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Ref. No. PEG/2014/127

Date: November 22, 2014

To:

Mr. Vivek Bharadwaj,
Nominated Authority under the CM (SP) Ordinance, 2014,
Ministry of Coal, Government of India

Dear Shri Bharadwaj,

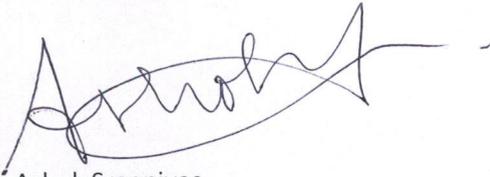
Comments and feedback regarding the draft rules under the CM (SP) Ordinance, 2014

Thank you for inviting comments and feedback regarding the draft Rules proposed to be notified under the Coal Mines (Special Provisions) Ordinance, 2014 through public notice no. 11022/10/2014-CA-I dated November 19, 2014.

Given the relatively short time available to respond, we would like to submit our broad comments and feedback on the proposed Rules and their implementation. Please find our comments attached to this note. We hope you will take them into consideration while finalizing the Rules.

Thanking you,

Yours sincerely,



Ashok Sreenivas
Senior Research Fellow
Prayas (Energy Group)

Feedback / comments re draft rules under CM (SP) ordinance, 2014

Prayas (Energy Group)

- 1. Mismatch between end-use needs and coal reserves:** The ordinance and the draft rules do not clarify how any excess coal that would be mined by the allocatee will be dealt with. As it is unrealistic to expect the auction or allotment process to match mineable coal reserves to needs of the successful allocatee, this issue becomes crucial while dealing with a scarce national resource – particularly considering end use plants with linkages are also allowed to participate in the auction. Therefore, the rules need to be clear in this regard.
- 2. Captive coal blocks and coal linkages:** The proposed rules allow even those end-use plants which have linkages or have applied for it to bid for captive blocks. It is not clear why plants with linkages should be allowed to participate in the bidding. As highlighted in point 1, it is very likely that such bidders will have excess coal if they win the bid. This would not only raise the issue of dealing with excess coal, but may also create complications due to the take-or-pay nature of FSAs that are likely to be signed based on the linkages. Therefore, captive coal block allocations cannot be dealt with in isolation and the issue of coal allocation to end-users through linkages or captive blocks has to be dealt with comprehensively.
- 3. Compensation to prior allottee:** The CM (SP) ordinance provides for compensating the prior allottee for expenses incurring in purchasing land, immovable assets etc. through clauses 9, 15 etc. In its current form, neither the ordinance nor the rules make it clear as to where funds for such compensation would be raised from, though clause 15(5) of the CM (SP) ordinance states that the Central Government would pay the Commissioner of Payments an amount equal to the compensation due to the prior allottee. It is hoped that the funds would not come from the Central Government (i.e. the taxpayer) but from the new allocatee through the auction process. It would be reassuring to citizens if this is made explicit in the rules and not left ambiguous.
- 4. Transparency of allocation design:** It is a welcome step that the Government is seeking feedback about the proposed Rules. The same transparency should be followed in subsequent stages also as other rules regarding determining the floor/reserve price, the auction process and the concession management get finalized. At each step, it would be desirable to publish the draft rules or proposal, seek feedback and publish the finalized rules or proposal after duly considering all inputs received. It would also help solicit more informed comments if more time is given for providing feedback. This is consistent with the practice followed with standard bidding documents in the power sector.
- 5. Transparency of allocation process:** It would be highly desirable to be highly transparent about the entire coal block allocation process, given the history leading up to the CM (SP) ordinance. Therefore, we suggest that the Central Government set up a separate web portal managed by the

Nominated Authority to regularly publish all relevant information related to the block allocation process. Such a portal should include at least the following:

- a. Names, qualifications and affiliations of all experts appointed by the Nominating Authority under Section 6 of the proposed Rules.
 - b. For each block, relevant details from the Tender Document and Allotment Document such as the geographical area, geological and extractable reserves, likely production profile, quality of coal, floor/reserve price, the template concession contract, and intended end-use.
 - c. For each block, after the auction process, the winning bidder, details of the intended end-use plant, details of the winning bid, and anonymous comparison of the winning bid with other bidders. This is consistent with the practice followed in the power sector.
 - d. Details of any binding directions, if any, provided by the Central Government under Rules 10(10) and 11(10) along with reasons for the same.
 - e. All details of any arrangements made by successful bidders or allottees with other bidders, allottees or linkage holders as permitted by clause 20 of CM (SP) ordinance and rule 19 of the proposed Rules.
6. **Allotment of mines to projects that have won tariff-based bids:** Clause 5(1) of the CM (SP) ordinance allows the Central Government to allot mines to any company that has been awarded a power project based on competitive tariff-based bidding and clause 12 of the Rules states that this allotment would be based on a recommendation from the Ministry of Power. However, not all such tariff-based bidding was based on an identified coal source, and not all tariff-based bid winners with an identified coal source have had their coal sources cancelled. Therefore, if at all such allotments should be made, they should be made only to power projects that have won competitive tariff-based bids based on an identified coal source which has now been cancelled by the recent Supreme Court judgements. All such allotments should also be published on the website suggested in point 5 along with reasons for the allotment.
7. **Washeries:** Coal washing is a legitimate end-use of coal according to the amended Coal Mines (Nationalization) Act. However, coal washing is only an intermediate step and its output is expected to be better quality coal. There needs to be clarity on how the washed coal produced by washeries that win any captive coal blocks through the auction process, would be used. This includes issues such as oversight of the washing process (to ensure necessary quality augmentation), end-use of the washed coal and price of the washed coal.
8. **Liabilities of prior allottees and new allocatees:** The CM (SP) ordinance protects the new allocatee from any liability of the prior allottee (Section 14). This is likely to prove problematic in cases where the suit against the prior allottee involves some irregularities in obtaining permissions or property (e.g. in obtaining environmental clearances, land acquisition or mining license etc.) as it may prevent challenging such an improperly acquired permission or property which is now passed on to the new allocatee.
9. **Other points:**

- a. Section 3(n) of the CM (SP) ordinance defines “prior allottees” as those who were allotted mines between 1993 and 2011, and which were cancelled by the Supreme Court. This appears to exclude beneficiaries, if any, who acquired the allotted coal mine through a sale, transfer or other such process directly or indirectly from someone who was originally allotted the mine. The definition of “prior allottee” should be changed to include such beneficiaries also.
- b. Section 10(5) states that the Nominated Authority may specify the maximum number of mines and/or reserves that may be allocated to one or more persons. It would be good to have greater clarity regarding this clause such as when and how the Nominated Authority would specify this, and how this would impact the allotment or bidding process.
- c. Section 15(3)(a) mandates the Nominated Authority to invite claims from persons other than prior allottee by publishing in at least one Hindi and one English newspaper. The clause should also mandate publication in a local (state) language newspaper if Hindi is not the local language as the case may be in states such as Maharashtra, Odisha, Telangana and West Bengal.
- d. Section 20(1) permits any successful bidder or allottee to utilize coal from an allocated mine in any of its end-use plants. It should perhaps be made explicit that the alternative end-use plant should have the same end-use as intended for the allocated mine.
- e. The Designated Custodian may undertake mining operations, dispose coal in the manner specified by the Central Government and earn revenue according to clause 28(2)(e) of the proposed rules. Details of the quantity and quality of any such coal mined and disposed, and revenue earned should be published on the website suggested in point 0.