in June 2020 regarding extension in timelines for stressed projects, which was attended by the DG, the judges made it clear that blanket extension of timelines could not be accepted unless MoEFCC presented rationale for the same, along with new timelines. **Thus, APP changed its strategy and made several representations to MoP, MoEFCC and PMO highlighting the likelihood of around 77% of TPP units missing their timelines due to extant systemic impediments while also talking about the potential opportunity to boost the Atmanirbhar Bharat vision by providing sufficient time to the domestic manufacturers to ramp up their capacity.**

This strategic approach which anchored our request for extension of timelines on the high possibility of disruption in power supplies and the Atmanirbhar Bharat plans, also received a timely boost by the CEA report on plant location specific emission standards which underscored the need for a graded action plan with higher focus for areas with poor atmospheric air quality. **With our arguments and with the help of the CEA report, we were able to convince MoP to write a detailed letter to MoEFCC in support of extension of timelines for 2 years.**

In the meantime, CPCB started issuing notices for payment of penalty to the TPPs which had missed their Dec 2019 deadline. Many Central and State generating plants were able to secure stay orders and after taking legal advice from its advocates, APP advised all its members who had received such notices to file for impleadment in the MC Mehta matter in the Supreme Court and seek stay in similar grounds.

With pressure from APP and appropriate intervention from some of our members, MoEFCC finally issued an amendment on the last day of the FY, extending the timelines for compliance for the TPPs, subject to three categories based on the TPP's proximity to

populated and critically polluted areas. This notification was a major triumph for APP's advocacy efforts as it was obtained without having to resort to legal challenge.

A committee has now been formulated to categorize TPPs into the three categories specified in the MoEFCC notification. In the meantime, the environmentalist lobby has already started advocating against this amendment in the timelines. There is a high possibility that the extension may be challenged in the Supreme Court, in which case APP may have to become a party in the case and contest any such challenge.

5. Fly ash utilization

Members may recall that NGT had issued an order on 20.11.2018, imposing penalties on those Power plants which had not met the criterion of 100% fly ash disposal by the extended date of 31-Dec-2017. Soon after the order, CPCB had issued demand notices to the TPPs, for compliance with the NGT order. APP had approached the Supreme Court, which sent the matter back to NGT, and then came back to Supreme Court and obtained an interim order which stayed the levy of penalty as per NGT and also directed NGT to address the issues on a case to case basis. A committee under MoEFCC was appointed by NGT, and **APP sent its representation to the committee, highlighting the genuine difficulties being faced by TPPs with regard to fly ash utilization. All the TPPs also appeared before the Committee to present their project specific issues and concerns.** Notwithstanding this, the final Committee report did not get into the individual issues raised and recommended a generic imposition of penalty for all non-complying TPPs, which was accepted by NGT.

APP again challenged this NGT order and when CPCB started issuing notices to TPPs demanding payment of the penalty within 30 days, APP's legal intervention in the Supreme Court ensured that all APP members companies who had received such notices were granted stay on the recovery notices, pending further orders. NGT was apprised of the Supreme Court order and the Tribunal clarified that recovery of EC would be done strictly as per the SC orders. The next date of hearing in the matter is still awaited. In the meantime, **as a result of APP's efforts in highlighting the practical difficulties through representations sent to Joint Committee, MoEFCC and MoP, and follow up through legal channels, MoEFCC has initiated the process**

of revising the Fly Ash Notification, the draft of which clearly shows the intent of putting more pressure on the user agencies and providing the TPPs with more options for ash utilization. However, several points of concern still remain with the draft notification (which APP has highlighted in detail in its submission to MoEFCC) and APP's future strategy will be governed by the final version of the notification.

6. Relinquishment of LTA

It may be recalled that the matter of relinquishment of LTA has been a thorny issue for many years as the lack of materialization of anticipated long term demand/PPAs led to heavy incidence of fines on the generators as per prevailing CERC Regulations. Back in 2015, we were able to get a Committee appointed to go into the issues related to relinquishment of LTA. The Committee's recommendations were very clear that the Regulations were faulty and needed reformulation. However, CERC did not accept the Committee's recommendations and went ahead with imposing heavy penalties through its 92/MP/2015 order, albeit with the condition that CTU would need to calculate the stranded capacity based on load flow studies. **APP had challenged the CERC judgement in APTEL, on the basis of erroneous findings by the Regulator and the fact that the Regulator had amended its own regulations in the order itself.**

In the meanwhile, as PGCIL went ahead to issue demand reminders to the generators, APP circulated a draft letter vetted by its advocates, which strongly advised PGCIL to keep all demand letters in abeyance till the completion of proceedings before APTEL. **Upon challenge of the PGCIL demand letters, APTEL issued an order stating that letters issued by PGCIL should not be taken as invoices and PGCIL is not to raise any invoices during pendency of similar appeals.** With PGCIL having finally submitted its response affidavit towards the end of March'21, hearings on merit of the case are expected to be held early in the new fiscal year.

7. Proposed Amendments to Electricity Act (EAB 2021)

Following the announcements made by GOI regarding proposed amendments to the Electricity Act by way of Electricity (Amendment) Bill 2021, APP organized a brainstorming session with an

intent to discuss how this proposed measure would play out and identify any need for strengthening and smoothing the process of implementation on the ground, while also chalking out APP's advocacy strategy on the subject.

Soon after the brainstorming session, APP sought time from the Hon'ble Minister for putting forward its views on the proposed amendments. **A meeting was held with the Hon'ble Minister on 18.02.2021, during which APP Chairman first spoke about the Australian experience with privatization of distribution, based on CLP Group's experience in the country. APP made a brief presentation on the salient features and suggestions with regard to the proposed amendments and then the Distribution company heads put forward their observations on the amendments.**

The Hon'ble Minister listened intently to all the points raised and also put across his thoughts on various aspects. He made it clear that the Government is fully intent on opening up the Distribution segment to competition. He informed that many points raised by APP and the participants were under consideration of the Ministry and would be brought about/effectuated through subsequent drafting of rules and guidelines. He also categorically stated that the industry would be consulted while drafting the rules/guidelines.

8. Supply of RTC power through bundling of RE and Thermal sources

In June 2020, MNRE released a draft Scheme for supply of RTC power through bundling of RE and thermal (coal based) power, and this was followed up with Guidelines for procurement of such RTC power through competitive bidding, as notified by MoP in July. Based on these documents, SECI initiated a tender for procurement of 5000 MW of RTC power. APP made several representations to MoP, MNRE and SECI, highlighting crucial concerns with the guidelines and bidding documents.

Subsequent amendments to the guidelines and bidding documents addressed many of the concerns raised by APP – eligibility of projects was expanded from just coal based plants to all 'non RE' projects including storage projects, project location requirement of being located in the same RLDC area was removed, coal based generator also to be party to the

PPA so that domestic linkage coal could be supplied and segregation of tariff streams for RE and non-RE projects.

Subsequent to the amended guidelines for procurement of RTC power as issued by MoP, CERC circulated a Staff Paper on the methodology of computing the escalation factors and other parameters for bid evaluation and payment for procurement of power from RE sources complemented with firm power from other sources. **APP has submitted its comments on the Staff Paper to CERC and awaits the finalization of the methodology.**

9. Third Party Sampling of Coal

In August, CIL, citing the need for employing more third party agencies in views of increase in requirement for sampling and limited capacity of CIMFR, issued an RFP for selection of third party agencies for collection, preparation and analysis of coal samples, under empanelment of CIL. APP immediately wrote to the Hon'ble Power Minister, highlighting that the tender floated by CIL was in direct contravention to earlier guidelines issued by the Hon'ble Minister of State (I/C) for Power, Coal and NRE in 2015 which had removed this role from the scope of CIL in order to ensure independent functioning of the third party agencies. In order to avoid any conflict of interest scenario, **APP requested that final decision on introducing new third party agencies should only be taken by Ministry of Power and Ministry of Coal and the tender issued by CIL should be immediately withdrawn.**

As CIL again floated a fresh RFP in December for empanelment of third party agencies for collection, preparation and analysis of coal samples at loading points, APP once again wrote to the Hon'ble Power Minister and highlighted that the matter was taken up at JS Level Committee on third party sampling during their meeting on 02.09.2020, wherein the protests made by CIMFR, APP and NTPC against this unilateral move by CIL were put on record. **While a decision on this matter was kept in abeyance during the meeting as Ministry of Power indicated their views would be communicated separately, APP highlighted that it was very surprising that CIL had gone ahead with a fresh RFP pending any further discussion by the JS Level Committee.**

MoP took up this matter with MoC and it was decided that the two agencies selected by CIL through the above mentioned tender would be utilized for the non-regulated sector only. For the power sector, MoP asked PFC and CEA to frame the criteria and guidelines for the bidding process to be carried out for empanelment of new agencies for coal inspection. APP is in the process of submitting its inputs for framing the criteria of selection of new agencies.

10. Impact of COVID-19 on the Discoms and cascading effect on payment obligations of Discoms under PPA

As many States tried to misuse the provisions of Force Majeure under PPA and sent notices to IPPs absolving themselves of their responsibility under PPA, including payment of capacity charge, **APP provided a platform where all members could share their respective notices received and responses sent to the Discoms as part of a collaborative effort to help all members respond to the Discoms. APP also brought this to the notice of MoP and mentioned that this approach being taken by the Discoms was a complete misinterpretation of MoP's directions on providing relief measures for Discoms. MoP subsequently issued a clarification letter clearly stating that the obligation of Discoms to pay for power procured and capacity charges would continue as per PPA.**

Following this, MoP also came under strong pressure from the States to provide waiver on fixed charges for power not scheduled by the Discoms. **APP advocated strongly against any such provision for Section 63 projects as it would severely impact debt servicing and violate the sanctity of competitively bid contracts. APP's efforts in this regard were successful as the subsequent circular issued by MoP announcing deferment and rebate on capacity charges was limited only to Central Generating Stations and not IPPs under Section 63.**

Keeping in mind the genuine difficulties being faced by the Discoms, APP gathered voluntary declarations from all members, with the exception of one member who could not get Board approval, to extend similar relief in terms of reduced LPS as given by the PSUs - i.e., LPS@12% during the period from 24.03.2020 to 30.06.2020. APP wrote to MoP about this proposal, highlighting that the IPPs were willing to share the pain and were empathic to the challenges being faced by the Discoms. **APP also requested for a mechanism to ensure graded increase in LPS**

amounts after every month beyond the due date, as a measure to try and keep the rising dues in check, and also requested for clear-cut guidelines towards adjustments of payments received towards the past dues. The Electricity (Late Payment Surcharge) Rules 2021 addressed many of these requests, while unfortunately limiting the ceiling of increased LPS rate to the rate specified in the PPA.

11. Transmission of power

APP wrote to Home Secretary, in reference to the consolidated revised guidelines for measures on containment of COVID, as released by MHA on 15.04.2020. It was highlighted that while certain construction activities, such as construction of RE projects, have been permitted from 20.04.2020, there was no mention of construction of transmission line projects. In order to avoid a situation where RE projects were commissioned without the requisite evacuation infrastructure in place, and keeping in view the ease of maintaining social distancing while undertaking transmission project construction activities, **APP requested for construction of transmission projects to be included in the allowed list. This request of APP was accepted immediately by MHA and clarification was issued. APP also wrote to Powergrid to withdraw notices for supply curtailment under regulation of power supply over delayed payment of PoC charges, while asking for an extension in payment timelines. Powergrid responded positively by withdrawing the regulation notices.**

Looking Forward – The agenda for FY 2021-22

As outlined in previous pages, many items in APP’s pending agenda were covered during the course of the year. However, there are still many other lingering issues which need to be taken up in the new year while also endeavouring to take the resolved issues to their final end. The issues which we propose to take up in FY 2021-22 are:

- **FGD implementation timelines** – While the extension in timelines has been notified by MoEFCC, recent news articles by CSE suggests that the environmentalist lobby may be gearing up to challenge the notification, especially with regard to the penalty for non-compliance (which in their view, amounts to providing a ‘licence to pollute’). We will be keeping a close watch and will decide further course of action in consultation with members.
- **Fly ash notification** – While the stay granted by the Supreme Court on the recovery notices continues to be in effect, MoEFCC has circulated a draft amendment to the Fly Ash Notification which clearly shows the intent of putting more pressure on the user agencies and providing the TPPs with more options for ash utilization. However several points of concern still remain with the notification, such as excessively stringent fines for non compliance, compliance stipulations which entail significant additional cost (dedicated dry ash silos for at least 15 days of ash, provision of separate access roads to the silos, changes to design and usage of ash ponds, transportation costs to be borne entirely by the TPPs up to 300 kms), etc. APP has already provided detailed comments and suggestions to MoEFCC and MoP on the proposed draft, and future strategy shall be governed by the final notification.
- **Electricity (Amendment) Bill 2021** - The proposed delicensing of distribution has the potential to bring about radical transformation and presents significant new investment opportunities for the private sector. However, these radical measures are bound to attract opposition and it would be important for us to ensure that many other measures in the EAB 2021 to improve sectoral and regulatory functioning are not lost – timely determination of tariff, ensuring financial discipline by way of linking scheduling of power to payment security and providing ERCs with the duty of adjudication of performance of obligations

under contracts, strengthening of regulatory oversight through increase in members of APTEL and ERC orders given power of court decree, and promotion of RE power and cross border trade of electricity.

- **Tariff Policy** – The Tariff Policy has been long delayed which is unfortunate as the last draft circulated had many positive measures to improve sectoral performance. While some of the provisions of the draft Tariff Policy are being enforced through Rules notified by MoP such as the Rights of Consumers Rules, Late Payment Surcharge Rules and Change In Law, Must-run status and other matters Rules (still in draft stage), we will continue to engage with MoP to bring other provisions to fruition, such as ensuring adequacy of power, penalties for power cuts, payment of subsidy to consumers through DBT, reduction in cross subsidies, pre-paid metering, limiting creation of Regulatory Assets, simplification of tariff categories and rationalization of retail tariff, etc.
- **Pending coal issues** – After numerous representations to MoP and MoC requesting for the removal of restrictive coal usage policy which was imposed with retrospective effect during a period of severe coal shortage, MoP has taken up this matter at the highest level with MoC to remove the condition of signing PPA under FSA and allow for linkage coal to be used for sale of power under any mode in which prices are determined competitively and transparently. We are hopeful of a positive decision on this soon. We are also informed that further to our representations regarding the confusing and restrictive conditions of coal allocation under SHAKTI policy, MoP and MoC are contemplating a complete overhaul of the coal market framework in order to create a competitive environment for a multi seller/multi buyer model. We will be tracking this development keenly. Regarding a shift towards internationally used practice of billing of coal on delivered basis at the plant end, MoC and CIL continue to be adamantly against this. APP will have to continue its advocacy efforts with MoP and MoC on this aspect.
- **Mega Power Policy** – APP's efforts to gain relaxations under the Mega Power Policy's PPA signing requirements has been ongoing for the past couple of years but the coming year is especially crucial as the the timeline to sign PPAs for the 25 Provisional Mega certified projects will end during the period between Sep 2021 to April 2022. In the past few months APP has made some strong recommendations on extension of timelines for

signing PPAs and delinking Mega Power benefits from PPAs. APP has tried to allay the apparent apprehensions in some quarters of MoP regarding windfall gains to the developers if the conditionality of PPA is removed, and further efforts shall continue to be made to ensure that the remaining securities of the provisional mega power projects are not encashed.

- **Implementation of pending HLEC and Cabinet recommendations** – Some important pending decisions such as Cabinet decision of ‘Hydro Purchase Obligations’, HLEC recommendations regarding getting stranded gas based assets on their feet and institutionalization of a payment security mechanism for the generators, were side tracked during the course of the year due to the COVID-19 pandemic. APP will have to renew its efforts to get these decisions fructified.
- **Pilot-II medium term bid under PTC** – In view of the increasing demand for power, efforts are still on to convince the States to sign the PPAs under the medium term Pilot-II bid which witnessed very competitive bidding with lowest tariff of Rs 3.26/kwh for 3 years. We are hopeful of positive action on this very soon.

While we have tried our best to outline the major pending issues, we may have missed out some and request members to please let us know if any particular issue needs to be taken up this year, which does not find mention in the list above.

Members would recall that things were showing promise towards the end of FY 2020-21, with peak power demand touching record levels since December and MoP taking active steps to ensure coal availability for TPPs to meet the coming peak summer demand. However, we are now experiencing a resurgence of COVID-19 cases, which is a cause for great concern as no one knows how long this wave would last and how it would impact the pending reform measures which are in advanced stages of decision making. APP has already started to repeat some of the requests made last year, pertaining to seeking relaxation in coal supplies.

In fact, during the time we were preparing this report, some more positive information has flowed in. Discussions with MoP officials have indicated that in a recent meeting of MoP and MoC, it has been **agreed to supply coal beyond ACQ if required, without any incentive to CIL; no penalty for shortfall as long as at least 55% of ACQ is picked and all e-auctions for power to start at**

notified price and with longer duration timelines, up to one year. MoC is however still stubbornly against delinking of FSA and PPA.

As always, we shall keep members apprised once we receive more definite information.