

NCU MOOT PROPOSITION

PART A

“LA LA LAND’S” ENERGY SCENARIO

The Democratic Republic of “La La Land”, commonly referred as L3, is the third largest consumer of energy in the world with an 8% of global energy consumption share. L3 is a constitutional republic having quasi-federal structure and a union of 28 states. Since 2000 the energy consumption of L3 has doubled projecting an energy demand growth of 6% per annum. With nearly 304 million people without access to electricity and about 500 million people, still dependent on solid bio-mass for cooking, La La Land strives to achieve a double-digit growth rate in its national income through privatisation of energy sector. Currently, L3’s 80 percent of energy requirement is met through fossil fuels, primarily coal, which makes it one of biggest carbon emitters in the world (Figure 1). Being a developing country, L3 advocated that only industrialised countries should give commitment under Paris Agreement, United Nations Frame Convention on Climate Change (UNFCCC).

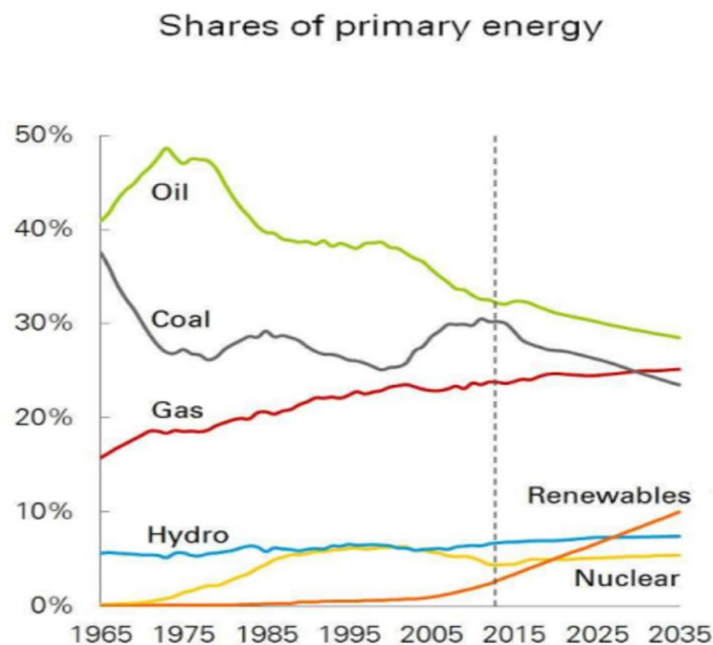


Figure 1

Presently, L3’s energy policy aims to reduce its dependency on fossil fuels, increase in-house gas production, and empower vulnerable communities through sustainable localised energy projects. During the 2017 financial year, L3 spent 130 billion dollars on annual Oil and Gas imports (Figure 2) leading to a significant cut in its various poverty alleviation programs.

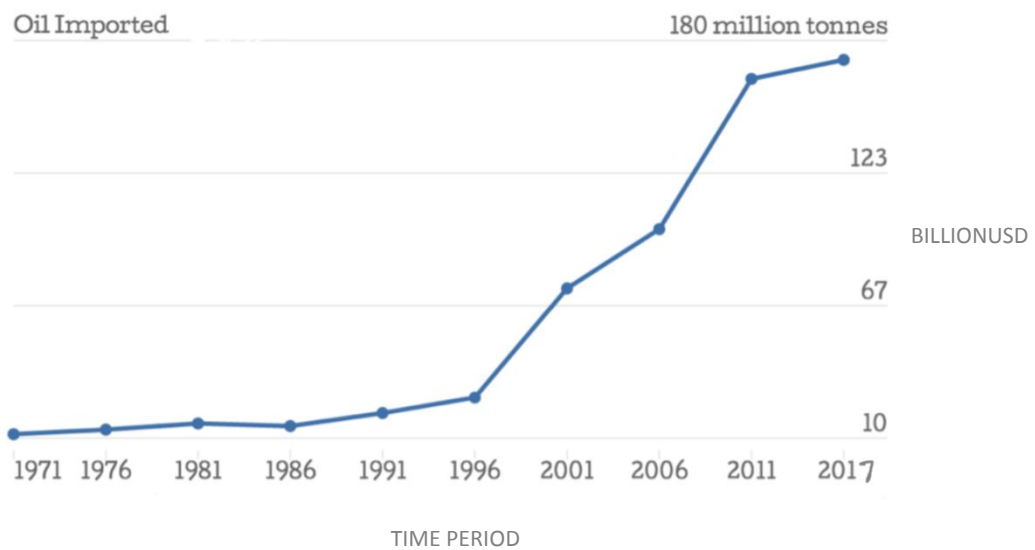


Figure 2

PART B

THE ALLOCATION OF “MOONLIGHT” HYDROCARBON PROJECT

In May 2010 the Directorate General of Hydrocarbon (DGH) operating under L3’s Ministry of Petroleum and Natural Gas expressed its interest to explore unconventional gas through hydraulic fracturing process and finalised 44 contract areas including 28 on-land fields and 16 offshores. In May 2011, the DGH opened competitive bidding for getting ‘exploration and production’ licenses for these contract areas. The bidding process was then finalised in February 2012 under its Hydrocarbon Exploration Licensing Policy (HELP), that replaced L3’s previously existing New Exploration Licensing Policy (NELP). Among the 28 on-land fields, 2 contract areas were located in the “Moonlight” district of State of “Argo”- one explore unconventional gas through hydraulic fracturing process and finalised 44 contract areas including 28 on-land fields and 16 off-shores of the eastern states of the union of “La La Land.” The site of Moonlight project was 10 square kilometer and have a potential to produce 20,000 barrels of oil per day generating worth one-million USD per day. On May 8, 2012, Government of L3 officially awarded the Moonlight project to an Argo based company “Stranger Things Private Limited” and then signed a contract for the Discovered Small Fields (DSF) Bid 2012 for extracting hydrocarbons at Moonlight site. While signing the contract at a national event, the then petroleum minister of L3 released an official statement:

“It is well recognised that despite liberalising its Exploration and Petroleum sector almost two decades ago, L3 has not completely unlocked its hydrocarbon potential. This is evident from the fact that out of the total oil and gas consumption of 226.3 Million Metric Tonnes, only 70.4 Million Metric Tonnes is produced domestically. However, projects like these will help the country to save substantive revenue, up to 70 billion dollars per year, over the past two decades. This revenue can be utilised for community welfare schemes in the project areas.”

PART C

THE OPERATIONS OF “STRANGER THINGS”

After getting various clearances, including environment clearance, the Stranger Things Private Limited (project proponent) began finalising its production phase operations and decided to commercially produce “Shale Gas” through a traditional fracking process in the region. The company decided to begin multi-well pad drilling in the area that required 7 million gallons of water per well. Considering the potential impact of the proposed fracking process, a state level Non-Governmental Organisation “Black Mirror” began campaigning against the proposed fracking process. On November 18, 2015 the Black Mirror organised a massive protest releasing its official protest document. The protest was widely attended by the local farmers. The protest document stated

“The proposed shale gas project will not only drench the ground-water from the land of farmers but will also result in various seismic activities in the region leading to a lot of crisis. Further, the infrastructural and intellectual capacity of the union government is not up to the standard as required to implement a fracking process. This project will poison the land and the central government will make us all a stooge of ‘Stranger Things.’”

On February 8, 2016, the Chief Minister of Argo had a meeting with the Black Mirror’s President. Convinced with the concerns of the NGO and considering the widespread protest, the state government asked the NGO to formulate a draft bill to regulate shale gas fracking in the region.

PART D

DRAFT BILL BY BLACK MIRROR

On May 8, 2016, Black Mirror submitted a draft bill and related comments to the Chief Minister's office. The draft bill was titled as 'Argo Regulation and Development of Pre-Production phase of Fracking process, 2016' and primarily proposed to legislate as following

- 1.1.**Establishing a state-level water committee:** Every project related to shale gas fracking or any hydraulic fracturing must take consent from the committee established under this Act. The consent will be additional to any such consent/clearance required under any central legislation.

- 1.2.**Defining 'Aquifers':** There shall be a difference of 600 meters between the drinking water sources/ aquifers and shale gas wells in order to preserve natural resources from contamination. Further, since aquifers were not defined under any of the central legislation, the bill defined it as "*a porous deposit of rock, such as a sandstone, containing water that can be used to supply wells.*"

- 1.3.**Centre-State Relationship Clarification:** Since Shale Gas, before production is just a "rock" it is well within the domain of state and accordingly the state can regulate these rocks. It is only after the hydraulic fracture the water meets the rock tapping the gas. Therefore, this bill does not regulate the 'hydrocarbon' sector. It only attempts to preserve land and water.

- 1.4.**Special Status of Argo under 371 A of L3's Constitution:** The draft bill further clarifies that going forward; it will regulate the bidding process of such hydrocarbon processes as the state has a special status under 'La La Land's Constitution.' Such power will only be used to protect the local communities' interest.

- 1.5.**Waste Water/ 'Flow-Back Water':** Since while doing hydraulic fracture, around 2-3% shale fluid (prepared by mixing a million gallons of water and chemicals) flows back, the state needs specific laws addressing "flow-back water." The bill proposed to define flow back water as "*any mixture of water with chemicals used for the purpose of Hydraulic fracturing.*" Further, the bill stated that such shale fluid cannot fit in the definition of

‘waste water’ due to its chemical and physical property. The draft bill further stated that usually ‘*shale gas fluid*’ are protected for commercial confidentiality but the composition and its perspective affects should be made public.

1.6.Private Mineral Ownership: Lastly, the draft bill proposes to incorporate the concept of ‘*Rule of Capture*’ with respect to mineral rights of the private individuals.

PART E
THE ARGO FRACKING ACT, 2017

The bill was then introduced in the state legislature and was passed, subsequently was effectuated on March 8, 2017. The Act was titled as “*The Argo (Regulation and Development of Pre-Production phase of Shale Gas) Fracking Act, 2017*” and was commonly referred as ‘The Argo Fracking Act, 2017’. The opposition party accused that since the ruling party was eyeing the 2018 State election, it passed the bill attacking the constitutional ethos of the country. One of the leaders of the opposition party, Mr. Narangi ji, during the press interaction said

“... to gain votes of the protesters and farmers the ruling party have stepped into the shoes of the center by regulating the hydrocarbon sector of the State. Such bill is completely against the spirit of the L3’s Constitution. ”

In another press release, one of the leaders from the ruling party issued a statement

“The State of Argo has been given a special status under the La La Land Constitution and hence we have full right to protect the land, water, air, and the living resources of the state.”

Sensing the complexity of the matter, the ‘Stranger Things Private Limited’ and the ‘Union of La La Land’ both filed separate cases in the High Court of Argo against the State of Argo stating that the ‘The Argo Fracking Act, 2017’ is unconstitutional. The High Court of Argo combined both the case into a single matter and commenced the hearing. The ‘Stranger Things’ argued that the Environmental Impact Assessment sector specific manual sufficiently and comprehensively deals with all the issues addressed in the ‘The Argo Fracking Act, 2017.’ Further, the Stranger Things stated that the 2017 Act not only threaten the quasi-federal structure of the nation but also breaches the company’s fundamental rights. On November 17, 2017. The High Court of Argo, by a ratio of 3:2, gave the decision in favor of Stranger Things Private Limited on November 17, 2017. The State of Argo appealed against the decision of the High Court in the Supreme Court of La La Land.

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Pari Materia:

- 1. Laws of Union of La La Land in pari materia with Union of India*
- 2. HELP 2012 and DSC 2012 in pari materia with Indian HELP 2017, and DSC 2017.*
- 3. Laws of State of Argo in pari materia with State of Nagaland in Union of India.*