

Association of Power Producers



Annual Report 2021-22

Executive Overview of APP's activities in 2021-22

Despite the continued onslaught of the COVID-19 pandemic, 2021-22 witnessed a strong rebound for the demand for power. Electricity generation grew by around 10% over the previous year and peak demand touched a record high of 200 GW in July. Coal production reached an all-time high of 622 MT, eclipsing the previous high of 607 MT in 2018-19. However, despite these impressive figures, the supply of coal was not able to keep up with the rise in demand for power and matters came to a head in October as coal stock levels at the plant heads crashed to severely critical levels.

With alarm bells ringing over the coal shortage situation, many of the issues which APP had been highlighting for several months, pertaining to coal supply deficit, railway rake shortage and other logistical constraints, came to the forefront and resulted in the Government resorting to emergency measures to try and control the situation. **Persistent follow up of these issues by APP at all levels of the Government, and the repeated reiteration of concerns over the impact of the proposed unified e-auction window on the power sector, finally led to the biggest achievement by APP on the coal security front – an official policy guideline from the Government which stated that:**

- a. **Coal to meet full PPA requirement of all the existing linkage holders** shall be made available by the coal companies irrespective of the trigger and ACQ levels;
- b. Coal shall be made available to all future linkages to be awarded to power sector as per extant policy or any policy decided by GoI from time to time; and
- c. Coal companies shall offer coal each month for the **SHAKTI B(viii)(a) windows which shall be 10% more than the maximum coal booked by the power sector in any of the 3 preceding months.**

Accordingly, coal supply has been assured for PPA holders (subject to availability) and mandatory auction every month with incrementally increasing quantity of coal offered, would ensure coal for non PPA holders too.

With the re-emergence of coal shortages during the present summer season and our renewed demands for continuation of SFEA for power, it is unlikely that the unified e-auctions may be practically implemented very soon. While the materialization rate may not show significant improvement immediately, but that is a function of limitation of coal supply and railway rakes. With two back-to-back episodes of severe coal shortage, the Government has been made strongly conscious of the present limitations of coal supply and railway rakes and is geared up in full force

to tackle these issues. We believe that positive results should be reflected on the ground later this year.

As part of efforts to ensure sufficient coal stocks at power plants, CEA prepared new coal stocking norms for power plants to avoid emergency shortage situations. While the norms were based on proper planning and study, they placed full obligation on the Generators to ensure sufficient stock of coal without any corresponding obligation on the coal companies/Railways, whose position remained on 'best effort basis'. **APP had to intervene and obtain a clarification that as long as a power plant submitted program as per its MCQ, it would not be penalized for factors beyond its control such as lack of sufficient rakes.** With the support of MoP, APP was also able to improve the SHAKTI B(viii)(a) auction process by ensuring the **introduction of new windows of 6 months and 1 year, and ease the certification requirements by moving towards a self-certification mechanism.**

APP's sustained advocacy efforts with Ministry of Power ensured MoP's support on several issues raised by APP. After a long and sustained battle, MoP was finally able to secure **Cabinet approval for extending the timelines for furnishing final Mega certificates** for the commissioned/partly commissioned provisional Mega projects by another 3 years. APP was also able to finally convince MoP to **amend the medium term bidding documents by removing restriction on usage of linkage coal under the lumpsum tariff option.**

APP's strategy of hard advocacy and persistent follow up, coupled with legal intervention when required has paid rich dividend. Armed with this strategy, APP has been able to achieve many seemingly difficult objectives. **In the matter of fly ash utilization, APP was able to stay the recovery notices issued pursuant to the NGT order and also ensure that MoEF&CC issued a new fly ash notification after consideration of various legitimate issues being faced by TPPs.** A recent order has been issued by the Supreme Court **wherein all penalties imposed under the impugned NGT order have been set aside.** APP will continue to engage with MoEF&CC on the remaining concerns with the fly ash notification but the possibility of significant amendments in the notification is realistically slim considering the heavy criticism and pressure being faced by the Government from the environmentalist lobby in view of FGD timeline extension and recasting of the fly ash notification.

Similarly, a combination of advocacy and legal challenge had helped APP to set aside penalty notices issued by CPCB against delayed implementation of FGD and get the timelines for

compliance extended by the Government. **APP's efforts have now shifted towards ensuring an equitable compensation mechanism for FGD installation which would provide complete cost-recovery, including reasonable return on capital employed.** The legal challenge at APTEL of CERC's order on compensatory mechanism did not see much movement this year due to Court 1 not being functional in light of Chairperson's post being vacant. **In the meantime, APP's advocacy efforts with MoP regarding under-recovery of costs under the FGD compensation mechanism led to the formation of a committee under Member (E&C), CEA. A series of meetings have been held with the Member and efforts are underway to get the compensation mechanism reframed in an equitable manner.** Regarding the issue of relinquishment of LTA, the matter is still pending before APTEL without final adjudication but all demand notices have been kept in abeyance in the meantime.

APP's past decision of allowing individual members to file petitions under the aegis of the Association in case of issues impacting specific developers but being relevant to the sector at large, has once again proven beneficial. HERC accepted APP's appeal (made by JSW Energy) requesting for allowing pass through of income tax in tariff under the MYT Regulations 2019. Another writ petition has been filed at Delhi HC under the aegis of APP by GMR Energy and Torrent Power, espousing the cause of stranded gas-based plants and challenging the MoPNG notification permitting marketing freedom for natural gas to the highest bidder, without honouring past allocation commitments made to the power sector. This has led to an Expert Committee being constituted by MoPNG to examine the issues raised in the writ petition and provide suitable recommendations. Proceedings are still ongoing in the matter.

This year we witnessed many instances of turf war between the policy makers and the regulators. The policy makers adopted an approach of 'regulation by rules', which was not appreciated by the Regulatory bodies. During such instances, APP consciously avoided ruffling feathers wherever possible and adopted a fully neutral stance. In the case of the Electricity (Timely recovery of costs due to change in law) Rules, which was drafted to address concerns raised by APP regarding protracted disputes and long-drawn-out regulatory processes, **APP took the route of writing to MoP to raise concerns over the misinterpretation of the Rules by the Regulator, instead of getting legally involved in the turf war.** Simultaneously, many transmission licensees, whose change in law claims had been pending adjudication before the CERC, challenged the approach taken by the Regulator before APTEL. **The order issued by**

APTEL vindicated many of APP's concerns that had been pointed out to MoP immediately after the notification of the Rules.

The chronically difficult problem of pending payments from the Discoms once again resurfaced once the fund disbursement under the liquidity window was completed. MoP has been trying its level best to arrest the rise in receivables along with liquidation of the arrears. The Draft Electricity (Late Payment Surcharge) Rules sought to make it much more difficult for the Discoms to escape payment. **It included many provisions which APP had been requesting for, such as regulating access to medium term and long term open access for the defaulting entities and providing a mechanism for liquidating past arrears.** However, this has not been finalized and notified in view of the writ petitions in Andhra Pradesh and Telengana against orders issued by NLDC pursuant to MoP's payment security order of 2019. **APP may intervene in these cases to provide support to MoP's mechanism. However, APP has also made it clear to MoP that the proposed Rules may not have the desired impact in view of the staggered penalties imposed on the States which may not deter the recalcitrant States from continuing to delay payments by some months.** Hence APP has requested MoP to fall back on HLEC's recommendation of bill discounting by REC/PFC backed by tripartite coverage. MoP has been considering extending tripartite agreement coverage to the IPPs by way of routing the sale of electricity through NVVNL. Discussions are ongoing and we remain hopeful of a longer lasting solution to this vexed problem.

As evident from above, many long pending issues were resolved this year. Some of the issues are still pending for final resolution, but APP is hopeful of positive action on these issues in the coming year as we have been able to convince the policy makers regarding the importance of resolving these issues, especially - strengthening of payment discipline by the DISCOMs, devising an equitable and bankable compensation mechanism for FGD installation. APP will be closely monitoring the situation on ground with regard to coal materialization under the new policy guidelines and continuing its demand for restarting the SFEA for power in view of the significant jump in spot market premiums. APP will also continue to engage with MoEF&CC on the remaining concerns with the fly ash notification, and will pursue the pending litigatory challenge with regard to relinquishment of LTA and regulations concerning FGD compensation.

A summary of the notable action highlights of the year is provided in the following pages.

1. Sufficiency of coal stocks at power plants

Acute coal supply and availability constraints throughout FY 2020-21 significantly impacted the ability of the power plants to build up sufficient coal stock at the plant heads. Right from April'21, APP had started sending representations to MoC, MoP and Railways regarding critical shortage of coal stocks at TPPs and highlighting the constraints being faced, such as severe shortage of rakes for IPPs from SECL leading to very low materialization and critical coal stock conditions.

Coal stocks at power plants continued to remain critical even after the summer season due to a confluence of multiple factors – production shortfall at the biggest SECL mines, shortage of manpower at collieries and limited truck drivers due to difficulties created by second wave of COVID-19, incessant rainfall in June and July in the coal bearing belt which severely affected coal lifting, liquidity constraints of IPPs in view of huge backlog of dues from DISCOMs etc.

Recognizing the need for ensuring sufficient coal stock at the power plants around the year, MOP advised CEA to review the mandatory coal stocking norms and also evolve a system of penalty provisions for not adhering to the norms. However, before the new coal stocking norms could be notified, a severe coal stock shortage situation occurred in October. A pickup in economic activity and very high prices of imported coal led to a surge in demand for power from domestic coal based power plants, whose stocks had been greatly depleted owing to severe coal supply constraints in Sep and Oct.

APP met the Minister for Power in late October to discuss the coal shortage situation. APP suggested that in order to ensure that the new norms under preparation by CEA would be practically implementable, it was critical to resolve the liquidity problem of IPPs to enable them to make advance payments and ensure that CIL and Railways fulfil their supply / transport obligations as per indents placed with advance payments by the IPPs.

The new coal stocking norms were subsequently notified by CEA in November. The norms provided for constant monitoring of coal stock to avoid emergency shortage situations while accounting for seasonal requirements. It also put in place penalties for non-maintenance of stock. However, they placed full obligation on the Generators to ensure sufficient stock of coal without any corresponding obligation/accountability on the coal companies/Railways, whose position remained on 'best effort basis'. **APP requested for clarity on applicability of penalty when the**

IPPs were not able to maintain coal stock due to reasons such as less supply of coal by CIL, less rake availability etc. In this regard, MoP responded by clarifying that power plants submitting program as per its MCQ with coal companies would not be penalized in terms of rake loading.

With summer fast approaching, a series of high level meetings were held in February and March, with Minister for Power, Secretary (Coal) and Chairman Coal India to discuss concerns regarding sufficiency of coal stocks for power generation. Ministry of Coal and Coal India outlined that despite record increase in coal production, railway constraints arising out of shortage of wagons have been the main reason for the coal shortages. The Minister for Power advised all power plants to supplement their domestic coal with imported coal at 10% blending, and he also advised all States to approve the additional cost of blended coal as it would be comparatively more cost effective than procuring high priced electricity from the power exchanges once power demand outstripped supply. In the meanwhile, the Railways also placed orders for the supply of 90,000 wagons, to be delivered over the next 3 years.

By the end of the year, the power sector was again left staring at an unfortunately all-too-familiar situation of acute coal shortage during the peak demand season. However, the silver lining to this was that many of the issues which APP had been highlighting for several months, pertaining to coal supply deficit, railway rake shortage and other constraints, have come to the forefront with the Government being made strongly aware of these issues and gearing up in full force to tackle these issues. We believe that positive results should be reflected on the ground later this year.

2. Unification of e-auction windows for regulated and non-regulated sectors

In June 2021, there appeared news reports about a proposed move by MoC to hold combined auctions for power and non-regulated sector. APP immediately wrote to the Power Minister and highlighted that the sector still had around 8-9 GW of TPPs stranded due to want of coal, linkage holders unable to access their linkage coal and deficiency in linkage coal supplies – all of which were dependent on the special e-auction window (SFEA) being set aside for power sector in 2015. **APP pointed out that a unified coal auction process at this juncture would lead to high**

volatility/increase in price of coal for power plants, resulting in increase in tariff/increase in Discom losses. APP suggested that before initiating any such move for unified e-auctions, the power plants need to be assured of their full coal requirement being met by way of permanent increase in ACQ quantum of existing linkage based plants, providing linkage coal to all power plants presently stranded for want of coal and removing the requirement of PPA for accessing linkage coal.

Secretary (Power) convened a meeting with generators to discuss the proposed unification of e-auction windows. It was explained to the Secretary (and also corroborated with data by CEA) that most of the participants in SFEA are projects which have PPA and coal linkage and are yet forced to take part in the auctions since they do not get their full quantum of coal requirement under the FSA. At the end, Secretary agreed that MoP would inform MoC that their proposal for unified auction window would not work until MoC ensures that all linkage based plants get their full coal requirement to meet their PPA obligations.

With Coal India having started implementation of decision to increase ACQ to 100% of normative requirement, MoC went ahead with the proposal of unification of e-auction windows. **A last effort was made by APP by writing to the Power Minister and PS to PM, highlighting that coal supply to the power plants still had not ramped up sufficiently to meet their full requirement. It was highlighted that considering the record high prices of imported coal, the unification of e-auction windows would lead to an increase in the price of power.** Eventually, despite all efforts, MoP was unable to prevail and the Union Cabinet approved the proposal for unification of e-auction windows on 26th Feb 2022.

However, persistent follow up of these issues by APP at all levels of the Government, and the repeated reiteration of concerns over the impact of the proposed unified e-auction window on the power sector, finally led to the biggest achievement by APP on the coal security front – an official policy guideline from the Government which stated that:

- a. **Coal to meet full PPA requirement of all the existing linkage holders** shall be made available by the coal companies irrespective of the trigger and ACQ levels;
- b. Coal shall be made available to all future linkages to be awarded to power sector as per extant policy or any policy decided by GoI from time to time; and

- c. Coal companies shall offer coal each month for the **SHAKTI B(viii)(a) windows which shall be 10% more than the maximum coal booked by the power sector in any of the 3 preceding months.**

Accordingly, coal supply has been assured for PPA holders (subject to availability) and mandatory auction every month with incrementally increasing quantity of coal offered, would ensure coal for non PPA holders too.

With the re-emergence of coal shortages during the present summer season and our renewed demands for continuation of SFEA for power, it is unlikely that the unified e-auctions may be practically implemented very soon. While the materialization rate may not show significant improvement immediately, but that is a function of limitation of coal supply and railway rakes. With two back-to-back episodes of severe coal shortage, the Government has been made strongly conscious of the present limitations of coal supply and railway rakes and is geared up in full force to tackle these issues. We believe that positive results should be reflected on the ground later this year.

3. Overdue payments to IPPs

In the previous year, the disbursements from the liquidity window helped many private Generators to stave off defaults on their debts, post expiry of the RBI moratorium period. However, despite the liquidity window, the overdues to IPPs continued to rise once again in view of the pandemic's deleterious impact on consumer income (household and small industries) and the unfolding burden on the State's finances. APP wrote to several States requesting for immediate release of outstanding dues to enable continuation of power supply without disruption.

During a meeting with Secretary (Power) in August, APP highlighted practical difficulties being faced by IPPs in taking required action under MoP's payment security mechanism in view of threat of coercive action by the States. MoP was also informed that the condition of 'encashment of LC done or LC encashment process initiated as per PPA' as a pre-requisite requirement for action to be taken by the NLDC/RLDCs regarding non-approval of STOA and no access to power exchanges, was impractical due to non-standard LC documents and small value of LCs which did not cover the monthly bill amount.

In the meantime, APP also brought to the notice of MoP and PFC regarding devious tactics employed by TANGEDCO wherein the list of pending dues under Tranche 2, as sent from TANGEDCO to PFC, only contained the names of Central Generating Stations and the IPPs who, in view of severely constrained financial position and looming debt default, had accepted TANGEDCO's unreasonable conditionalities for disbursement. With continuous follow up through MoP & PFC, APP was able to ensure that all eligible generators were included in final list for Tranche 2 disbursement. However, TANGEDCO's efforts to undermine a non-discriminatory approach to fund disbursement did not end there, and they resorted to withholding large amounts from a few IPPs while disbursing funds under Tranche 2. **Once again, with the help of MoP and PFC's involvement, APP was able to ensure that full funds were disbursed to all the IPPs.**

The Minister for Power called APP for a meeting in September to discuss issues pertaining to overdue payments to IPPs. APP raised the point that the LC mechanism only takes care of the current dues and therefore it was suggested that in order to make the enforcement of LC mechanism easier, the total outstanding overdues should be bifurcated and the accumulated past dues (LPS & Change in law + carrying cost) may be liquidated through a separate arrangement. MoP asked PFC to examine whether a scheme could be devised to handle the past arrears separately.

In November, MoP issued a letter to all the States informing them that CPSE generators have been directed to regulate power supply in case of delay beyond 30 days from due date of the bill. **APP immediately wrote to MoP and requested that similar directions may be issued for IPPs also, in order to have equitable treatment for all generators. This request of APP was accepted and revised letter was issued by MoP immediately thereafter.** Later in the month, APP met the Minister for Power wherein he again urged the IPPs to enforce the LC mechanism put in place by MoP. APP informed him that the defaulting States have a large basket of power purchase options available to them, especially since thermal PLFs were hovering near or below 50%, and hence limiting the debarment of additional power purchase by the defaulting States to just the power exchanges and STOA may not prove effective. **It was therefore suggested that apart from STOA, even access to power under MTOA and LTOA should be curtailed for the defaulting States.**

In December, MoP released Draft Electricity (Late Payment Surcharge) Rules, which sought to tighten security of payment for the generators and bring about more discipline in payments by the

DISCOMs. It introduced steps to liquidate past arrears while laying down mechanisms to ensure payment security going forward. **The Draft Rules also incorporated APP's suggestion of regulating access to MTOA and LTOA of the defaulting States. Unfortunately however, the mechanism outlined in the Draft Rules was a staggered and lengthy process which involved regulation of long and medium term access by 10% per month after 3 and a half months from the presentation of the bill. This would not provide any immediate respite to the generators given that the receivables for some States had crossed 7-8 months.** However, this has not been finalized and notified in view of the writ petitions in Andhra Pradesh and Telengana against orders issued by NLDC pursuant to MoP's payment security order of 2019. **APP may intervene in these cases to provide support to MoP's mechanism.**

However, APP has also made it clear to MoP that the proposed Rules may not have the desired impact as the major defaulting States which were not able to meet 100% of payment against current month billing despite their best efforts, due to systemic cash deficit caused by low tariff and/or high losses, would find it extremely hard to pay both the current bills plus EMI against the accumulated dues over the period specified in the Draft Rules without some support from the Central Government. **APP therefore requested for provision for transition financing by REC/PFC (under TPA coverage as recommended by HLEC) or a credit window for clearing the accumulated dues of the financially weak States may be considered by the Ministry.** MoP has also been considering extending tripartite agreement coverage to the IPPs by way of routing the sale of electricity through NVVNL. Discussions are ongoing and we remain hopeful of a longer lasting solution to this vexed problem.

4. Compensation mechanism for recovery of costs due to FGD installation

It may be recalled that after relentless pursuit with MoP and CEA in the previous year, APP was able to convince MoP to write a detailed letter to MoEFCC in support of extension of timelines for 2 years. **Subsequently, with pressure from APP and appropriate intervention from some of our members, MoEFCC finally issued an amendment on the last day of the year, extending the timelines for compliance for the TPPs, subject to three categories based on the TPP's proximity to populated and critically polluted areas.**

During FY 2021-22, the battle shifted to the compensation mechanism and tariff implications on account of installation of emission control systems. A draft order was issued by CERC in April, wherein many of APP's comments on the earlier Staff Paper of CERC were not considered. **APP reiterated that many of the provisions of the draft order appeared to have overlooked the principle of restitution upheld by the Supreme Court in the Energy Watchdog judgement dated 11.04.2017, wherein the Court had specifically stated that the purpose of compensating a party affected by change in law is to restore, through monthly tariff payments, the affected party to the economic position as if such change in law had not occurred.**

In August, CERC issued its suo-moto order on the compensation mechanism for FGD installation for section 63 projects. Most of the provisions remained the same as in the draft order and the suggestions made by APP and the individual IPPs on critical aspects such as depreciation recovery period, return on equity, cost of debt, o&m expenses, capacity charge recovery during shut down period etc, were not addressed. **APP decided to take up legal challenge of the suo motu CERC order at APTEL.** The legal challenge at APTEL of CERC's order on compensatory mechanism did not see much movement in the year due to Court 1 not being functional in light of Chairperson's post being vacant.

In the meantime, APP also approached Ministry of Power and raised the issue of under-recovery of costs with the Minister, who agreed to have the matter of incomplete recovery of depreciation examined and write to CERC if necessary. Detailed representations with numerical examples were sent to MoP, after which a Committee was constituted under Member (E&C), CEA. A series of meetings have been held with the Member and efforts are underway to get the compensation mechanism reframed in an equitable manner.

5. Recovery of costs due to Change in Law

One of the biggest challenges faced by IPPs has been with regard to recovery of costs arising from Change in law events (caused by changes in domestic duties, levies, cess or taxes), leading to corresponding changes in the cost of the project or additional operating costs. Recovery of such dues have been inevitably delayed due to multiple litigations by the DISCOMs as a strategy to

delay their payment obligations, even after regulatory declaration/approval of such change in law events.

The average time taken for Regulatory approval of tariff pass through of 'change in law' items has been around 3 years. This regulatory approval always gets challenged at the APTEL/higher courts, and this process takes another 1 to 2 years on average. And subsequent to final adjudication, it has been observed that the final receipt of payments against 'Change in Law' items takes another 1 to 2 years. Therefore, the entire cycle of recovery of cost due to 'Change in Law' events takes 5 to 6 years and during this period, the amount of cost to be recovered keeps increasing on account of carrying charges, as permitted by the Supreme Court.

Pursuant to many requests made by APP in the past to devise a policy framework to reduce the time taken for recovery of costs arising out of change in law events, MoP issued the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021, in October which sought to facilitate timely recovery of costs and streamline a process often mired in disputes and litigation. The Rules provided a formula for calculating the impact of change in law to be recovered in case no such formula was provided in the agreements, and allowed the generating company to immediately start adjusting/recovering the additional costs from the next billing cycle after providing the Procurers with the computation of impact in tariff of the change in law event.

While the intent behind these Rules was positive and sought to address concerns expressed by APP in the past, a few key concerns arose. Firstly, the Rules did not appear to take into account that different categories of change in law events exist (such as events which have been allowed by the Courts in the past, those which are presently under adjudication, and project specific change in law events which may require new capex and would thus require 'in principle approval' from the Regulator. In this regard, APP sent a detailed representation to MoP highlighting the need for differentiation in approach that would need to be followed for the above categories of change in law projects and requested MoP to issue necessary explanatory memorandum.

A second concern arose with regard to CERC's interpretation of the Change in Law Rules wherein subsequent to the notification of the Rules, CERC disposed off many petitions filed by the generators and transmission licensees seeking approval of pass through of costs due to change in

law events and directed the petitioner and respondents to settle the change in law claims among themselves and only approach the Commission for verification of the calculations and adjusting the amount of impact in the monthly tariff. This gave rise to a concern that CERC would adopt the same approach even in cases where the pleadings had been completed and were reserved for final orders.

APP took the route of writing to MoP to raise concerns over the misinterpretation of the Rules by the Regulator, instead of getting legally involved in the turf war. Simultaneously, many transmission licensees, whose change in law claims had been pending adjudication before the CERC, challenged the approach taken by the Regulator before APTEL. **The order issued by APTEL vindicated many of APP's concerns that had been pointed out to MoP immediately after the notification of the Rules, wherein APTEL observed that the Rules do not dwell at all on a situation where a Discom may have to approach the Regulator for adjudication of the dispute. APTEL also held very clearly that approach taken by CERC compelling the petitioners to approach the Discoms/LTTCs for mutual resolution would only delay the inevitable as the matter would have to be finally decided by CERC only.**

The Change in Law Rules also led to confusion with regard to its applicability for FGD installation. While the Rules also accounted for recurring impact of change in law events, the formula provided in the Rules appeared to be relevant only for cases of non-recurring change in law events. Further, in case of change in law events such as FGD installation, there was no provision for recovery of increased operating expenses on account of additional O&M expense, auxiliary consumption, cost relating to procurement of lime-stone, disposal of gypsum, additional working capital requirement etc. **In view of these concerns, APP wrote to CERC and MoP, requesting for prospective implementation of the Change in Law Rules and MoP thereafter issued clarification that the Rules would only be applicable for change in law events occurring after the date of notification of the Rules, i.e., after 22.10.2021.**

6. Fly ash utilization

In the previous year, APP's legal challenge at the Supreme Court of the NGT order dated 20.11.2018 which had imposed penalties on power plants not meeting the criteria of 100% fly ash

disposal by 31.12.2017, had led to stay orders issued by the Supreme Court on the recovery notices, till completion of proceedings. **In the meantime, as a result of APP's efforts in highlighting the practical difficulties faced by IPPs in utilization of fly ash through representations sent to the Joint Committee, MoEF&CC and MoP, and follow up through legal channels, MoEF&CC had initiated the process of revising the Fly Ash Notification.**

In April 2021, MoEF&CC issued a Draft Fly Ash notification seeking stakeholder comments. Some of APP's suggestions made to MoEF&CC in the past were accepted and incorporated, such as imposition of obligation on the user industries to procure/utilize ash, reduction in the requirement of installing dry ash silos for 15 days of ash storage, provision of change in law status, etc. The draft notification provided a three-year cycle for achieving 100% average utilization in those three years subject to certain conditions (compliance cycle).

However, the draft Notification continued to overlook the most important aspect that ash utilization entirely depends on avenues available and creation of demand for ash by the user agencies on which the Power Project Developer has absolutely no control. **APP provided its detailed comments on the Draft Notification highlighting that the 'Polluter Pays' Principle cannot be applied selectively to just thermal power plants, especially when they are supplied high ash coal, have no option but to use such high ash coal, and have no means of 'utilizing' the ash other than facilitating and ensuring the availability of ash to the users who can actually utilize the ash.**

MoEF&CC notified the Fly Ash Notification on 31st December 2021. On comparison of the draft and final Notification, it was observed that not a single provision had been changed from the draft notification. **APP once again wrote to Secretary MoEF&CC highlighting that the biggest hurdle faced by the TPPs with full utilization of fly ash has been the lack of avenues for ash utilization, along with logistical constraints faced by many plants due to being located in remote areas far off from human habitats. APP suggested that MoEF&CC should take the ground realities into account for at least the next 4-5 years, beyond which a relook or review may be required based on the progress achieved by the ash user industries and the TPPs. APP will continue to engage with MoEF&CC on the remaining concerns with the fly ash notification but the possibility of significant amendments in the notification is realistically slim**

considering the heavy criticism and pressure being faced by the Government from the environmentalist lobby in view of FGD timeline extension and recasting of the fly ash notification.

In the meantime, since the notification of 31st Dec 2021 introduced a new regime to ensure 100% fly ash disposal, APP filed an application at the Supreme Court to bring on record the subsequent developments during the pendency of the Civil Appeal filed by APP against the 2018 order of NGT which had levied penalties on power plants which had not met the criteria of 100% fly ash utilization, in order to facilitate the disposal of the pending matter. **An order has now been issued by the Supreme Court wherein all penalties imposed under the impugned NGT order have been set aside.**

7. Mega Power Policy

APP continued the ceaseless efforts it had been making for the last couple of years trying to gain relaxation in the Mega Power Policy's requirement of signing PPAs within the timeline of 120 months from the date of import. This year was especially critical since the timelines to sign PPAs for the Provisional Mega projects was to end during the period between Sep 2021 to Apr 2022.

Recognizing that mere extension of timelines may just result in postponing the inevitable, in view of the demonstrated lack of long term bids by States, **APP pushed for allowing projects with Provisional Mega certificates to avail the benefits of the Policy irrespective of the availability or duration of PPA. Representations were made to MoP regarding the change in market dynamics since policy formulation with power exchanges/short term competitive bids being more cost effective and preferred by the States as compared to long term PPAs.**

A meeting was held with Additional Secretary (Thermal) in June, wherein APP representatives tried to allay apprehensions regarding possible windfall gains to the developers if the conditionality of PPA was removed. A detailed note was sent to MoP after the meeting, which brought out clearly that despite the condition of signing long term PPAs remaining unachieved due to various reasons beyond the control of the generators, the broad objectives of the Mega Power Policy have been largely achieved, in terms of promoting capacity addition and discovery of competitive electricity prices in the short and medium term markets, with the benefits accruing to the consumers.

However in order to further allay MoP's apprehensions regarding any possible profiteering if the condition of signing PPAs was removed, the note also outlined a mechanism by which developers who avail of the waiver of PPA requirement, would share on a 50-50 basis any excess realization of annual fixed cost recovery for the untied capacity of the plant beyond a threshold value of fixed cost @Rs 2.5/kwh, till the remaining duty liability for the project was completely paid back to GoI.

After a long and sustained battle, MoP was finally able to secure Cabinet approval for extending the timelines for furnishing final Mega certificates for the commissioned/partly commissioned provisional Mega projects by another 3 years. The Cabinet decision also stated that during this extended period, the Mega projects would be expected to participate in bids for bundled firm power to be invited by SECI in co-ordination with MNRE. It also directed MoP to develop an alternate mechanism based on present electricity markets to ensure that the benefits are passed on to the consumers in an effective manner.

8. Third Party Sampling of Coal

It may be recalled that in the previous year, CIL had issued an RFP for selection of third party agencies for collection, preparation and analysis of coal samples under empanelment of CIL, citing the need for employing more third party agencies in views of increase in requirement for sampling and limited capacity of CIMFR. APP had immediately opposed this, highlighting that the tender floated by CIL was in direct contravention to earlier guidelines issued by the Minister of State 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.

Subsequent to objections raised by APP against the process initiated by CIL for empanelment of new third party agencies, discussions were held between MoP and MoC on the concerns raised pertaining to maintaining the independence of the entire process. It was decided that new third party sampling agencies could be taken on board but the empanelment of agency would not be done by CIL and would instead be done by a neutral agency. PFCCL was selected as the agency for carrying out the empanelment process for the new third party sampling agencies.

CEA prepared draft Terms of Reference for selection of new third party agencies and APP provided its detailed comments on the same. A meeting was convened by Additional Secretary (Thermal) in July wherein the draft ToR was discussed. MoP assured the generators that they would retain the option to select a specific third party agency from the list of empaneled agencies. APP highlighted that such choice may turn out to be illusory since the bargaining power of small IPPs was very limited before Coal India. In light of the fact that none of the generating companies whether NTPC/State Gencos or IPPs, had asked for appointment of new agencies, APP requested MoP to reconsider this decision and continue with the MoU which had been signed by all stakeholders in presence of the Ministers. However, PFCCL was given the green signal to proceed with the empanelment of new agencies, subject to the condition of generators being allowed to chose the agency of their choice.

The 13th Apex Committee meeting was held in March 2022 wherein decisions were taken on some long pending issues. Regarding enabling conditions at loading end, it was decided that a committee would be formed comprising of representatives from CIMFR, NTPC & CIL, to visit locations identified by CIMFR in order to identify deficiencies in loading conditions if any. CIMFR would arrange to rectify the deficiencies to their satisfaction and the cost would be shared between coal companies and power companies on 50-50 basis. Coal India proposed changes to certain clauses of the TPA MoUs with a view to ensure timely and expeditious submission of test results with sufficient degree of accuracy. APP circulated the proposed changes to all members for views and comments, and the general consensus was that the proposed changes would be beneficial for all. However, as discussed in the Apex Committee meeting, a committee would be formed to examine and discuss the proposed changes in greater detail.

9. Other coal supply related issues

A. Timelines for signing PPA under NCDP FSA and SHAKTI B(iii)

The timelines for signing PPA as Condition Precedent under FSA had been extended twice in the past (till 31.03.2020 in SLC(LT) meeting held in June 2017 and till 31.12.2021 as per SLC(LT) meeting held in May 2020). As the drought of bidding opportunities still persisted in the market, APP requested for a further extension of 2 years for fulfilling the condition of

signing PPAs under the FSA. However, MoC was not amenable to the request as their view was that the timelines have already been extended twice in the past already and cannot be extended indefinitely since the SHAKTI Policy mentions that the old NCDP regime would come to fade away gradually. Despite several representations by APP and the IPPs and recommendation by MoP, MoC was unwilling to change its stand.

Subsequently, APP highlighted that certain medium term power procurement tenders had been recently completed (Pilot-II, Gujarat, Railways etc) wherein projects with NCDP FSAs had participated. APP represented that without immediate extension to the timelines, the successful bidders would be unable to operationalize their FSAs. The matter was finally considered during SLC(LT) meeting held in Feb 2022, wherein the Committee held that the request for 2 years extension cannot be agreed to. However, in view of provisions of SHAKTI policy, SLC(LT) recommended for extension of timeline for obtaining PPA till 31.03.2022.

A similar struggle for extension of timelines for signing PPA was also played out with respect to the auctions held in Feb 2020 under SHAKTI B(iii). Around 7 bidders had successfully booked 6.5 MTPA of coal in these auctions, with the condition that they could access the booked coal only after signing of valid PPAs within a timeline of 2 years. As some of the bidders were unable to sign PPAs within the specified timeframe of Feb 2022, APP made several requests for a further 2 year extension in the timelines in order to avoid forfeiture of bid security which would only further increase the stress in the sector. However, MoC was again not amenable to this request and took a stand that the timeline of 2 years has been provided under the Cabinet approved SHAKTI scheme and any extension in this would require Cabinet approval. During a meeting with Secretary (Coal) in Feb'22, APP was able to convince him to advise the coal companies not to encash the securities until a final decision was taken by the Cabinet on this matter.

B. Improving the ease of doing business w.r.t. SHAKTI B(viii)(a) auctions

In view of the national level exercise conducted by Government of India to improve the ease of doing business across all government departments, APP prepared a note for Secretary Coal, outlining several potential areas for implementing Ease of Doing Business Reforms with

regard to coal supplies from Coal India. Key thrust areas for improving the ease of doing business were with regard to dispensing with requirement of providing annual coal utilization certificate from the DISCOMs and streamlining the arduous guidelines for coal linkage auctions under SHAKTI B(viii)(a).

The issue of simplifying procedures under SHAKTI B(viii)(a) was also discussed during a meeting with the Power Minister in September. APP requested to simplify the processes and also requested for more flexibility in terms of allowing generators to indicate quantity requirement for the entire year instead of quarter-wise submission. With support from MoP, MoC agreed to consider 2 additional windows under the SHAKTI B(viii)(a) auctions – of 6 months and 1 year, which would help to improve visibility of coal supplies for the generators over a longer period.

A committee was constituted under Additional Secretary (Thermal), MoP, to deliberate on the suggestions provided by APP to streamline and improve the SHAKTI B(viii)(a) auction process. APP was invited to the 2nd meeting of the Committee and during discussions, APP's request move towards self certification by the generators was agreed to, with the condition of random vetting to be done by CEA. MOP and CEA were however not able to convince Coal India regarding one time signing of FSA and one time submission of BG. This was however taken up by APP again during a meeting with Coal India Chairman in March. Chairman CIL was of the view that signing of individual agreements after each auction round could not be dispensed with because of legal reasons. He however assured to look into the possibility of digital signing of the FSA in order to make the process less cumbersome.

C. Difference between actual and pre-determined tare weight

In continuation to efforts made over the past few years, APP persisted with raising the issue of difference between pre-determined tare weight of rakes and the actual tare weight, which led to the generators paying for dead freight, i.e., coal which was never loaded to the rake. Multiple representations were sent to Railways, highlighting that the difference between the pre-determined and actual empty tare weight was around 90 MT on average basis, resulting in

approximate financial loss of Rs 2 lakhs per rake (Rs 0.35 lacs on transportation cost for coal which did not get transported, and Rs 1.65 lac against coal value which did not get loaded).

As most power plants had in-motion weigh bridges installed at the plant end, APP suggested that the plant in-motion weigh bridges may be utilized for measurement of actual tare weight. This issue was also discussed during the meeting with Secretary (Coal) on 17.02.2022, but Ministry of Coal informed that as per a previous study conducted by CIL involving 500-600 rakes delivering coal to NTPC plants, it was found that the impact of overloading/underloading caused by difference in tare weights averaged out over a period of time.

However, with continued representations by being sent by APP, Railway Board finally initiated some action and announced a pilot project on weighment of empty BOXN/BOBRN rakes after their CC examination, for suitable modification in the FOIS system. This pilot project will be conducted for a 6 month period.

D. Impact of COVID-19 (2nd wave)

With the second COVID-19 wave surpassing the previous wave in terms of severity and number of infections, and with transportation restrictions and localized curfews being imposed all over the country, APP sought relaxations by way of extension in DO payments and validity periods. Based on periodic requests made by APP and the IPPs, Coal India extended the timelines for lifting and payment of coal initially till end of April and then subsequently this was extended several times, till July.

APP also wrote to MoC and MoP requesting for extension of waiver on Performance Incentives for FY 2021-22. APP's letter highlighted that all the reasons due to which the waiver on PI was extended in the previous year (encouraging import substitution, large stocks at mine heads, financial hardships being faced by consumers, etc) were still present in the current condition and any levy of Performance Incentive would result in significant increase in cost of power and be a double whammy for the consumers who were already undergoing numerous difficulties. This led to MoP writing to MoC requesting to issue directions to CIL for waiver of Performance Incentive on coal supply above 90% of ACQ. In June, Coal India issued notice

on waiver of Performance Incentive for power plants (which have made timely payments) from FY 2021-22 onwards.

MoP also supported other requests made by APP such as extension of Usance LC to SFEA supplies and allowing conversion from Road to Rail mode in view of transportation difficulties due to lockdown restrictions.

FY 2022-23 – Major Tasks Ahead

1. To keep pressure on Ministry of Coal, Coal India and Railways for improving the coal supply materialization rate.
2. Advocacy/legal follow up for bringing necessary changes in the regulatory compensation mechanism for FGD installations.
3. Push hard for a workable payment security mechanism to strengthen payment discipline by the DISCOMs.
4. Looking at the current pace of FGD installation, many members might require further push back of the timelines by a year or two. APP will feel the ground with MoP and start advocacy at the right time.
5. Engage with MoEF&CC to address remaining concerns with the new Fly Ash Notification.
6. Advocacy with CEA/MoP and CERC regarding ‘deterrent charges’ for shortfall in coal stock – ensuring that coal stocking norms are made equitable with adequate accountability for defaulting entities instead of holding generators fully liable.
7. Resolution of LTA relinquishment charges issue.
8. Now that timeline extension has come through for Mega Power projects, APP will follow up on the remaining issues concerning Mega Power Policy - expediting the refund of duties paid to Customs/Excise department through direct payment and uniformly restricting the condition of power tie up to 85% of the installed capacity without any discrimination between Section 62 and competitively bid projects.