

# ● PRAYAS

Initiatives in Health, Energy,  
Learning and Parenthood



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July 13, 2012

To,  
Shri. S.L. Bunker  
Secretary  
Competition Commission of India  
The Hindustan Times House  
18-20, Kasturba Gandhi Marg,  
New Delhi – 110 001

**Subject:** Request for intervention in petition filed by Maharashtra State Generation Company Ltd (MSPGCL) against Mahanadi Coalfields Limited (MCL).

Dear Sir,

Prayas (Energy Group) is a Pune based voluntary organization which has been working on issues of electricity policy and regulation for more than a decade. In past we have worked on analysis of the power purchase agreements of various Independent Power Producers (IPPs), development of a least-cost integrated resource plan (IRP) for the state of Maharashtra, preparation of several reports on the electricity regulatory processes and publication of a 'Citizen's Primer on electricity'. Our work also involves pro-active interventions in Maharashtra and national regulatory processes and capacity building initiatives for civil society groups. We have been involved in the power sector in various capacities such as, authorized consumer representatives before Maharashtra Electricity Regulatory Commission (MERC), Odisha Electricity Regulatory Commission (OERC) and Central Electricity Regulatory Commission (CERC), member of advisory committees of MERC, CERC and Andhra Pradesh Electricity Regulatory Commission. We were also member of Power sector working groups formed by Planning Commission for development of 11<sup>th</sup> as well as 12<sup>th</sup> five year plans.

During a public hearing undertaken by MERC on 12<sup>th</sup> April 2012 regarding the annual tariff revision process of MSPGCL (case no 6 of 2012), the managing director of MSPGCL mentioned about a petition that they have filed before the Competition Commission of India (CCI) regarding issues concerning with coal supply and quality. It is based on this knowledge and the information that came forth in this regard through various media reports<sup>1</sup> that we came to know about the present case before the CCI. Generation cost (which is a pass through in case of regulated company like MSPGCL) is significantly affected by both coal availability and quality. In turn, this affects consumer tariff of electricity. Therefore, we are writing this letter to you, requesting you to allow us to be an intervener in this matter.

Below is our submission in this regard. We kindly request the commission to take the same on record.

<sup>1</sup> <http://business-standard.com/india/news/mahagenco-takes-coal-india-arm-to-competition-tribunal/478414/>

1. As per the section 25 of the Competition Commission of India (General) Regulations, 2009 (No. 2 of 2009), the Commission can permit a person or enterprise to take part in the proceedings before it. The sub-section (1) under this section states: *“While considering a matter in an ordinary meeting, the Commission, on an application made to it in writing, if satisfied, that a person or enterprise has substantial interest in the outcome of proceedings and that it is necessary in the public interest to allow such person or enterprise to present his or its opinion on that matter, may permit that person or enterprise to present such opinion and to take part in further proceedings of the matter, as the Commission may specify.”* Accordingly please consider this letter as an application in the same regard.
2. Maharashtra State Electricity Distribution Company Ltd (MSEDCL) sources more than 45% of its power requirement from MSPGCL, cost of which alone, accounts for more than 30% of MSEDCL’s total annual revenue requirement<sup>2</sup> and hence has a direct bearing on retail supply tariff for electricity consumers in Maharashtra state. As stated before, generation cost of MSPGCL power is regulated on cost-plus basis and hence consumers of MSEDCL are significantly affected by coal availability as well as quality, as both these factors have a direct bearing upon cost of generation. In this context, the current proceedings before the CCI have direct bearing upon MSPGCL’s generation cost and hence electricity tariff for Maharashtra consumers. By virtue of being electricity consumers in Maharashtra we are an affected party and as this submission will demonstrate, there is significant element of public interest involved in this matter which is presently being investigated by the CCI. Therefore, considering these facts we request the commission to accept our intervention application as per the sub-section (1) of section 25 of the Competition Commission of India (General) Regulations, 2009.
3. In its recent tariff revision proposal (petition before MERC, Case no 6 of 2012), MSPGCL has attributed almost the entire increase in its fuel cost, to poor quality and inadequate supply of domestic coal<sup>3</sup>. MSPGCL and MCL (as well as other coal companies that MSPGCL deals with) are corporate entities which are expected to operate on commercial principles. However, unlike other corporate entities, MSPGCL business is regulated on cost-plus basis and hence its coal cost is of pass through nature. The regulatory framework in electricity sector is designed to disallow costs arising out of inefficiencies such as say, inability of MSPGCL to adhere to stipulated performance norms such as Station Heat Rate, Plant Load Factor, auxiliary consumption, etc.
4. MSPGCL has claimed that variation in its actual performance vis-a-vis stipulated norms is largely on account of its inability to enforce its commercial contracts with coal suppliers to ensure supply of coal as per agreed quantity and quality. For example, the petition states that around 1100 MU of generation loss in FY 10-11 was on account of poor quality of coal. Presently however, there is no way to estimate the extent to which poor coal quality is responsible for the poor performance of MSPGCL units as there are no transparent and accountable monitoring mechanism to assess the quality and quantity of coal that is dispatched and received. This is a very serious governance concern, as more than 75% of the generation cost is on account of fuel expenses.
5. All the coal supplier companies follow policy directives issued by Coal India Ltd (CIL) in contractual matters, and hence Fuel Supply Agreement (FSA) design is same across all coal suppliers. Thus, issues raised by MSPGCL are not unique but are representative of all power generating companies who depend on domestic coal supply agreements. Hence, this matter

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<sup>2</sup> <http://mercindia.org.in/pdf/Order%2058%2042/Final%20Order-31.10.2011.pdf>

<sup>3</sup> <http://mercindia.org.in/pdf/Order%2058%2042/Case%206%20of%202012-%2018-6-2012.pdf>

should not be seen as just a dispute between MSPGCL and MCL, but as an instance of a larger problem of ensuring contractual accountability of a monopoly supplier with regard to accountability in both quantity and quality of coal supply, which affects the entire power sector of the country. Hence, CCI should investigate this matter while keeping in view the monopoly nature of coal supply companies and larger implications for power sector as a whole. Thus, the matter involves larger issue of public interest beyond the concerns of MSEDCL consumers alone.

6. As has been widely reported in the media, monopoly coal supplier companies have been reluctant to enter into legally binding Fuel Supply Agreement (FSAs) with power generators except on highly one-sided terms. Such reluctance on part of coal suppliers to sign FSAs creates uncertainty about supply availability as well as generation cost. Further, the skewed nature of proposed FSA terms and conditions, makes it difficult for the generators to hold the supplier (or the intermediaries such as washeries) accountable for either coal quality or quantity. Hence in such a situation even if FSA is signed, electricity consumers may still have to subsidize the cost of inefficiencies arising out of either:

- a. Poor quality of coal or
- b. Inadequate supply

Such predicament defeats the purpose of signing a contractual agreement which should address these primary concerns. Hence CCI should investigate into the reasons for this persistent reluctance on part of coal companies to enter into equitable and legally binding contracts, from the point of view of abuse of dominant position under section 4 of the Competition Act 2002.

7. In case coal companies do not supply coal as per agreed quantity (usually 85% of normative availability of the generation capacity), generators are forced to procure imported coal which is much costlier than the domestic coal (imported coal cost is roughly 2-3 times that of domestic coal). Moreover, the boilers in Indian power generating companies are often not designed to handle large quantities of the low ash and high calorific coal that is available for import. Naturally such blending increases the overall cost of generation and burdens the electricity consumer. Presently, increase in cost of generation on account of imports arising from inability of the coal companies to supply coal as per agreed quality or quantity are either being passed-through to electricity consumers or generators are expected to absorb them. In either case, coal companies are not held accountable for non-performance of their contractual commitment. Therefore, any increase in costs arising out of monopolistic practice of refusing contractual accountability for either coal quality or quantity, should be strictly prevented and CCI should issue an appropriate order in this regard to Coal India Ltd.
8. Another major concern for the power sector is the stagnant domestic coal production. There have been quite a few government studies and reports (e.g. The Expert Committee on Road Map for Coal Sector Reforms and Committee on Allocation of Natural Resources) which have identified issues in the present sector structure and recommended steps for enhancing governance and operational performance. However, there seems to be no action on this front. Considering that coal mining and production is a monopoly business, price of which has been deregulated, it becomes important to understand the reasons behind the persistent shortage in spite of official data suggesting that the country is rich in its coal reserves. Considering the monopoly nature of coal sector, CCI should investigate the reasons behind the present shortage and lack of initiative for implementation of suggested and approved policy and operational reforms.
9. Further, even if best efforts are made to enhance coal production, it will certainly take at least 4-5 years before the benefits are realized, since that is the normal gestation time for

coal mines to begin production. Meanwhile there is a large capacity in power sector today which will be stranded for want of coal. In the light of this shortage situation and considering monopoly structure of domestic coal market, the CCI should notify guidelines based on rational criteria and transparent process for prioritizing allocation of coal through signing of FSAs. Examples of such criteria could be, power projects which have signed long terms power purchase agreements with distribution companies and which are in advanced stage of commissioning should be considered on priority; coal companies can sell coal through e-auctions only after meeting their FSA commitment, etc.

10. In January 2012, the Government of India announced its decision<sup>4</sup> to move to Gross Calorific Value (GCV) based pricing, which is the international norm. This mechanism can be useful for both supplier and buyers. Supplier can get higher price for coal, as bands in GCV based pricing are much narrower than the prevalent useful heat content/value based system. For the buyer, it helps ascertain both coal quality and quantity at the receiving end, thereby significantly improving accountability of the supplier. However, though more than six months have passed since the announcement has been made, the mechanism has not actually been implemented by CIL. The Commission should investigate why this is the case as it can potentially address many of the present governance and accountability related concerns.
11. Therefore, considering the issues raised above, our main prayers to the commission are as follows:
  - a. Allow Prayas (Energy Group) to be an intervener under section 25 of the Competition Commission of India (General) Regulations, 2009 (No. 2 of 2009) and consider this letter as an application for the same.
  - b. Share all the relevant information as per section 25 (4) of the Competition Commission of India (General) Regulations, 2009 (No. 2 of 2009) which states: *“(a) on an application made by a party, Secretary shall furnish to the person or enterprise permitted to participate in the proceedings, copies of such documents previously filed in the matter by other parties as may be decided by the Commission within ten days of the order...”*.
  - c. In light of the monopoly structure of coal sector, investigate the following issues:
    - i. Shortage of domestic coal and stagnation in production of Coal India Ltd
    - ii. Non-implementation of Gross Calorific Value based pricing mechanism, in spite of its obvious benefits for both buyer and seller.
  - d. Review the latest proposed draft Fuel Supply Agreement (FSA) by Coal India Ltd, to analyze whether it sufficiently addresses buyer’s concerns regarding ensuring accountability of the supplier in terms of agreed quality and quantity of coal supply and under section 27(d) of the competition act, direct Coal India Ltd to amend the FSA structure as may be necessary.
  - e. In order to prevent arbitrary decisions and abuse of monopoly powers under shortage situation, suggest guidelines for identifying projects eligible for signing of the modified Fuel Supply Agreement based on certain objective criteria such as; giving priority to projects having long term power purchase agreement with distribution companies and which are in advanced stage of commissioning, etc.
  - f. Direct Coal India Ltd and all its subsidiaries to enter into Fuel Supply Agreements with all such identified projects in a time bound manner.

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<sup>4</sup> <http://coal.nic.in/%5Cpolicy%5Cpricing.pdf>

- g. Issue any other order or directive as may be necessary to address the concerns raised through this submission.
- h. Condone any delay or error in this submission on account of lack of procedural compliance, if any. Allow us to make further submissions in this matter by participating in subsequent proceedings related to this case.
- i. Not to reject the intervention application without giving the intervener a hearing.

Address for serving notice

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We would once again request the commission to take this submission on record and allow us to be an intervener in this matter.

Thanking you,

Yours sincerely

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