

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:-

Thiru S.Akshayakumar

.... Chairman

and

Thiru.G.Rajagopal

.... Member

M.A.P.No.2 of 2007

The Chairman
Tamil Nadu Electricity Board
144, Anna Salai, Chennai

... Petitioner
(Thiru M.Gopinathan
Standing Counsel for TANGEDCO

Vs.

Samalpatti Power Company Pvt. Ltd.
14, 1Floor, Third Cross Road
Raja Annamalaipuram
Chennai

...Respondent
(Thiru Rahul Balaji
Advocate for the Respondent

and

M.A.P.No.1 of 2012

M/s.Samalpatti Power Corporation Pvt. Ltd.
(formerly Samalpatti Power Company)
14, I Floor, Third Cross Road
Raja Annamalaipuram
Chennai – 28.

... Petitioner
Thiru Rahul Balaji
Advocate for the Petitioner

Vs.

The Chairman
Tamil Nadu Electricity Board
144, Anna Salai
Chennai.

.... Respondent
Thiru M.Gopinathan
Standing Counsel for the Respondent

Dates of hearing: 21-06-2012, 21-11-2012, 13-02-2013, 27-02-2014
19-09-2014, 22-09-2014, 19-01-2015, 27-04-2015,
28-10-2015, 13-11-2015 and 26-11-2015

Date of Order: 31-01-2017

In the year 1991, the Electricity (Supply) Act, 1948 (since repealed) has been amended and inter alia section 43-A was inserted in the said Act vide Central Act 50 of 1991. The said section provided for the entry of private generating companies into the Power Sector and to enter into Power Purchase Agreements with the then existing State Electricity Boards. M/s.Samalpatti Power Company Pvt. Ltd. (SPCL) (formerly Samalpatti Power Company) ventured into establishment of 100 MW Diesel Generating Power Plant at Burgur Industrial Complex, Parandapalli Village, Pochampalli Taluk, Dharmapuri District (now Krishnagiri District) through the Memorandum of Understanding (MoU) route. The capacity of the project was subsequently enhanced to 105.66 MW. The Power Purchase Agreement (PPA) has also been initiated between TNEB and SPCL. Thereafter, the TNEB approached the Central Electricity Authority (CEA) for Techno Economic Clearance (TEC) for the said private power project. The CEA granted the TEC on 10-02-1998 subject to certain terms and conditions. In the meanwhile, the Electricity Act, 2003 came into force and the Electricity Regulatory Commissions constituted thereunder were vested with the power to fix the capital cost of the power projects. Therefore, the TNEB filed M.A.P. No.2 of 2007 before the Tamil Nadu Electricity Regulatory Commission (Commission) with a prayer to fix the capital cost for SPCL at Rs.417.89 Crores under section 86 (1) of the Electricity Act, 2003. While so, the SPCL filed W.P.No.8794 of 2008 before the Madras High Court challenging the provisions of section 86(1) (f) of the Electricity Act, 2003 as ultravires the Constitution and another

W.P.No.16358 of 2008 challenging the jurisdiction of the Commission for fixing capital cost of the project. However, the SPCL withdrew the said two Writ Petitions on 04-04-2012 thereby submitting itself to the jurisdiction of the Commission and thereafter has filed M.A.P. No.1 of 2012 before the Commission with the prayers *interalia* to fix the capital cost of its 105.66 MW (7 x 15.094 MW) power project at US \$ 56.1083 Million + Rs.174.55 crores which works out to Rs.424.84 crores at the foreign exchange rate of 1US \$ = Rs.44.607. Since M.A.P.No.2 of 2007 filed by TNEB and M.A.P. No.1 of 2007 filed by SPCL relate to the same issue namely, fixing of capital cost of the SPCL power project, the Commission clubbed both the M.A.Ps. as a batch and heard the said M.A.Ps simultaneously. The Commission heard the matter on 21-06-2012, 21-11-2012, 13-02-2013, 27-02-2014, 19-09-2014, 22-09-2014, 19-01-2015, 27-04-2015, 28-10-2015, 13-11-2015 and 26-11-2015. The Commission upon perusal of the Petition and after hearing the submissions of the Petitioner hereby makes the following:

ORDER

1. Prayers in the Petitions in M.A.P.No.2 of 2007 and M.A.P.No.1 of 2012:-

1.1. Prayer of the Petitioner in M.A.P. No.2 of 2007:-

The prayer of the Petitioner TNEB in M.A.P.No.2 of 2007 is to fix the capital cost of the Private Power Project of the Respondent Company M/s.Samalpatti Power Company Pvt. Ltd., in Parandapalli Village, Pochampalli Taluk, Krishnagiri District, Tamil Nadu and determine the tariff as per section 86(1) of the Electricity Act, 2003 and the Power Purchase Agreement (PPA) entered into between the Petitioner Board and the Respondent and pass such suitable further or other orders as this Commission may deem fit and proper and thus render justice.

1.2. Prayer of the Petitioner, SPCL in M.A.P.No.1 of 2012:-

The prayer of the Petitioner SPCL in M.A.P.No.1 of 2012 is to fix the capital cost of the 7 X 15.094 MW (105.66 MW) Power Project of the Petitioner company, M/s.Samalpatti Power Company Private Limited in Parandappalli Village, Pochampalli Taluk, Krishnagiri District, Tamil Nadu at US\$ 56.1083 Million + Rs.174.55 Crores which works out to Rs.424.84 Crores at the foreign exchange rate of 1 US \$ = Rs.44.607 and pass any further order(s) as this Commission may deem fit and proper in the interest of the project.

2. Contentions of the Petitioner in M.A.P.No.2 of 2007:-

2.1. On 15-10-1991, section 43-A was introduced to Electricity (Supply) Act, 1948. Under this section, for the first time, a private power generating company was permitted to enter into a Power Purchase Agreement (PPA) with the State Electricity Boards like TNEB. Sub-section (2) of the said section 43-A (which was omitted by Electricity Regulatory Commissions Act, 1998) clearly provided that the tariff for such sale of electricity by a generating company like the SPCL, which sells the energy so generated by it shall be determined in accordance with the norms regarding the operation and Plant Load Factor as may be laid down by the Central Electricity Authority and in accordance with the rates of depreciation and reasonable return and such other factors as may be determined from time to time by the Central Government by Notification in the Official Gazette.

2.2. After the introduction of section 43-A to the Electricity (Supply) Act, 1948, the Government of India issued a Notification on 30-03-1992 setting out various norms

/factors, based on which, the tariff for the sale of electricity to the State Electricity Boards, by such Power Generating Company has to be determined.

2.3. After the introduction of section 43-A to the Electricity (Supply) Act, 1948 and the Notification, the TNEB had mooted out proposals to enter into Memorandum of Understanding (MOU) with various Private Power generating companies for the purpose of purchasing electricity, from them.

2.4. M/s.Samalpatti Power Company Pvt. Ltd. (SPCL) the Respondent herein which was in the process of setting up a power generating station, approached the TNEB for the purpose of selling its power to the Petitioner Board and on 18-02-1995 MOU was signed. In fact, at that stage, the Respondent SPCL was proposing to establish a 100.0 MW Diesel Generating Power Plant at Bargur Industrial Complex, Parandapalli Village, Pochampalli Taluk, Krishnagiri Dist-635 206 in the State of Tamil Nadu.

2.5. After the said PPA was initialed between the parties, proposals were sent to Government of Tamil Nadu (GOTN), and the GOTN had in principle permitted the setting up of the project by SPCL, subject to certain terms and conditions and subject to the issue of Techno Economic Clearance (TEC) by the CEA. Based on the permission by the GOTN, the SPCL appears to have placed its request before the CEA for giving a TEC for the said project. The CEA, after going through the norms and the permission given by the GOTN, subject to the conditions mentioned therein was pleased to accord a TEC dated 10.02.1998. The terms of the TEC are extracted hereunder:

“The above proposal was considered by CEA on 10.02.1998 and accorded Techno-Economic Clearance subject to the following:

The completed capital cost of the scheme shall not exceed Rs.391.863 cr (US\$ 61.222 Mn at Foreign exchange rate of Rs.39.0/US \$ & Rs.153.098 Cr.). The liquidated damages received from the EPC contractor shall be used for repayment of loan amount and the capital cost shall also be reduced accordingly.

Clearance of Tamil Nadu Environment Control Committee shall be obtained in favour of M/s.Samalpatti Power Co Pvt. Ltd.

The Techno-economic clearance accorded by CEA is subject to review after financial closure and furnishing of firm financial package within a period of six months from the date of issue of this letter.”

On number of occasions, discussions between the parties took place and on 22.05.1998, a Power Purchase Agreement (hereinafter called as the PPA) for 105.66 MW was entered into between the parties setting out the various terms for the establishment, generation and sale of energy to the Petitioner Board.

2.6. On a perusal of the said tentative techno economic clearance, it could be seen that the project so proposed by SPCL was approved subject to the capping that the completed cost of the scheme shall not exceed Rs.390.822 Crores. From the FFP approved by the CEA on 12.08.1999, it is clear that it is subject to review, after financial closure, and furnishing of a firm financial package (FFP) by the Respondent within a period of 6 months from the date of issue of the letter. After obtaining the said TEC, SPCL vide their letter dated 10.05.1999 submitted Firm Financial Package of Rs.390.82 Cr. (US\$ 55.978 Mn + Rs.172.508 Cr @ an exchange rate of US\$=39) for approval of CEA. SPCL started to tie-up all other requirements as contemplated under the initialed PPA. The PPA entered into between the parties, wherein the

capital cost ceiling of the project was mentioned as Rs.391.864 cr., (US\$ 61.222 Mn at an Exchange rate of 1 US\$=Rs.39.00 + Rs.153.098 Cr) was approved by GOTN and CEA.

2.7. On a perusal of the PPA, it could be seen that the capital cost of the project has been agreed by the parties as Rs.391.8638 Cr. as provisional capital cost for the purpose of tariff calculation, pending finalisation of the actual completed project cost by the CEA. The capital cost mentioned in Appendix D to PPA further provided that for the purpose of finalizing of the capital cost, SPCL shall permit access to papers, documents and records as may be considered necessary by the TNEB and the CEA, at the time of approval of the final cost. In other words, for the purpose of determining the actual completed capital cost than what was tentatively agreed to, for the purpose of tariff calculation, SPCL had agreed to furnish all the documentary proof of actual expenditure for arriving at the final completed capital cost incurred by them.

2.8. In the meanwhile, Electricity Regulatory Commission Act, 1998 was promulgated and the said Act was deemed to have come into force on 25.04.1998. The Act was mainly intended for establishment of Electricity Regulatory Commissions for rationalization of electricity tariff, transparent policies regarding subsidies, promotion of efficient and environmental benign policies and for matters connected therewith or incidental thereto. The Act further prescribed the powers and functions of the Regulatory Commissions, for the purpose of achieving the objectives.

2.9. The Government of India, Ministry of Power (MoP) published two Notifications dated 22.03.1999 and 11-09-2000, by virtue of the powers conferred to it, under section 51 of the Electricity Regulatory Commission Act, 1998, which read as follows:

NOTIFICATION / 22-03-1999

"S.O.1194. In exercise of the powers conferred by section 51 of the Electricity Regulatory Commissions Act, 1998 (14 of 1998), the Central Government hereby appoints in respect of the generating companies referred to in clause (a) or clause (b) of section 13 of the said Act and the States of Orissa and Haryana, the 15th day of May, 1999 as the date on which sub-section (2) of section 43A of the Electricity (Supply) Act, 1948 (54 of 1948) shall be omitted."

NOTIFICATION / 11-09-2000

"S.O.825(E) - In partial modification of the Government of India in the Ministry of Power's Notification Number S.O.1194, dated the 22nd March, 1999, the date of omission of sub-section (2) of section 43 A of the Electricity (Supply) Act, 1948 (54 of 1948) in respect of the generating companies referred to in clause (a) or clause (b) of section 13 of the Electricity Regulatory Commissions Act, 1998 (14 of 1998) may be read as 24th day of July, 1998."

2.10. On a perusal of the above notifications issued by the Government of India, it is very clear that sub-section (2) of section 43-A of the Electricity (Supply) Act, 1948 has been omitted, which in other words means that the power to fix the tariff has been vested with the Electricity Regulatory Commissions under section 22 of the said Act. The notification also states that the date of omission of sub-section (2) of section 43-A of the Electricity (Supply) Act, 1948 in respect of generating companies referred to in clause (a) or (b) of section 13 of the Electricity Regulatory Commission Act, 1998 (14 of 1998) may be read as 24-07-1998.

2.11. The execution of the project was commenced by SPCL and ultimately the generator was synchronized with the Grid and after completion of test to prove its rating SPCL declared its commercial operation of the power plant with effect from 01.03.2001. Under the Electricity Act, 2003 which came into force on 10-06-2003, the power which was hitherto exercised by the CEA, namely, fixation of the capital cost, (which in turn requires determination of the tariff at which the electricity has to be purchased by the State Electricity Boards from various power generating companies) came to be vested with the Commission.

2.12. The Electricity Act, 2003 came into force on 10-06-2003. Sections 61,62 and 86 of the Electricity Act, 2003 clearly lay down the functions of the Commission, and on a perusal of the same, it is clear that the power of fixing the capital cost which element goes into determination of the tariff based on such capital cost now vests only with the Commission. The Commission was set up by the Government of Tamil Nadu in the year 1999, and it became fully functional on and from 17.06.2002. Further, the Commission in exercise of its powers under section 61 of the Electricity Act, 2003 read with section 181 thereof, and all other powers enabling in that behalf had on 24-06-2005 notified the Tamil Nadu Electricity Regulatory Commission (Terms and Conditions for determination of Tariff) Regulations, 2005. The said tariff regulations prescribe, under Chapter II, the power to determine tariff and other various norms therefor. Chapter III of the said Regulations provides for the fixation of the capital cost and the various norms that are crucial for arriving at the capital cost. Besides this, the said Regulations also lay down various other provisions for effectively complying with the provisions of the Electricity Act, 2003.

2.13. It could be seen from the PPA dated 22.05.1998 that the capital cost ceiling was subject to the determination of the actual completed capital cost by the CEA. In pursuance to the arrangements entered into between the TNEB and SPCL, namely, the terms and conditions of the PPA, the Respondent SPCL on 26-05-2001 submitted all the necessary records to the CEA for fixing the final capital cost of the project and requested the CEA to fix the capital cost at Rs.424.863 Crores (US\$ 56.109 Mn. at an Exchange rate of Rs.44.61 + Rs.174.555 Cr.). This letter was also addressed by SPCL to the Secretary, Energy Department, GOTN with a request to approve the same.

2.14. Even after coming into force of the Electricity Act, 2003 on 10-06-2003 and even as late as on 03.01.2006, both the parties have been having correspondence and discussions with the CEA, in order to finalize the completed capital cost of the project. On 03.01.2006 both the parties had a meeting with CEA, and submitted documents before the CEA in respect of the completed cost of the project. The IPP completed their financial closure on 24.12.1999 and submitted the Final FFP to CEA for an amount Rs.391.86 Cr. The FFP was approved by CEA in August 1999. The completed capital cost submitted by the Company was Rs.424.863 Cr. The proposed completed capital cost was discussed on 13.01.2005 in New Delhi in the Standing Committee meeting convened by CEA. The Standing Committee Meeting was held on 22.11.2005 and the subject was further discussed with concerned officials of CEA on 23-11-2005.

2.15. Pending finalization of the capital cost by the CEA, TNEB was making monthly energy bill payments provisionally based on the capital cost ceiling of

Rs.431.38 crores (agreed between the parties) from 01-03-2001 onwards. The Petitioner Board is making monthly energy bill payments provisionally from 26.09.2005 onwards based on the actual capital cost of Rs.424.84 crores, submitted by SPCL to CEA.

2.16. Articles 1 and 16.3 of the PPA entered into between the parties on 22.05.1998 define “change in law” according to which the Commission can fix the capital cost notwithstanding any fixation of cost hitherto done by the CEA, which is not acceptable.

2.17. The computation of capital cost was done by CEA considering the following factors / definitions / Notification:

- (i) Capital Cost as defined in the PPA. (Appendix D)
- (ii) Change in Law as defined in the PPA (Article 1 & Article 16)
- (iii) Engineering, Procurement and Construction (EPC) Contract.
- (iv) GOI, MoP Notification dated 30.03.1992 (especially para 1.2 and para. 1.3).

(a) The calculation for arriving the capital cost:-

Sl. No.	Detailed A/C Head	Arrived capital cost by TNEB				Rs.in Cr.
		US \$		INR		
		US \$ Mn	Ex rate	Eq.Rs.	Rs.in Cr.	
1	Land and Preliminary Exp.				0.901	0.901
	Total - A	0.000		0.000	0.901	0.901
2	EPC Cost					
2.1.2	Diesel Generator Island	41.827	44.6	186.588	1.351	187.939
2.1.3.	BOF Mechanical	9.333	44.6	41.634	14.419	56.053
2.1.4.	BOP Electrical & C&I	3.165	44.6	14.119	5.614	19733
2.1.5.	Switchyard			0.000	7.972	7.972

2.1.7.	Fuel Storage Handling System			0.000	4.812	4.812
2.1.8.	Initial Spares	1.654	44.6	7.378	0.000	7.378
2.1.9.	Civil Works			0.000	14.892	14.892
2.1.10	Erection Testing and Commissioning			0.000	9.147	9.147
2.1.15	Local transportation			0.000	4.750	4.750
2.1.16	Consultancy Engg.					
	Adj for additional exp under component \$	0.0010	44.6	-0.004		-0.004
	Total B	55.978	44.609	249.715	62.957	312.672
2.2.1	Custom Duty				57.211	57.211
2.2.2	Other taxes and duties					
	Total-C	0.000		0.000	57.211	57.211
3	Non EPC cost					0.000
3.1.1.	External Water System			0.000	0.823	0.823
3.1.8.	Establishment & Const. Supervision			0.000	1.325	1.325
3.1.9.	Township & Colony			0.000	4.600	4.600
3.1.11	Construction insurance			0.000	0.000	0.000
3.1.12.	Operators training			0.000	0.100	0.100
3.1.13	Start-up cost			0.000	0.713	0.713
3.2.	Taxes and Duties					
	Total – D	0.000		0.000	7.561	7.561
4	Overheads					
4.1.	Development expenses				1.892	1.892
4.2.	Legal fee etc.				0.586	0.586
4.5.	Consultancy & Engg.				1.097	1.097
4.6.	Pre-Operative expenses including O & M Mobilisation				4.000	4.000
	Total – E	0.000		0.000	7.575	7.575

	Hard cost = (A+B+C+D+E)	55.978	44.609	249.715	136.205	385.920
	IDC				27.438	27.438
	FC				- 0.366	-0.366
					5.806	5.806
					-0.077	-0.077
	Soft cost F=IDC+FC	0.000	0.000	0.000	32.801	32.801
	Total Project cost =A+B+C+D+E+F	55.978	44.609	249.715		418.720

(b) Details of disallowance of capital cost:

Capital cost of Samalpatti Power Co. Pvt. Ltd
Details of Disallowed expenses.

S. No.	Heading and Sub- Heading	Amount Rs. in Cr.	Remarks
1	Land	0.036	The freehold Land cost of Rs.0.036 crore is disallowed as the free hold land cost is not related to project land (i.e. the land is located in Pune in Maharashtra whereas the project is in Tamil Nadu.
2	Establishment Development Expenditure	1.159	M/ s SIV industries Ltd (Parent promoter) has claimed establishment & Development expenditure of Rs.2,46,62,815/- for the period from 18.02.95 (i.e. date of MOU) to 15.12.99. Further, while approving the project by the Lenders, they specifically mentioned that the preliminary expenses and pre-operative expenses are alone taken for arriving at capital cost of the Project. The salary and wages for the above period amounting to Rs.1.059 Crore is allowed and 20% of salary and wages amounting out to Rs.0.2118 (i.e 1.059*20/100) in lieu of overheads is also allowed. The balance amount of Rs.1.1592 Cr. said to have been paid towards Overheads and perquisites is disallowed because the same could not be justified for reasonableness and payment was not made directly by the Company.
3	Construction Insurance	1.135	The Erection All Risk (EAR) insurance cover of Rs 0.90 crore was allowed in EPC contract as postulated in clause SC.07. The other Policy for Advance Loss of Profit of

			Rs.55,85,385/- and Marine Delay Start Up of Rs.56,69,790/- and Fuel Stock Insurance of Rs.90,172 amounts to Rs.1.135 crore is disallowed as the above insurance policy was for the Company's exclusive comfort.
4	Operator training	0.067	As per Appendix-11 of Schedule-E- "Off Shore Supply Contract" the cost of Training Expenditure shall be borne by the contractor. The travelling and accommodation for the above training incurred was restricted to the level of FFP. Therefore, the cost of operator training for Rs.0.067 crore (0.167-0.100) is disallowed.
5	O & M Mobilisation Fee	1.149	O&M mobilisation fee has not been shown in the FFP, and the fee for mobilisation of O&M contractor comes under the purview of O&M contract. Hence, the entire cost of mobilisation fee of Rs.1.30 crore was proposed to be disallowed. This has already been decided in the Standing committee Meeting of CEA. The Company in their letter dated 28.11.2005 represented that the O&M Mobilisation expenditure are part of pre-operational expenses and should have been grouped under pre-operative expenses. Hence, the pre-operative expenses and O&M Mobilisation expenses are grouped together and admitted to the FFP limit of Rs.4.0 Cr. The balance of Rs.0.851 Cr. is disallowed.
6	Development Expenses	1.327	<p>M/s.SIV Industries Ltd., was merged with M/s.Shapoorji & Pallonji Company Ltd., and Nomenclature modified as M/s.Samalpatti Power Company (SPC). Ltd., with effect from 22.12.1995. Subsequently M/s. SPC Ltd., was formed as M/s.SPC Pvt Ltd.</p> <p>Power Purchase Agreement (PPA) was signed with TNEB by M/s.SIV Industries on 22.01.1998. MOU was signed by M/s.SIV Industries Ltd. on 18.02.1995. FFP approved & achieved on 08.12.1999 & 24.12.1999 respectively.</p> <p>Taking into consideration the above, the company have accepted four debit notes dated 31.03.1999, 12.10.1999, 21.12.1999 & 07.01.2000 raised by M/s. Shapoorji Pallonji Ltd., in connection with development</p>

			<p>construction and supervision expenditure amounting to Rs.2.5 crs. and the same was appropriated in TRA Alcon 05.02.00. M/s. Shapoorji was one of shareholders and also they claimed consultancy charges for the service rendered to SPC. Hence, the admittance of salary, perquisites, overheads, depreciation and other professional charges relating to the period from 12/94 to 03.01.2000 is not justifiable and the amount of Rs.2.5 crs was proposed to be disallowed from capital cost. Further M/s. Shapoorji Pallonji Ltd has claimed the salary and other development expenditure for the period 12/94 to 03/95 amounting to Rs.7,01,407/- i.e. prior to MOU and an amount of Rs.25,00,000/- was also paid to them as special award for achieving FFP. These amounts could not be justified for inclusion in the capital cost. Further, while approving loan document by the Lenders, they have specifically mentioned that the Preliminary and Pre-operative expenses are alone taken consideration for arriving at for Capital Cost. However, salary and wages (Rs.0.6751Cr.), professional charges (Rs.0.2775 Cr.) and 30% of the salary and wages and professional charges (Rs.0.271Crs.) totally amounting to Rs.1.1736 Crs. towards overheads are allowed. The balance of Rs.1.327 Crs. is disallowed because the same could not be justified for reasonableness. Here, 30% of the salary etc. is taken as overheads as the expenditure was incurred at Mumbai.</p>
7	Contingency i.e. 10% cost escalation in Township	0.340	Rs.0.340 Crs towards 10% cost escalation on civil works of Township Development has been claimed as contingency. As decided in the Standing Committee Meeting conducted by CEA, the contingency of Rs.0.340 Cr is disallowed.
8	Excess Dollar expenses in EPC	0.004	The US \$ components for EPC is 55.978 Mn, whereas the SPCL has incurred US\$ 55.979 Mn. The excess dollar expenses of Dollars 0.001 Mn is disallowed. There is no provision to include equivalent Indian rupee under domestic component, because the domestic component also expended fully.

9	Excess Dollar expenses under Consultancy and Engineering and pre-op.	---	The expenditure incurred in US \$ under consultancy and Engineering (0.055 Mn) and under pre-operative expenditure (0.067 Mn) are converted into rupees at base Forex rate and added to the rupee expenses under the concerned head. The total is limited upto FFP level. However, there will be no FERV benefit for the US\$ converted into rupees.
	Disallowance in Hard Cost	5.217	
10	I.D.C.	0.051	The various charges like LD on interest, overdue interest, additional interest on account of delay in creation of security, interest on interest, etc. work out to Rs.0.051 Cr. These are excluded from the capital cost, as the same are not envisaged.
11	Financial Advisory fee	0.252	An amount of Rs.1.729 Cr is claimed towards Financing Advisory Fees. This is limited to Rs.1.4 77 Cr., which is 0.5 % of loan norms of Rs.295.474 Cr. The balance of Rs.0.252 Cr. is disallowed.
12	Legal and Stamping Fee	0.045	The Ceiling prescribed in FFP (Rs.0.375 Crs L.S) is exceeded to the tune of Rs.0.045 Cr. Therefore this is limited to FFP level.
13	Management Fee (Equity rising charges)	0.124	The Company has claimed Rs.0.6 Crs. The eligibility is only Rs.0.476 Crs. as per FFP. The excess claim of Rs.0.124 Cr. over the level of FFP limit, towards Management Fee on equity is disallowed.
14	Soft Cost IDC	0.366	Disallowance of soft cost (IDC) in proportion to arrived hard cost and claimed hard cost.
15	Soft Cost FC	0.077	Disallowance of soft cost (FC) in proportion to arrived hard cost and claimed hard cost
	Disallowance in Soft Cost	0.915	
	Total Disallowance	6.132	

2.18. The TNEB is not making any profit by buying power from the Respondent and selling it to the Consumers. The average cost of power purchased from SPCL during

2002-2003 to 2006-2007 is compared with the average rate of realization being realized by the Board (at the point of Grid) from sale of power to the consumers in the following statement. The cost includes both fixed cost and variable cost for the quantum of power purchased. The rate of realization at the point of Grid is arrived at by dividing the total revenue from sale of power including tariff subsidy, by the total units fed into the Grid.

Statement exhibits the loss incurred by the Board because of transactions with SPCL

Year	Total units purchased MU	Total amount paid Rs.in Cr.	Purchase Cost / Unit Rs.	Board's Realisation by sale Rs. per unit	Loss Rs./ Unit	Total Loss Rs. in Cr.
2002-03	617.94	291.41	4.72	2.15	-2.57	-158.55
2003-04	458.82	240.43	5.24	2.38	-2.86	-131.23
2004-05	355.62	207.22	5.83	2.04	-3.39	-120.45
2005-06	332.51	244.47	7.35	2.56	-4.79	-159.34
2006-07	378.70	279.33	7.38	2.56	-4.82	-182.38
Total / Average	2143.6	1262.86	5.89	2.39		-751.96

The average cost of power purchased from the Company (Rs5.89 per unit) is more than the average realization from TNEB's consumers (Rs.2.39 per unit) as seen above and consequently, the Board has incurred a loss of Rs.751.96 Crores as on 2007.

2.19. The financial burden of the Board is enormous on account of the purchase of power from the Respondent SPCL and this burden has to be passed on to the consumers of Electricity in Tamil Nadu. Hence, it is in public interest to fix the Completed Capital Cost of the project and the tariff payable to the company at a reasonable and affordable level for TNEB and its consumers.

2.20. The CEA vide letter dated 10-10-2006 has stated that, TNEB has recommended a completion cost of US \$ 55.978 mn+Rs.169.009 cr @ Ex rate of Rs.44.61 equivalent to Rs.418.72 Cr. for the project. The CEA has examined the completion cost as recommended by TNEB and a completion cost of US \$ 55.978 Mn+Rs.168.174 Cr. @ ex-rate of Rs.44.61 equivalent to Rs.417.89 Cr. is considered to be reasonable.

3. Contention of the Petitioner / SPCL in M.A.P.No.1 of 2012, Reply to M.A.P.No.2 of 2007 and Rejoinder to the Counter of TANGEDCO dated 21-08-2012:-

3.1. The Petitioner SPCL approached the TNEB for the purpose of establishing a 100 MW Diesel Generating Power Plant and selling the power therefrom to the TNEB resulting in a MoU dated 18.02.1995 being signed between the parties after appropriate approval from the GOTN. SPCL at that stage proposed to establish a 100 MW Diesel Generating Power Plant at Bargur Industrial Complex, Parandapalli Village, Pochampalli Taluk, Krishnagiri Dist-635 206 in the State of Tamil Nadu as per the MoU. The capacity of the Project was enhanced to 105.66 MW which was approved by the Board on 17-09-1997. Approval under section 18-A of the Electricity (Supply) Act, 1948 for the revision in the capacity of the Project was given by GOTN on 21-09-1997. Approval under section 44 of the Electricity (Supply) Act, 1948 for setting up of 105.66 MW DGPP was accorded by the Board on 26-09-1997.

3.2. Based on several rounds of discussions between the SPCL and the Board, a Power Purchase Agreement dated 22.05.1998 for selling and purchasing of electricity from the Company's proposed 105.66 MW DGPP was executed between

the parties setting out the various terms for the establishment, generation and sale of energy to the Respondent TNEB. The capital cost agreed in the PPA was same as approved by CEA in TEC.

3.3. After discussions on the said PPA initialed by the parties, proposals were sent to GOTN. The GOTN in principle permitted the setting up of the Project, subject to certain terms and conditions and the issuance of a TEC by the CEA. Based on the permission given by the GOTN, the SPCL approached the CEA for TEC for the project. The CEA granted TEC for the Project on 10.02.1998, subject to certain terms and conditions stipulated therein.

3.4. As per the TEC accorded by CEA, the completed cost of the Project was not to exceed Rs.391.863 Crores. It was further stipulated in the TEC that-

The above completed cost shall not exceed except on account of-

- (a) Variation in foreign exchange rate in respect of US \$.
- (b) Interest during construction and the financing charges as per actuals but not exceeding the amount to the TEC unless otherwise reviewed by CEA, while according concurrence under section 31 of Electricity (Supply) Act, 1948 after review of the financial package.
- (c) Change in rate of customs duty and additional taxes and duties levied subsequent to issue of techno-economic clearance.
- (d) Change in Indian Law resulting in change in cost.

The TEC inter-alia contains the following provisions:

"The Customs Duty shall be as per actual subject to ceiling of Rs.48.029 Crores at Customs Duty rate of 22% at FE rate of Rs.39/ US\$."

3.5. The EPC cost component of the project cost as per TEC is US \$ 55.9783 million and Rs.62.958 Cr. The dollar (\$) portion of the EPC cost, i.e. 55.9783 million is CIF value of all imported equipment for the project. If the exchange rate of Rs.39 per US dollar (\$) and the Customs Duty @ 22% on the CIF cost (both as per TEC) are considered, the customs duty amount will work out to Rs.48.0294 Cr. Rs.48.029 Crores was the custom duty payable @ 22% at foreign exchange at Rs.39 / USD whereas the actual customs duty paid was Rs.57.211 Crores based on the exchange rate and the rate of customs duty applicable at the time of actual customs clearance. The ceiling of 48.029 Cr. cannot hold good for all circumstances as it takes the exchange rate at Rs.39 / USD as constant. This has to respond accordingly to the variation in the foreign exchange as provided under the TEC.

3.6. The Clearance accorded by the CEA on 12.08.1999 is subject to review after financial closure, and furnishing of a Firm Financial Package (FFP) by the Petitioner within a period of 6 months from the date of issue of the letter.

3.7. By letter dated 10-05-1999, SPCL submitted a Firm Financial Package (FFP) of Rs.390.82 Cr. (US \$ 55.978 Mn+ Rs.172.508 Cr. @ an exchange rate of US \$ = Rs.39) for approval of CEA and started to tie-up all other requirements as contemplated under the initialed PPA.

3.8. The PPA provides that during the period between the Commercial Operation date and the delivery of the Actual Cost Reports on completion of the project (the "Actual Completion Costs Report"), and its approval by CEA, the company (SPCL) will use US \$ 61.222 million plus Rs.1530.98 million (adjusted for foreign currency

exchange rates) as its provisional capital cost for purposes of tariff calculation. When the actual capital cost is finalized, the amount of overcharge or undercharge will be refunded or paid (as the case may be) in twelve equal payments at the time of the payment of the next twelve billing period payments after such finalization. Therefore, Rs.129.42 crores being considered by the company as Equity component of capital cost at 30% of Rs.431.3918 crores. Continuing its usual practice of blatant violation of the provisions of the PPA, TNEB has considered the incurred capital cost figure, which was submitted for CEA approval as the basis for admitting the SPCL's invoices. TNEB has erroneously arrived at the figure of 30.46% by applying the equity component as a percentage of incurred capital cost instead of applying it as a percentage of FFP approved capital cost and the same may be ignored.

3.9. After a meeting with CEA and submission of documents as sought by CEA, the FFP for the Project was approved by CEA on 12-08-1999, whereby, the Authority accorded its approval to the FFP based on completed cost of US \$ 55.978 million + Rs 172.508 Crores including IDC & FC of Rs 41.066 Crores at an exchange rate of US \$ =Rs 39.00 and subject to exchange rate protection for US \$. The Project achieved financial closure on 24.12.1999.

3.10. After completion of the Project on May 26-05-2001 SPCL submitted its Completed Capital Cost of Rs.424.837 Cr. which was on the basis of the exchange rate of Rs.44.609 = 1 US \$ with details thereto to the Respondent Board and the CEA for approval.

3.11. The TNEB is wrong in saying that the petitioner needs to substantiate its claim

of Capital Cost of Rs.424.84 Cr. as the same has been substantiated with the required documents as prescribed by CEA.

The CEA had accorded TEC to the Project based on the Feasibility Report submitted by the Petitioner as well as the discussions held with TNEB and CEA, as required under the law at the time in force i.e. 1998. The statement of the TNEB that an estimate TEC is normally prepared on a conservative manner providing for certain contingencies and that the same would result in savings when compared with the TEC approved by the CEA (hereinafter referred to as CEA), is ambiguous and confusing.

The definition of "Capital Cost" contained in Appendix D of the PPA only directs SPCL to submit half-yearly reports of the capital cost actually incurred in completing the project certified by the company's independent auditors, it does not enjoin any duty upon the petitioner to produce documents and records before the TNEB. The only duty that is cast on SPCL is that it shall "permit access" to its papers, documents and records, the precondition being that a request to that effect has to be made by TNEB.

TNEB after having taken more than 6 years after submission by the Petitioner of the details of the completed Capital Cost of the Project at Rs. 424.84 Cr (submitted on May 26,2001) and after several rounds of discussions with CEA and with the Company during which lot of clarifications and documentary evidence were submitted by the Petitioner, had filed their petition before TNERC in Sep. 2007 seeking to fix the capital cost of the Project at Rs.417.89 Cr. The documents submitted by the Petitioner along with the Petition are only copies of those documents which were earlier submitted to the TNEB. The argument that certain facts have come to light and that the TNEB is contemplating to file an amendment

has no bearing on the present petition and the same can be ignored by the Commission.

3.12. The Completed Capital Cost of the Project at Rs.424.84 Crores is less than CEA approved cost as per FFP duly adjusted for variation in Foreign exchange rate and the corresponding impact of Customs Duty due to variation in Foreign exchange rate. The details are as shown in the table below:-

Table
Capital Cost of 105.66 MW DGPP of Samalpatti Power Company Pvt. Limited

Details	US \$ (million)	INR in Cr.	Exchange Rate (INR for one \$)	Total Cost in INR (Cr.)	Remarks
TEC	61.22	153.098	39	391.86	Project cost is subject to variation on account of Exchange Rate and Change in Law
FFP	55.9783	172.508	39	390.82	Project cost is subject to variation on account of Exchange Rate and Change in Law
Actual completed cost	56.1083	174.55	44.607	424.84	
FFP approved cost adjusted for exchange rate variation and customs duty actually incurred	55.9783	181.682	44.607	431.38	INR component includes the effect of Exchange Rate on Customs Duty amount

The Completed Capital Cost of the Project at Rs.424.837 Crores is less than CEA approved cost as per FFP duly adjusted for variation in foreign exchange rate

and the corresponding impact of Customs Duty due to variation in Foreign exchange rate.

3.13. The Gross Block as of 31-03-2001 as per Audited Accounts of SPCL amounted to Rs.423.585 Crores. On addition of Cost of Leasehold Land (for which payment was made to TACID and hence part of the Project Cost but was not forming part of the assets of SPCL amounting to Rs.83.379 Lacs and payment to TACID (for laying water supply lines outside the Project premises and was part of the Project Cost but not forming part of the assets of SPCL of Rs.82.29 Lacs and reduction of Rs.40.46 Lacs towards the cost of Freehold land at Samalpatti with corresponding stamp duty thereto (which was not part of the Project Cost since the Project was relocated), the Completed Capital Cost of Rs.424.837 Crores is arrived at.

3.14. The TNEB had deputed retired Chief Engineer of the Board for verifying the scope of the Project for its completion as per TEC. In February 2005 he visited the Project site and verified the equipments installed. No query was raised with regard to the scope of the Project, subsequent to his visit. The TNEB had also deputed 2 of their Accounts Executives for verifying the Accounts of SPCL for the expenditure incurred on the Project. This was carried out in Feb/Mar, 2005. No query was raised in respect of the same by the Respondent TNEB.

3.15. The Completed Capital Cost proposed was discussed on 13.01.2005 in New Delhi at the Standing Committee Meeting convened by the CEA. During a subsequent Standing Committee Meeting held on 22.11.2005, the Member

(Thermal) requested the TNEB to finalize the Capital Cost early. The subject was again discussed with the CEA on 23.11.2005.

3.16. The Capital Cost approved by CEA as per the Tentative Financial Package in TEC was US \$ 61.222 millions + Rs.1530.98 millions vide its letter FI.No.2/TN/31/96-PAC/1445-68. This was revised to US \$ 55.978 millions + Rs.1725.08 millions as per the Final Financial Package approval vide letter No.FI.No.2/TN/31/96-PAC/7005-27, dated August 12, 1999. The exchange rate to US \$ considered while approval was at Rs.39/- and the total cost of the Project in equivalent Indian Rupees worked out to Rs.3908.24 millions. The Completed Capital Cost worked out to Rs. 4248.37 millions comprising of US \$ 56.1083 millions and Rs. 1745.55 millions at a weighted average Base exchange rate of Rs.44.607 per US \$.

3.17. Under the Terms and Conditions for Determination of Tariff Regulations, amended up to 31.12.2010, Article 18 provides for Capital Cost. This interalia includes:

- “18. Capital Cost*
- 1.*
 - 2. Investments made prior to the notification of these Regulations by the Generating Company and licensees shall be accepted on the basis of audited accounts.*
 - 3. The actual capital expenditure on the date of commercial operation for the original scope of work based on audited accounts of the Company/licensee limited to original cost may be considered subject to prudence check by the Commission.”*

Under the Regulations, read with the definition of Capital Costs under the PPA, it has calculated the Capital Cost. The following Chart gives the details about the completed Capital Cost:

COMPLETED CAPITAL COST (at actual) (Rs. in Millions)				
				Statement No.3
Particulars	Foreign Component			
	US \$	Equivalent Rs.	Domestic Component	Total
Land & Preliminary Expenses			9.37	9.37
EPC Cost	55.9783	2496.94	1201.69	3698.63
Non EPC Cost			57.63	57.63
Overheads	0.13	5.88	139.70	145.58
Project Cost without IDC & Financing Cost	56,1083	2502.82	1408.39	3911.21
IDC & Financing Cost			337.16	337.16
IDC			62.27	62.27
Financing Cost			274.89	274.89
Project Cost including IDC & Financing Cost	56.1083	2502.82	1745.55	4248.37

The reason for considering the deposit (refundable) made with SIPCOT as part of the Capital Cost even though it was classified under Current Assets, Loans and Advances as per accounting norms is that the deposit has been made for a lease term of 99 years and is not expected to be recovered by the Company during/at the end of the term of the PPA which is only 15 years. As per the extant regulations of the GOTN, land situated in an industrial park, in this case, Bargur SIPCOT industrial area, the land is allocated by SIPCOT on lease basis as aforesaid. If TNEB elects to take over the plant at the end of the PPA term, the lease rights would have also to be transferred together with the Fixed Assets. Hence for all practical purposes, this very much forms a part of the Capital Cost of the Project. In view of the fact that during the six years when the Capital Cost data submitted by the Company, was scrutinized by CEA and TANGEDCO, no query was raised with respect to the above. In the course of verifying the details of expenses incurred from the books of accounts and the documentary evidence for the same, the TNEB has acknowledged that there were no questions raised in respect of the same.

3.18. The SPCL has approached the Commission to fix the Capital Cost of the Project at Rs.424.837 Crores. On the other hand, TNEB is disputing capital costs to the extent of Rs.6.132 Crores, as per the petition filed with the Commission. The Board has opposed allowance of these amount under various heads. Such a disallowance is not justified. The SPCL made detailed submissions on the disallowances made by the Petitioner Board, which is reproduced herein below:-

SPCL's submission on disallowances made by Petitioner Board

Sl. No.	Item of Disallowance	Amount disallowed by Petitioner Board (in Rs.Cr.)	Respondent's Submission
1	Land	0.036	In order to minimize Stamp Duty expenses in connection with creation of security & assignment of project contracts in favour of the Lenders with IDBI, Mumbai as the Lead Security Agent, a small piece of immovable property was acquired in the State of Maharashtra. In the absence of this property the stamp duty expenses would have been substantially higher. The lead security agent viz., IDBI and most of the lenders approved for the Project were Mumbai based and security creation had to be done in Mumbai. Further security creation in Tamil Nadu would have cost Rs.1.69 Crores. Considering, the saving to the Project Cost that has resulted, the small amount of Rs.0.036 Crores (proposed for disallowance by the Petitioner Board) may be admitted.
2	Establishment & Development Expenditure	1.159	Memorandum of Understanding (MOU) for setting up the 105.66 MW Power Project was signed between TNEB and SIV Industries Limited (SIV) on the 18th Feb 1995. It had also been agreed that a separate company will be established by SIV for setting up the Project. Accordingly the Company was established. During the period between MOU and FFP approval only activities relating to Project Development were in full swing. After identification of the site, the Project Company was required to obtain various statutory approvals such as Environmental Clearance

			<p>from State Pollution Control Board and Ministry of Environment & Forests, Fuel Allocation from Ministry of Petroleum, Clearance from National Airport Authority etc. before submission of the Detailed Project Report to the Petitioner Board / CEA for approval.</p> <p>All the project development work as detailed above was carried on by the personnel employed by SIV. Expenses towards, Administration, Legal, Technical, Commercial and allied Services in connection with the Project including providing cash support for petty expenses to the Power Company were all funded by SIV. Until the Project Company had its own financial resources, it was not in a position to spend any money. Until the project attains financial closure, all establishment & developmental expenses are normally borne by the Promoter or Promoter Group Company & later on reimbursed by the Company.</p> <p>The Board of Directors of the Respondent Company had examined the expenses incurred by SIV Industries and have approved the establishment & developmental expenses. The reason for partly disallowing the expenses as stated by the Petitioner Board is not justifiable.</p> <p>In view of the above, the amount of Rs.1.159 Cr. (proposed for disallowance by the Petitioner Board) may be admitted.</p>
3	Construction Insurance	1.135	<p>The expenses incurred by the Company were in respect of insurance covers against all other risks associated with the Project till it is commissioned, excluding the Erection All Risk cover taken by the contractor. The EPC contractor does not indemnify the Company against consequential losses arising out of loss/damage to the property such as delay in commissioning the Project resulting in Liquidated Damages becoming payable to the Petitioner Board, loss of profit etc. Such other risks associated with the Project were covered under different insurance policies as detailed below. These insurance policies were taken by the Project Company.</p>

	Sl. No.	Policy	Premium
	1	Advance Loss of Profit (ALOP)	Rs.55,85,385/-
	2	Marine Delayed Startup (DSU)	Rs.56,69,790/-
	3	Fuel Stock	Rs.90,972/-
	4	Total	Rs.1,13,46,147/-
	<p>Precisely for such insurance requirement of the Project, provision was made against Construction Insurance under Non EPC Cost of General Breakdown of Project Cost while according TEC/FFP approval. In fact, as per the Format prescribed by CEA in their publication titled "(Guidelines for Formulation of Project Reports for Power Projects in Private Sector (June 1995)" the item of "Construction Insurance" appears as an item under (IDC & Financing Cost (Refer Annex.III). From the above it is obvious that this provision is only to meet the above requirements of insurance coverage.</p> <p>The premium of Rs.1,13,46,147/- paid for the above mentioned insurance policies has been shown against Construction Insurance under Non EPC Cost. The photocopies of these Insurance Policies and proof of payment made were given to the Respondent Board.</p> <p>The premium amount of Rs.1,13,46,147/- has been accounted against the provision of Rs.1.20 Cr. under 'Construction Insurance', an item under Non-EPC Cost</p> <p>The disallowance of Rs.1.135 Cr. (proposed by the Petitioner Board) may therefore be admitted.</p>		
4	Operator Training	0.067	In terms of the Supply Agreement with Wartsila, as per Appendix-11 of Schedule E, "Supplier shall provide all training manuals, instructions, class rooms and miscellaneous training materials and supplies as required. The Owner shall provide for all transport to and from Finland. Supplier shall provide all transport to sub suppliers and during the training. Room and Board shall be arranged by supplier but is the responsibility of the owner."

			<p>It is evident from the above, that all the travel, boarding & lodging related expenses of the Operators sent for training to Finland have to be borne by the Owner/the Company and only these expenses have been included under 'Operator Training' in the Completed Capital Cost. The Company had not paid any amount to the EPC Contractor on account of 'Operator Training' which was provided by the Contractor free of cost.</p> <p>Operators' Training is a line item approved under the Firm Financial Package for Rs.1 Million. There has been an increase in this expenditure which may also be admitted, considering the overall reduction in the Completed Capital Cost as per FFP approval.</p>
5	O&M Mobilization Fee	1.149	<p>As per the O&M contract, the O&M Operator was asked to mobilize his personnel at site and perform the following services:-</p> <ol style="list-style-type: none"> 1. Establish or procure, to the extent not provided under the EPC Contracts or by the Owner, adequate operation, maintenance and storage facilities (other than office and storage space); tools, equipment, supplies and spare parts inventories in accordance with the recommendations of the EPC Contractor; security and safety systems and plans; any necessary or prudent special clothing or safety equipment for personnel; and such other facilities and systems as may be necessary to perform the Operator's ongoing responsibilities under the O&M Agreement. 2. Establish a system to maintain an inventory of spare parts, tools, equipment, consumables and supplies for the Facility's operation 3. Employ and coordinate the training of personnel who will be qualified and experienced to operate and monitor the Facility and to coordinate operations of the Facility with the Grid System. 4. Provide trained personnel to assist the EPC contractor to conduct startup and performance testing of the Facility under

			<p>the supervision and direct control of the EPC contractor.</p> <ol style="list-style-type: none"> 5. Assist the Project Company to monitor performance and/or RC testing and to advise the Project Company as to the progress of the performance and / or RC testing and as to whether or not the Facility has successfully passed the Performance Tests set forth in the PPA. 6. Assist the Project Company to prepare a construction deficiency list (the "Punch List") and to advise the Owner as to whether or not the EPC Contractor has corrected such deficiencies. 7. Prior to the performance of any on site activities, obtain the insurance policies at the Cost of the Project Company. <p>While it is admitted that at the time of seeking approval for project cost, the above requirement was by oversight omitted to be included in the pre-operative expense and once again request TNEB to kindly consider including this amount since this has helped in the project achieving COD 2½ months before the scheduled date and has thus resulted in considerable reduction in the Completed Capital Cost as per FFP approval. Therefore the amount of Rs.1.149 Cr. (proposed for disallowance by the Petitioner Board) may be allowed.</p>
6	Development Expenses	1.327	<p>The infrastructural support in terms of Project Management, negotiation, dealing with all Governmental Authorities, Central Electricity Authority, Central and State Governments and obtaining of the required approvals were through Shapoorji & Pallonji Company Limited, one of the promoter companies</p> <p>Until the Project Company had its own financial resources it was not in a position to spend any money. Until the project attained financial closure all establishment & developmental expenses were borne by the Promoter or Promoter Group Company & later on reimbursed by the Project Company.</p>

			<p>The Board of Directors had examined the expenses incurred by Shapoorji & Pallonji Company Limited and approved these Project related expenses. These expenses were accounted for under Establishment / Construction Supervision, under Non-EPC Cost</p> <p>The Respondent Board's proposal to allow part of the expenses incurred by the promoter company was arbitrary. The amount of Rs.1.327 Cr. (proposed for disallowance by the Respondent Board) may be admitted.</p>
7	Contingency	0.340	<p>There was huge increase in the cost of the Township.</p> <p>Between 1997 and 2000 the prices of inputs such as Cement, Steel and Labour had gone up by more than 20%. After considerable bargaining with the Contractor an increase of only 7.39% was agreed to. Considering the time lag between the date of submission of DPR and the project construction time as well as the savings achieved compared to the actual price increase, the Commission should permit this increase in cost under contingency since this excess is primarily due to increase in input cost. This may thereafter be admitted.</p>
8	Excess Dollar Expenditure in EPC	0.004	This is a minor excess which may be admitted.
9	Total under Hard Cost (items 1 to 8)	5.217	As explained above, the entire amount of Rs.5.217 Cr. (proposed for disallowance by the Respondent Board) may be considered for admission.
10	IDC	0.051	<p>Interest During Construction Period</p> <p>Liquidated damages – to IDBI Rs.2,329 Liquidated damages – to IFCI Rs.840</p> <p>Overdue Interest paid to SBI Rs.67,371</p> <p>Additional Interest at 1% paid to IDFC upto the Date of creation of Security – Rs.436,586</p> <p>Commitment Fee paid to SBI – Rs.289,723</p>

			<p>Total Rs.796,849</p> <p>LD and Overdue interest arose primarily due to the delay and transfer of funds occasioned due to IFCI, midway of the project expressing that it would not be in a position to lend the remaining amount of the sanctioned amount. IFCI's risk perception of the project due to non-establishment of LC and non-operationalisation of ESCROW is understood to have made them to limit their exposure. The process of finding an additional lender and completing the documentation and security formalities in consultation with all the lenders took four months thereby requiring the payment of interest at 1% to IDFC. Similarly, as a reaction of IFCI's pull out, SBI had apprehensions about the debt being drawn and levied Commitment Charges for the debt not drawn as per schedule. Thus, these costs were incurred due to reasons beyond the control of the Respondent and resultantly, this amount should be allowed.</p>
11	Financial Advisory Fee	0.252	The actual amount incurred i.e., Rs.1.738 Crores is higher by Rs.0.228 Cr as compared to the "Restated Financing Advisory Fee" (refer page #5 of attached Company's communication dated 14th December 2005 to the Petitioner Board) of Rs.1.51 Crores and the aforesaid increase in the Fee by Rs.0.228 Cr. may be admitted, considering the overall savings in the completed cost.
12	Legal & Stamping Fee	0.045	The actual amount incurred i.e. Rs.41.9 lakhs towards legal and stamping fees is only marginally higher as compared to the "Restated Legal & Stamping Fee" (refer page 5 of attached Company's communication dated 14 th December 2005 to the Petitioner Board) of Rs.41.4 Lacs and hence the actual amount may be admitted, considering the overall savings in the completed cost.
13	Management Fee (Equity Raising Fee)	0.124	As per FFP, the Respondent was entitled to Management fee of 0.75% of non-promoter foreign equity @ Rs 39/USD amounting to Rs.0.435 Crore and Other Fees/Expenses of 1% of Non-promoter foreign equity @ Rs.39 /USD amounting to Rs.0.058 Crore. On restating the above fees after adjustment based on Forex

			rate of Rs 44.61/USD, the Management Fee and Other Fees and Expenses together would amount to Rs 0.563 Crore. An amount of Rs 0.6 Crore was actually incurred by the Company towards management fee and other fees/ expenses. Since this is only marginally higher as compared to the "Restated management fee" (refer page #5 of Company's communication dated 14th December 2005 to the Petitioner Board) of Rs.0.563 Crore. The Commission is requested to admit this marginal increase. The contention of the Petitioner to allow Rs.0.476 Cr. and disallow Rs.0.124 Crores towards Management Fees is not clear and arbitrary. Therefore the disallowance as proposed by the Petitioner may not be considered.
14	Soft Cost (IDC)	0.366	These disallowances are not applicable since there is no reduction in the Hard Cost proposed by the Respondent Company. Therefore the disallowance may not be considered.
15	Soft Cost (FC)	0.077	
16	Total Under Soft Cost (items 10 to 13)	0.915	The total amount of Rs.0.915 Cr. (proposed for disallowance by the Petitioner Board) may be admitted, in view of the reasons furnished above.
17	Total (items 9 plus 16)	6.132	The total amount of Rs.6.132 Cr. proposed for disallowance may be admitted.

After completion of the Project, the Respondent on May 26, 2001 submitted its Completed Capital Cost of Rs.424.837 Cr. which is well within the approved capital cost as per FFP. Therefore, the recommendation for capital cost equivalent to Rs.417.89 Cr. is incurred.

Details of the Project

3.19. **Financial structure:-** The Cost of the Project under the Lenders' appraisal was Rs.447.44 Crores. This was to be financed by debt and equity in the ratio of 69.5:30.5 and the appraised cost was to be financed by Rupee Debt and Indian

Equity (15%) and Foreign Equity (85%). The SPCL had tied-up its entire working capital requirements for the project to the satisfaction of the lenders.

Project Implementation:-

As per the approval of CEA, the Project had to be completed within a period of 17 months from the date of Financial Closure with commercial operation date of:

Units I & II	-	14 Months
Units III & IV	-	15 Months
Units V & VI	-	16 Months
Unit VII	-	17 Months

As against the Schedule, the SPCL completed the entire project on 01-03-2001 and commenced commercial production. This was done in a period less than 14 months. As a result, there was a considerable saving in IDC costs which, in turn, reduced the Project Cost.

Statutory Compliance:-

The SPCL obtained all the statutory clearances required for the Project.

Project Highlights:-

The major highlights of the Project are:

- * The Project was completed well before the scheduled date. The full Project was commissioned in a period of 14 months as against the original schedule of 17 months.
- * All the Engines were commissioned in one stroke instead of the phased completion as per the schedule. The Plant Performance and Capacity tests were satisfactorily completed in a short period of time as the tests were conducted in one stroke.
- * This is short gestation project and operating as a Base Load Station.
- * All the term loans are designated in Indian Rupees with no Forex exposure. This will result in a steady tariff.
- * All the statutory clearances are in place.

- * The Project Cost is within the cost approved by CEA.

Status of Major Contracts / Agreements executed by SPCL:-

The status of major contracts executed by SPCL is:-

- I. Power Purchase Agreement - The PPA was signed with TNEB on 22-05-1998 with two addendums on 19-01-1999 and 16-12-1999. The PPA is presently operational.
- II. Land Lease Agreement for lease of 30.33 acres of land by TACID (presently SIPCOT) was signed on 04-03-1999. The land has been utilized for construction of the Project
- III. Water Supply Agreement for supply of water under the TACID Industrial Scheme was signed on 13-01-1999. The SPCL is presently drawing water under the scheme.
- IV. State Government Guarantee - The GOTN provided a Payment Support Guarantee by a Guarantee Agreement dated 20-05-1999.
- V. Escrow and Disbursement Agreement - The SPCL has entered into an Agreement with TNEB and State Bank of India, as the Escrow Agent on 13-10-1999. Accordingly, an Escrow Account was opened by the Respondent Board with State Bank of India. The Escrow mechanism was not operationalized.
- VI. Security and Hypothecation Agreement - TNEB has signed the Agreement on 13-10-1999 favoring SPCL to provide the security cover as per PPA.
- VII. Loan Agreement with the Lenders was executed by the SPCL on 16-12-1999.
- VIII. EPC Contract - Offshore Supply Contract with Wartsila NSD Finland OY, Finland and Onshore Supply Agreement and Onshore Service Contract with Wartsila NSD India Limited were executed on 06-09-1999.
- IX. The Power Plant I Project was constructed on a fixed time fixed price turnkey basis by the Wartsila Group (Finland and India) as per the EPC contracts awarded to them and the Notice to Proceed was given to them on 17-12-1999.

- X. O & M Contract - The O & M Contract was signed on 03-12-1999 with Ogden for a 15 year term. They fully mobilized and took over the operations of the Plant on the date of COD on 01-03-2001.
- XI. Fuel Supply Agreement - The Agreement was signed with M/s. Bharat Petroleum Corporation Limited on December 30, 1997 for a 15 year term. They are supplying LSHS fuel for the Project and the operations have been very smooth.

Completed Capital Cost and Means of Finance:-

The Capital Cost approved by CEA as per the Tentative Financial Package in TEC was US \$ 61.222 millions + Rs.1530.98 millions vide its letter FI.No.2/TN/31/96-PAC/1445-68. This was revised to US \$ 55.978 millions + Rs.1725.08 millions as per the Final Financial Package approval vide letter No.FI.No.2/TN/31/96-PAC/7005-27, dated 12-08-1999. The exchange rate to US \$ considered while approval was at Rs.39/- and the total cost of the Project in equivalent Indian Rupees worked out to Rs.3908.24 millions. The Completed Capital Cost worked out to Rs. 4248.37 millions comprising of US \$ 56.1083 millions and Rs. 1745.55 millions at a weighted average Base exchange rate of Rs. 44.607 per US \$.

Regulation 18 of the "Terms and Conditions for Determination of Tariff Regulations as amended up to 31.12.2010 provides for Capital Cost. The capital cost interalia includes:

- "2. Investments made prior to the notification of these Regulations by the Generating Company and licensees shall be accepted on the basis of audited accounts.*
- 3. The actual capital expenditure on the date of commercial operation for the original scope of work based on audited accounts of the Company/licensee limited to original cost may be considered subject to prudence check by the Commission."*

As per Regulation, read with the definition of Capital Cost under the PPA the capital cost has been calculated. The following Chart gives the details about the completed Capital Cost:

COMPLETED CAPITAL COST (at actual) (Rs. in Millions)

Particulars	Foreign Component			
	US \$	Equivalent Rs.	Domestic Component	Total
Land & Preliminary Expenses			9.37	9.37
EPC Cost	55.9783	2496.94	1201.69	3698.63
Non EPC Cost			57.63	57.63
Overheads	0.13	5.88	139.70	145.58
Project Cost without IDC & Financing Cost	56.1083	2502.82	1408.39	3911.21
IDC & Financing Cost			337.16	337.16
IDC			62.27	62.27
Financing Cost			274.89	274.89
Project Cost including IDC & Financing Cost	56.1083	2502.82	1745.55	4248.37

3.20. The figure of 55.9783 million USD @ Rs.44.607 / USD is the actual USD spent for procurement of capital assets of the project in foreign currency (with complete proof of remittance) submitted to CEA and TNEB. The SPCL has provided the Capital Cost as approved in the FFP, adjusted for exchange rate variation and customs duty actually incurred. The latest Billing data referred by TNEB is the amounts of Equity (with break-up of foreign currency and Indian Rupees) and the Loan component which would comprise the 70:30- Debt to Equity Ratio as per FFP Approval, based on which components of Fixed Charge claim of SPCL's Invoice, i.e., Interest on Debt and Return on Equity are to be computed. These are two different approaches and the first break-up is bound to be different from the second. Under S.No.2 of the aforesaid tabular form, the INR component as per Page 6 of the petition has been erroneously shown as Rs.181.682 Million, while the Actual amount was Rs 181.682 Crores. The capital Cost as per the latest Bill has been wrongly

shown as Rs.4313.98 million, while the correct cost is Rs.4313.918 Million. The difference in decimal points in the Capital cost arrived at, based on the two approaches explained above, is on account of rounding off. TNEB has made a desperate attempt to distort the interpretation of the provisions of the PPA. The small variation in the debt, equity ratio as per the actual financing of the Project may be considered, while approving the capital cost .

The PPA provides that, during the period between the Commercial Operation date and the delivery of the Actual cost Reports on completion of the Project (the “Actual Completion Costs Report”) and its approval by CEA, the company (SPCL) will use US \$ 61.222 Million plus Rs.1530.98 million (adjusted for foreign exchange rates) as its provisional capital Cost for purposes of tariff calculation. When the Actual Capital Cost is finalized, the amount of overcharge or undercharge will be refunded or paid (as the case may be) in twelve equal payments at the time of the payment of the next twelve Billing Period Payments after such finalization. Therefore, Rs.129.42 Crores being considered by the Company as Equity component of Capital cost is 30% of Rs.431.3918 Crores. Continuing its usual practice of blatant violation of the provisions of the PPA, TNEB has considered the incurred capital cost figure, which was submitted for CEA approval as the basis for admitting the SPCL’s invoices. TNEB has erroneously arrived at the figure of 30.46% by applying the Equity component as a percentage of incurred capital cost instead of applying it as a percentage of FFP approved capital cost and the same may be ignored.

3.21. The Commission may fix the capital cost of the project at Rs.424.84 Crores. The Respondent Board on the other hand, is disputing Capital Costs to the extent of

Rs.6.132 Crores, as per M.A.P.No.2 of 2007 filed by the Respondent Board. The Respondent Board has opposed allowance of amount under various heads.

Pending finalization of the capital cost by the CEA, though the petitioner was initially making monthly energy bill payments provisionally on the basis of CEA Approved Capital Cost duly adjusted for exchange rate variation at Rs.431.38 Cr. as per the provisions of the PPA, it had subsequently from 26.09.2005 onwards been making energy bill payments based on the actual capital cost of Rs.424.837 crores, submitted by the Respondent to CEA. The dispute with respect to the Capital Cost of the Project between the Respondent and the Petitioner Board is only to the extent of Rs.6.132 crores.

3.22. The SPCL by communication dated 17.01.2005 explained to the CEA as to why amounts disallowed on account of O&M Mobilization Fee, Increase in Township Cost, Pre-operative Expenses, Development Expenses, Consultancy and Engineering Expenses, Interest during Construction Period, Financing Charges and LD, if any, levied and collected from the EPC Contractor was unjustified.

3.23. The SPCL by communication dated 17.02.2005 furnished details of O&M Mobilization Fee, Increase in Township Cost, Increase in Cost of Overheads, Liquidated Damages for delay in supplies by the EPC Contractor, Verification of Payment Details, Details of Plant and Equipments installed as required by CEA from TNEB for the project, List of Civil Structures as required by CEA from TNEB for the project, Equity employed in the project, High Interest Rate on Term Loans, Interest during Construction Period (delay in creation of security), Financing Charges on Debit and Equity, Details of Equity and Debt deployment in the project.

3.24. Since the sole purpose of procuring the Pune land was to minimize the impact of stamp duty involved in security creation in favour of the term lenders of the project, the same has been included in the capital cost claim. TNEB has made an uninformed allegation that the details of land purchased was not furnished. In response to TNEB's letter dated CE/IPP/AEE1/F.SPC/D.156/2995 dated 28-04-2005, documentary evidence for freehold land, namely, the "Deed of Conveyance" by the vendor of the land in favour of the SPCL containing all requisite details was submitted by the Petitioner vide letter dated 3rd May 2005.

3.25. The claim towards Establishment and Development expenditure was substantiated by submission of detailed break-up and complete supporting documentation to CEA and TNEB vide communications dated 19-10-2004, 17-01-2005, 09-02-2005 and subsequent queries were addressed vide letters dated 18-11-2005 and 05-12-2005. Break-up of individual components of debit notes duly authenticated were provided to TNEB. After having received such extensive information and supporting evidence, the baseless assumptions and apprehensions expressed by TNEB as to the possibility of double claims having been made/interest component getting included are to be firmly repudiated. The Certificate of General break-down of project expenditure by an Independent Cost Auditor had been submitted with the initial submission to the CEA on capital cost. A Certificate dated 10-05-2001 from the Statutory Auditor of the Petitioner, of the Completed Capital Cost, was also provided after due examination of all relevant documents. In view of the above submissions, the demand for various documents to be submitted further illustrates the superficial and redundant approach of the Respondent.

3.26. One of the covenants of the lenders was that the SPCL had to appoint an Insurance Consultant for examining the Insurance Covers required to be taken during the construction phase of the project, with a view to mitigate the risks associated with the Project during construction. Accordingly, M/s M. F. Consultants, Mumbai, were appointed as Insurance Consultants. They had submitted a Report which envisaged various Insurance Policies to be taken. Copies of the Letter of Intent of IDBI and the Preliminary report on insurance submitted by M/s.M.F. Consultants were submitted to TNEB vide letter dated 08-12-2005. It was further explained that losses arising as a consequence of the occurrence of risk was not the responsibility of the EPC Contracts and was therefore to be covered only by the Project Company. The Project Company has paid premium towards the Insurance policies, in line with the TEC approval for Rs.12 million towards construction insurance. The marine delayed start-up policy covers consequential risks as a result of loss or damage to or delay in the delivery of the property. ALOP covers consequential risks as a result of loss or damage after its/their receipt at Site. It was clarified in clear terms that the advance loss of profit policy does not seek to cover any profit since during construction period there is no profit accruing to the project company. The intention was only to mitigate the risks in connection with construction and testing and to ensure compliance with the report of the Lenders' Insurance Consultant. There was no violation of the provisions of the TEC in this regard. The disallowance of Rs.1.135 Cr proposed by TNEB may therefore be admitted.

3.27. In terms of the Supply Agreement with Wartsila, as per Appendix-11 of Schedule E, it is provided that:

“Supplier shall provide all training manuals, instructions, class rooms and miscellaneous training materials and supplies as required. The Owner shall provide for all transport to and from Finland. Supplier shall provide all transport to Sub Suppliers and during the training. Room and Board shall be arranged by Supplier but is the responsibility of the Owner”

It is evident from the above that all the travel, boarding and lodging related expenses of the operators sent for training in Finland had to be borne by the Owner / SPCL and only these expenses had been included under "Operator Training" in the completed capital cost. The SPCL had not paid any amount to the EPC Contractor on account of "Operator Training" which was provided by the contractor free of cost. Operators' training is a line item approved under the Firm Financial Package for Rs.1 million. There had been an increase in this expenditure which may also be admitted considering the overall reduction in the completed capital cost as per FFP approval.

O & M Mobilisation for SPCL was omitted by oversight to be included in the pre-operative expenses. SPCL had requested for inclusion of this amount since it helped in the project achieving COD two and a half months before the scheduled date, resulting in considerable reduction in the Capital Cost as per FFP Approval.

Regarding Contingency of Rs.0.34 Crs. vide letter dated 29th July 2004, SPCL explained in detail, the reason for Rs.34 lakh increase in the Cost of Township as against the approved cost of Rs.4.6 Crores. While the detailed Project Report was submitted on 29-01-1997, the project construction took place in 2000. Between 1997 and 2000, the prices of inputs such as Cement, Steel and Labour had shot up by more than 20%. After considerable bargaining with the Contractor, an increase of 7.39% was agreed to. Considering the time lag between the date of submission of DPR and the project construction time as well as the savings achieved in comparison to the actual price increase, the same may be allowed.

The excess dollar expenses in EPC of Rs.0.004 is a minor excess which may be admitted.

LD and overdue interest arose primarily due to the delay and transfer of funds on behalf of IFCI, midway of the project, expressing that it would not be in a position to lend the remaining amount of the sanctioned amount. The reason that led IFCI to limit their exposure can be understood to be IFCI's risk perception of the project due to non-establishment of LC and non-operationalization of ESCROW. The process of finding an additional lender and completing the documentation and security formalities in consultation with all the lenders took four months thereby requiring the payment of interest at 1% to IDFC. Similarly, as a reaction to IFCI's pull out, SBI had apprehensions about the debt being drawn, and levied commitment charges for the debt not drawn as per schedule. Thus these costs were incurred due to reasons beyond the control of SPCL and resultantly, this amount should be allowed.

Financing Advisory Fee, Legal Stamping Fee and Management Equity Raising Fee are as follows:-

Financial Advisory Fee - The Actual amount incurred i.e., Rs.1.738 Crores is higher by Rs.0.228 Cr as compared to the "Restated Financial Advisory Fee" of Rs.1.51 Crores as explained vide Company's communication dated 14-12-2005 to TNEB.

Legal and Stamping Fee: The actual amount incurred i.e., Rs.41.9 Lakhs towards legal and stamping fees is only marginally higher as compared to the "Restated Legal & Stamping Fee" of Rs.41.4 Lakhs explained vide Company's communication dated 14-12-2005 to TNEB.

Equity Raising Charges: The amount of Rs.60 lakhs which was actually incurred by the Company towards Management fee is only marginally higher as compared to the "Restated Management Fee" of Rs.56.3 lakhs.

The total financial charges based on restated FFP is Rs.6.175 Crores as compared to actual financial charges incurred of Rs.6.227 Crore. Therefore the net increase of Rs.0.052 Crores may be allowed.

The proportionate disallowances of soft cost is not applicable since there is no reduction in the hard cost proposed by SPCL.

3.28. By its communication dated 14.12.2005 addressed to TNEB valid and cogent reasons for not disallowing, inter-alia, Construction Insurance and Financing Charges were given. By communication dated 31.10.2006, SPCL gave reasons to show that deductions on account of, inter-alia, IDC and Financing Costs was totally unjustified. The total Capital Cost of Rs.424.837 Crores finalized for the reasons given in this petition.

3.29. Earlier Writ Petition was filed by SPCL before the High Court, Madras and numbered as W.P.No.16358 of 2008 which was filed for seeking relief of Prohibition, prohibiting the TNERC from proceeding with hearing of the petition or initiating any action on the petition filed by the TNEB and another W.P.No.8794 of 2008 filed for the relief of Declaration declaring the provisions of section 86(1) of Electricity Act, 2003 as ultra-vires Articles 14 and 19(1) (g) of the Constitution of India were withdrawn on 04-04-2012.

3.30. The Commission may fix the capital cost of the 7X15.094 MW (105.66 MW) Power Project of the Petitioner Company Samalpatti Power Company Private Limited in Parandappalli Village, Pochampalli Taluk, Krishnagiri District, Tamil Nadu at US\$ 56.1083 Million + Rs.174.55 Crores which works out to Rs.424.84 Crores at the foreign exchange rate of 1 US\$ = Rs.44.607.

4. Contentions of TANGEDCO in the Amendment Petition dated 01-12-2012 and in the Counter filed in respect of M.A.P.No.1 of 2012:-

4.1. TNEB has filed M.A.P.No.2 of 2007 for fixing the capital cost of the project put / set up by SPCL at a capital cost of Rs.417.89 Crs. On further verification of the factual position with the records available, it has come to the knowledge of TNEB that the capital cost of the project would be much less than what was originally prayed for in the said MAP. Though, the completed cost of the project may be less than the CEA approved cost as per the FFP, the same need not be taken as necessary criteria to adopt the same without further scrutiny especially, when clause 2.2. of the GOI Notification dated 30-03-1992 clearly reads as follows:-

“The capital expenditure of the project is to be financed as per the approved financial package set out in the techno-economic clearance of the Authority.

The actual capital expenditure incurred on completion of the project shall be the criterion for the fixation of tariff.....”

SPCL prayed for fixing the capital cost of the project at Rs.424.84 Crs. (at the Foreign Exchange Rate of 1 USD equal to Rs.44.607). SPCL is called upon to substantiate that the Petitioner is entitled to the capital cost at Rs.424.84 Crs. In fact, this Respondent wishes to submit that an estimate TEC is normally prepared on a conservative manner providing for certain contingencies, and at the same time will

result in savings when compared with the TEC approved by the Central Electricity Authority. It is further stated that savings alone cannot be a criteria for allowing expenses not permitted in TEC/FFP. Under the PPA entered into between the parties, the capital cost has been defined in Appendix D. While defining the capital cost, it has been specifically provided that,

"The Petitioner herein shall submit half-yearly reports certified by the company's Independent Auditors of the Capital cost actually incurred in completing the project as determined in accordance with generally accepted accounting principles."

4.2. It is further provided that the Company shall permit access to papers, documents and records as may be considered necessary by TNEB and CEA at the time of approval of final cost. A duty is therefore enjoined on SPCL to produce the necessary documents to substantiate its claims in order to arrive at the actual completed capital cost incurred by the SPCL.

4.3. During further study of papers submitted by SPCL certain additional facts have come to the knowledge of the Board, which will demonstrate that the capital cost would be much less than what has been claimed by SPCL in relation to the amount claimed to be fixed by SPCL. Therefore, the question of requesting the Commission to arrive or fix the capital cost at Rs.424.84 Crs does not arise. .

4.4. The completed cost claimed by SPCL in so far as Debt Equity Ratio is concerned, the same is not in line with the approval granted by CEA on 10.02.1998 because as regards Custom Duty, paragraph 3, sub-paragraph (iv), reads as under:

"The Custom Duty payable shall be as per actual, subject to ceiling of Rs.48.029 Crs. at Customs duty rate of 22% at Foreign Exchange at Rs.39/USD."

4.5. On the contrary as against the claim made by SPCL, the same works out to Rs.57.211 Crs. with a rider that, at the time when the TEC was applied for SPCL has wrongly worked out the Custom Duty and consequent on this, the actual duty works out to Rs.57.211 Crs. as against Rs.48.029 crores submitted and approved by CEA while granting the TEC.

4.6. The above contention is purely an afterthought because it is a fact that SPCL had approached the CEA for approval of the capital cost and while doing so, no such request for amending the expenses incurred towards excess Custom Duty was asked for. Further, it needs to be mentioned here that while approving the FFP on 12.08.1999, CEA has clearly mentioned in paragraph 3 (xi) which reads as under:-

"All other terms and conditions of TEC would remain unaltered until and unless specifically notified subsequently by the Authority."

4.7. Therefore, it is clear that any claim in deviation of the terms and conditions while approving the TEC cannot be countenanced now, as sought to be done by the SPCL. The completed cost is not in line with the approval accorded by CEA on 10.02.1998 with regard to Customs Duty because the same has exceeded the ceiling amount, Equity deployed, equity raising charges and stamping charges for FC loans, etc. With regard to customs duty, because, the same has also exceeded the ceiling amount and this amount works out to Rs.9.18 Crs out of which Rs.48 lakhs does not find a place in the FFP submitted by the Respondent to the CEA.

4.8. The cost incurred towards lease hold land is actually the deposit for land leased from TACID (presently SIPCOT) for 99 years as indicated in clause 14 of

Notes to accounts of Annual Report for 2000-01. This claim need not be allowed as part of capital expenditure because the same is in the nature of current asset. Further, if at all the amount needs to be serviced, the same has to be serviced at a borrowing rate suitably discounted by giving less weightage for the initial years considering the inflation and the lease period of 99 years. In any event, this is not in line with clause 2.2 of the GOI Notification issued on 30.03.1992 with regard to tariff determination of projects approved under MOU route. The relevant clause reads hereunder wherein it provides to consider the capital expenditure only for the completed capital cost.

"The capital expenditure of the project is to be financed as per the approved financial package set out in the techno-economic clearance of the authority.

.....
The actual capital expenditure incurred on completion of the project shall be the criterion for the fixation of tariff....."

4.9. An allegation has been made that no query was raised by TNEB on the verification scope of the project, and that TNEB has deputed two Accounts Executives for verification of the accounts of SPCL which was done during the period Feb/Mar 2005 and that no query was raised. In so far as these contentions are concerned, that the fact that a Retired Engineer and an Accounts Executive were also deputed, and that, no queries were raised by them, does not mean that the SPCL is automatically entitled to the fixation of capital cost as sought to be claimed. The fact of certain discussions held on the finalization of the capital cost before the CEA has been accepted by SPCL and therefore there is no gain on the part of SPCL in saying that because no objections were raised earlier by TNEB, SPCL is automatically entitled to the capital cost as claimed. In fact there is a dispute between the parties in relation to the capital cost of the project which cannot be denied by SPCL.

4.10. Merely because the SPCL had completed the project in less than 14 months, it does not mean that SPCL is automatically entitled to the capital cost as prayed for by the Petitioner. It goes without saying, that if the project has been completed ahead of the schedule, naturally, the cost in putting up the project would get reduced in terms of the soft cost, which benefit has to be necessarily extended to TNEB. On the guise of completing the project ahead of the schedule, the SPCL cannot be heard to contend that SPCL is automatically entitled to the capital cost claimed in the petition.

4.11. Though SPCL claims to have infused USD amounting to 26.18 million by way of equity at an exchange rate of Rs.44.25 / \$, from the completed capital cost details furnished by SPCL, it is clear that the SPCL has claimed the benefit of USD infused into the project @ 56.10 Million at an exchange rate of Rs.44.607/\$.

4.12. In so far as the claim of SPCL towards capitalization of the Exchange rate at which the foreign currency has been converted for factoring into the capital cost in the domestic currency, SPCL has considered different exchange rates at various places and at various points of time. Further, SPCL has not furnished the equity and loan funding of the project as certified by Statutory Auditor. SPCL has not furnished the equity and loan funding of the project as certified by a Statutory Auditor. The funding of the project based on the information furnished works out as follows at different places:-

(All figures in Million)

Sl. No.	Particulars	Equity		Loan		Equity + Loan		Capital cost		SPC Petition
		FC	INR	FC	INR	FC	INR	Rs./USD	Rs.	Page No.
1	Actual means of finance	26.17	204.36		3112	26.9	3316.36	43.00	4474.40	237
2	CEA level	24.65	194.04		2954.74	24.65	3148.78	30.81	3908.23	
3	Billing-first month	24.66	194.12		3019.61	24.66	3213.72	28.20	3909.23	
4	Billing – Latest	24.66	194.12		3019.74	24.66	3213.87	44.61	4313.98	

It can be noticed that the entire loan is funded through Indian rupee and a portion of equity is funded through US \$ viz., 26.17 million USD only which has been considered @ Rs.43/-. However, for the purpose of billing, the equity deployed in foreign currency is considered at USD 24.66 million at an exchange rate of Rs.44.61/ US \$ and whereas the inward remittance of equity holding has been considered in the petition as at an exchange rate of Rs.44.25907/\$. The inward remittance made by the promoters and the weighted average exchange rate as on the date of inward remittance are tabulated below from the date furnished in the petition for ease of reference:-

Inward Remittance made by Promoters:-

Sl. No.	Equity Inward Remittance	USD (Millions)	Rs.(Millions)	Rs. / \$
1	Wartisila India Power Investment	3.386	149.89	
2	Ogden Energy India (Samalpatti) Ltd.	15.0957	667.93	
3	Goa Holding Ltd.	3.3887	149.94	
4	Fenmor Energy Ltd.	4.3058	190.77	
	Total	26.176	1158.53	44.25907

Calculation of Base Exchange rate for Foreign Equity Inflow

Sl. No.	Particulars	Date	Source Details			SPC Petition Page No.
			Equity			
			US \$	Ex Rate	INR	
1	Equity	20-09-1999	2,193,000.00	43.43	95,241,990	398
2	Equity	22-11-1999	522,752.00	43.23	22,598,569	398
3	Equity	24-11-1999	3,110,000.00	43.22	1,34,414,200	398
4	Equity	24-11-1999	517,963.13	43.22	22,386,366	398
5	Equity	24-11-1999	174,230.00	43.22	7,530,221	398
6	Equity	26-11-1999	182,036.87	43.25	7,873,095	398
7	Equity	25-04-2000	706,810.00	43.50	30,746,235	409
8	Equity	24-04-2000	706,810.00	43.50		409
9	Equity	26-04-2000	685,000.00	43.54	29,824,900	409
10	Equity	24-05-2000	1,442,354.00	43.83	63,218,376	416
11	Equity	24-05-2000	323,868.00	43.83	14,195,134	416
12	Equity	26-05-2000	350,000.00	43.83	15,340,500	416
13	Equity	24-07-2000	4,629,667.00	44.56	206,297,962	423
14	Equity	24-07-2000	1,003,000.00	44.56	44,693,680	423
15	Equity	24-07-2000	1,039,296.00	44.56	46,311,030	423
16	Equity	25-07-2000	1,282,977.58	44.64	57,272,119	423
17	Equity	28-08-2000	1,322,977.00	45.63	60,367,441	432
18	Equity	28-08-2000	297,016.00	45.63	13,552,840	432
19	Equity	28-08-2000	334,000.00	45.63	15,240,420	432
20	Equity	28-08-2000	417,155.29	45.63	19,034,796	432
21	Equity	31-01-2001	315,000.00	46.26	14,571,900	457
22	Equity	01-02-2001	1,970.00	46.26	91,132	457
23	Equity	01-02-2001	411,690.00	46.26	19,044,779	457

24	Equity	05-02-2001	321,724.00	46.25	14,879,735	457
25	Equity	05-02-2001	1,433,162.00	46.25	66,283,743	457
26	Equity	07-02-2001	1,000.00	46.23	46,230	457
	Total		26,176,178.87	44.25	1,158,409,947	

4.13. In Appendix “D” of the PPA calculation of payments, under clause 1 Definition, Capital Cost, Determination has been laid down there and the relevant portion of the clause read as follows:-

“..... For purposes of determining the Capital Cost, all foreign currency loans and all foreign currency equity sources shall be converted into Rupees at the applicable Base Foreign Exchange Rate ... ”

The Commission may adopt the above mentioned methodology being a liability side approach. Consequently, the Commission may consider adopting the weighted average exchange rate as set out below:-

The basis on which the Base Foreign Exchange Rate (BFXR) has been arrived at by the Company has not been detailed. In any event, the same is not in line with the BFXR defined by the Company in Appendix D and one considers three different rates of exchange considered for working out capital cost namely, Rs.44.61/\$, Rs.44.25607/\$ and Rs.43/\$. The same will not achieve the desired effect. The provision for BFXR which reads as follows:

“Foreign Exchange Rate” shall mean the currency

“BFXR” or the “Base Foreign Exchange Rate” shall mean the currency exchange rate between US Dollars (or other applicable foreign currency) and Rupees utilized by the Company in computing the Rupee Capital Cost for all capital

assets paid for by the company in US Dollars (or other applicable foreign currency). If multiple exchange rates are utilized by the Company for different assets or group of assets, the BFXR shall be the weighted (according to the various amounts of US Dollars or other applicable foreign currency expended at different exchange rates) average of all such exchange rates; and”

Having regard to the above, Commission may consider liability side approach as the method while arriving / fixing of the capital cost of the project at an appropriate exchange rate of Rs.44.25907/USD and at the rate of Rs.43/USD.

4.14. Debt-Equity Ratio:-

It has been stated that the project was financed at a debt-equity in the ratio of 69.5:30.5 and on this basis, the tariff ratio has been claimed in the petition. In the financial statement furnished by SPCL it has accepted / admitted that the FFP approval was based on a debt Equity Ratio of 70:30. It is no doubt true that when an issue on the debt-equity ratio of 70:30 was raised by TNEB under its letters dated 15-12-2011, 26.04.2012, and 06.06.2012, the same was disputed by SPCL vide its letter dated 23-12-2011 and 22-06-2012 by stating that the debt-equity ratio should be in the order of 69.5:30.5. This clearly shows the inconsistent stand being taken by the Company on this aspect of the matter. It will not be out of place if it is mentioned here that, the petitioner had claimed funding of the project by way of foreign currency at 55.9783 Million USD @ 44.607/USD plus Indian rupees of Rs.181.682 Million, totaling to Rs.4313.80 Million. Whereas, the actual mix of currency utilized for claiming equity and loan deployed in relation to the project is 24.66 million USD @ 44.61 plus Indian rupees of Rs.3213.87 Million, totaling to Rs.4313.98. The basis of considering two different mix, one for asset side and other for liability side needs due

detailing for considering the liability side approach of determining the tariff. The same is tabulated below:-

(All figures in Million)

Sl. No	Particulars	Equity		Loan		Equity + Loan		Capital cost		SPC Petition
		FC	INR	FC	INR	FC	INR	Rs./USD	Rs.	Page No.
1	Billing-Latest	24.66	194.12		3019.74	24.66	3213.87	44.61	4313.98	
2	Petition	NA	NA	NA	NA	55.9783	181.682	44.607	4313.80	6

Annexure-II of the TEC issued by CEA dated 10-02-1998 in respect of tentative financial package and the Annexure-II of FFP issued by CEA dated 27-08-1999 provides for funding the project at a debt equity ratio of 70:30. Whereas SPCL while billing has claimed an amount of Rs.129.42 Crs. as equity for a completed project cost of Rs.424.84 Crs. which works out to 30.46% as equity deployed in the project which is not in line with the approval accorded by CEA. The Commission may restrict the equity in line with the approval accorded by CEA read with GOI tariff notification dated 31.03.1992 to 30%.

Clause 3 (xi) of FFP dated 12.08.99 issued by CEA provides that, the terms and conditions of TEC would remain unaltered until and unless specifically notified subsequently by CEA. In view of the foregoing, the change in debt-equity ratio of 70:30 needs to be considered and not debt-equity ratio of 69.35:30.65 as claimed by SPCL. Further, clause 3(xvii) of TEC dated 10-02-1998 issued by CEA provides that, the final financial package shall not be inferior to the tentative financial package and the approval provides for a debt-equity of 70:30 in the tentative financial package. Whereas the equity deployed in the project has exceed the 30%. Further, the

promoter's equity in USD has exceeded the amount provided for in the tentative financial package. Hence, the excesses may be disallowed.

4.15. Land Cost Rs.0.036 Crs.:-

As per the records, the SPCL has purchased a small piece of land at Maharashtra in order to provide as security and assignment of project contracts in favour of the lenders IDBI, Mumbai Lead Security Agent in order to save stamp duty. The expenditure incurred is neither in accordance with TEC dated 10-02-1998 nor is in accordance with FFP dated 12-08-1999 approved by CEA. Further, this is clear violation of clause 3 (xi) of FFP dated 12-08-1999 issued by CEA, which provides that the terms and conditions of TEC would remain unaltered until and unless specifically notified subsequently by CEA. Hence, the same may be disallowed. The value of the land would have appreciated by now. Further the SPCL has not furnished details of land purchased including date of purchase, location etc. for offering further comments.

Establishment and Development Expenditure Rs.1.159 Crs.:-

The said issue has been dealt with under the head development expenses also. This head of claim included as a part of capital cost need to be considered only on production of documents to the satisfaction of the Commission.

Construction Insurance Rs.1.135 Crs.:-

Clause SC-07 of the EPC supply contract dated 06-09-1999 entered by the SPCL with the supplier M/s.Wartsila NLD Finland OY provides that the insurance shall be taken by the supplier as set out in Schedule –N which reads as follows:-

“All risk marine Insurance for Plant Equipment: The Supplier shall insure the Plant Equipment to be supplied and delivered with a reputable company. The insurance shall be taken out in the joint names of the Lenders, Supplier, TNEB and SPC for their respective rights and interests and shall cover all risks plus war and strike on a warehouse to warehouse basis. Insurance premium shall be paid by the Supplier. Under such insurance, the indemnity shall be payable in invoiced currency. Concealed damage shall also be covered. ”

From the above, it is clear that the Insurance taken by the Company viz. Advance Loss of Profit (ALOP) Rs.55,85,385/-, Marine Delayed Startup (DSU) Rs.56,69,790/- and Fuel Stock of Rs.90,972/- is for the comfort of SPCL and not incurred as per the TEC dated 10-02-1998 accorded by CEA for the project.

Further, this claim is clear violation of clause 3 (xi) of FFP dated 12-08-1999 issued by CEA which provides that the terms and conditions of TEC would remain unaltered until and unless specifically notified subsequently by CEA. Hence, this claim may not be allowed.

Operator training Rs.0.167 Crs.:-

The claim of a sum of Rs.0.064 Crs. towards cost of travel and Rs.0.102 Crs. towards stay and travel related expenses, totaling to Rs.0.167 Crs. has been made under the head Operator Training as part of project cost.

As per Appendix-11 of Schedule E pertaining to operator training, SPCL should bear the to and fro transport charges to Finland and not the stay / expenses which reads as follows:-

"Supplier shall provide all training manuals, instructions, class rooms and miscellaneous training materials and supplies as required. SPC shall provide for all transport to and from Finland. Supplier shall provide all transport in Finland to Sub suppliers and during the training. Room and Board shall be arranged by Supplier but is the responsibility of the owner. "

From the above, it is clear that SPCL is not entitled towards stay / expenses wherein the amount claimed to be capitalized is inclusive of stay / expenses. Further, the number of persons to be trained in various courses is also given in Appendix 11 of Schedule-E- "Off Shore Supply Contract". In view of the foregoing, the Commission need not to allow this claim for the purpose of capitalization. Further, this claim has not been properly supported with relevant details or by way of any documents viz., no. of employees attended, no. of days, etc.

O&M Mobilization Fee Rs.1.30 Crs.:-

O&M Mobilization Fee is not approved by CEA in the TEC dated 10.02.1998 as well as in the FFP dated 12.08.1999. The SPCL is not entitled to any expenditure which is not approved by CEA as the same will be violating the terms and conditions prescribed in TEC as well as FFP. Clause 3(viii) of FFP clearly provides that

"Any change in terms & conditions affecting the FFP should be brought to the knowledge of CEA."

Further, clause 3(xi) of FFP provides that

"All the terms and conditions of TEC would remain unaltered until and unless specifically notified subsequently by the Authority."

In view of the foregoing, the entire amount of Rs.1.30 Crs. instead of Rs.1.149 Crs. towards O & M Mobilization Fee need not be considered for capitalization especially when the SPCL has not sought the requisite approval as contemplated in FFP dated 12.08.1999 till date.

Development Expenses Rs.1.327 Crs.:-

The development expenses have been claimed as part of Overhead while seeking the completed cost of the project. The total overhead amount claimed is

Rs.10.148 Crs. The main objection under the pre-operative and development expenses on the side of TNEB is that for the same period the SPCL is seeking reimbursement of expenditure as well as raising bill towards development expenses as part of pre-operative expenses which will result in double claim being made by SPCL herein. On this aspect of the matter the same is dealt with in the Petition filed by TNEB. In any event, the SPCL has not furnished the basis on which a percentage of parent company expenses have been charged as pre-operative expenses.

Further, from the details furnished by SPCL, TNEB is unable to know as to whether any interest component has been claimed under pre-operative expenses on certain expenditure incurred which has been claimed to be adjusted as advance against share capital through debit notes duly certified by an Auditor for services rendered by the promoter company. The additional documents which deal with this matter along with other issues were not filed with M.A.P.No.1 of 2012.

In view of the above, in the absence of the details of expenditure incurred, though claimed to have been certified by an Auditor, in the absence of any details this head of claim cannot be countenanced in the eye of law. Further, in the absence of following documents, the above head of claim may be rejected by the Commission:

- i) The breakup details of expenditure incurred under this head duly certified by an Auditor.
- ii) SPCL Annual Report in full shape for the period in which the expenses were claimed from the date of incorporation to completion of the project.

iii) Parent Company's Annual Report in full shape for the period in which the expenses are transferred or debited to SPCL along with the basis of debiting such expenditure to the company under subject as the same was not found in the petition.

iv) It is not out of context here to mention herein that the Annual Reports are required for ascertaining the qualification made by Auditors, if any or as the case may be any other issue which may have an impact on the capital cost.

Contingency Rs.0.34 Crs.:-

SPCL is claiming escalation cost incurred towards township construction under contingency which according to TNEB is not a contingent event. Accounting Standard 4 issued by Institute of Chartered Accountants of India defines-

"Contingency as a condition or situation, the ultimate outcome of gain or loss, will be known or determined only on the occurrence or occurrence of one or more uncertain future events.

In the case on hand, inflation being a normal feature for a developing economy having budget deficit and escalation, cannot be termed as an uncertain event. After taking this account only the CEA in its TEC dated 10.02.1998 as well as while approving the FFP dated 12.08.1999 has not provided for such escalation. In view of the above, it is requested that the claim may be rejected for capitilisation.

Excess Dollar expenses in EPC Rs.0.004 Crs:-

The CEA while granting TEC in clause No. 4(xvii) of TEC dated 10.02.1998 has stated as follows

"The final financial package shall not be inferior to the tentative financial package."

Further, clause 3 (viii) & (xi) of FFP provides as follows:

"3 (viii) Any change in terms & conditions affecting the FFP should be brought to the knowledge of CEA.

3(xi) All the terms and conditions of TEC would remain unaltered until and unless specifically notified subsequently by the Authority. "

Having regard to the above, in view of the fact that there is no provision to include the expenditure claimed under this head of claim as capital expenditure, the Commission may reject this head of claim as not being eligible for capitalization.

IDC Rs. 0.051 Crs.:-

Under this head of claim, the Petitioner has claimed various charges like LD, overdue interest, additional interest on account of delay in creation of Security, Interest on Interest, etc. There is no such provision in the TEC dated 10.02.1998 while granting approval of TEC. Further, there is no such provision while granting the FFP dated 12.08.1999 by the CEA. In fact, clause 3(viii) of FFP and clause 3(xi) clearly bars making such a claim.

In the absence of there being any provision to include the expenditure claimed as a capital expenditure, the same may be rejected.

FINANCING CHARGES (Financing Advisory Fee Rs.0.252 Crs, Legal Stamping Fee Rs.0.045 Crs., Management Equity raising fee Rs.0.124 Crs., etc.):-

The submission of SPCL on this head of the claim is that the financing charges needs to be proportionately charged to the extent the loan amount considered for capital cost for billing purposes that too at the rates ordered by CEA in its FFP dated 12.08.1999. Applying the above, it is seen that the actual

disallowance of the Financing Charges works out to Rs.0.757 Crs. and the same is not liable to be added to be capitalized.

Having regard to the above, the SPCL is not entitled to the entire amount claimed but is eligible proportionately as set out as detailed in the Annexure-III.

Proportionate disallowance of soft cost:-

In so far as this claim is concerned the SPCL is not entitled to the entire amount. If at all is entitled it can be only proportionate charge to extent of loan considered for capital cost for the purpose of billing to be determined by the Commission.

Other issues:

(i) Savings in Capital Cost cannot be a criteria for allowing unapproved excess:-

Expenditure not approved by CEA need not be allowed on the pretext that there is a savings in the capital cost as detailed earlier viz., Insurance taken towards loss, profit etc., contingency expenditure, excess dollar charges, etc.

(ii) Documentary proof needs to be furnished:-

With regard to finance advisory fees, legal & stamping fees, management fees for equity raising have been restricted to amount approved by CEA after obtaining the documentary evidence towards equity raising charges which needs to be furnished at the time of approval of completion cost has not been furnished before allowing the same.

(iii) Methodology of accounting disallowance in debt and equity:-

The disallowed expenditure by the Commission, if any can be related to the source then, the same to be reduced from the source. For instance in case of

expenses disallowed, if incurred prior to the drawal of the loan then the same needs to be reduced from equity and the expenses disallowed, if incurred after drawal of loan needs to be reduced in the debt-equity ratio.

The weighted average rate of depreciation may be ordered on finalization of Capital Cost for regulating the bills in order to avoid unnecessary dispute in this regard.

The Respondent submits that any other issues which impact the capital cost will be raised during the course of the hearing.

5. Contentions in the Counter Affidavit of SPCL dated 27-12-2012 filed in response to TNEB's Amendment Petition:-

5.1. The complete details on the completed capital cost of the project amounting to Rs.424.84 Crores in the formats as prescribed by CEA, on 26-05-2001 to the TNEB and CEA and only after which the TNEB filed its petition to fix the capital cost of the Project for a lesser value.

5.2. After a lapse of six years from the date of submission of the capital cost details by SPCL and after discussions with CEA and the TNEB filed MPA No.2 of 2007 in September 2007 seeking to fix the capital cost of the Project at Rs.417.89 Crores proposing disallowances amounting to Rs.6.132 Crores without providing any details for the further disallowance amount of Rs.0.818 Crores.

TNEB had ample time since May 2001 till September 2007 to examine the documents and therefore the plea that that the capital cost of the Project would be less than what was originally prayed is unsubstantiated and is without sufficient reasons.

5.3. A. Customs Duty:-

In the details of disallowance furnished by TNEB in their original petition, there was no mention about Customs Duty and therefore the averments in the amendment petition are without any basis and need to be rejected.

The EPC Cost component of the Project Cost as per TEC is US\$ 55.9783 million and Rs.62.958 Crores. The Dollar portion of the EPC Cost, i.e. 55.9783 million, is CIF value of all imported equipment for the Project. If the exchange rate of Rs.39 per US\$ and the rate of customs duty at the time of TEC approval @22% on the CIF cost (both as per TEC) are considered, the customs' duty amount would work out to Rs.48.0294 Crores ($55.9783 \times 39 \times 22\% / 10$). This is the amount provided under the head 'Taxes and Duties on EPC Items' in the Abstract of Project Cost contained at Annexure I to the TEC.

It was stipulated in the TEC that the completed capital cost shall not exceed except on account of-

- a) Variation in foreign exchange rate in respect of US Dollars
- b) Interest during construction and the financing charges as per actuals but not exceeding the amount as detailed in Annexure-I to the TEC unless otherwise reviewed by CEA, while according concurrence under Section 31 of Electricity (Supply) Act, 1948 after review of the financial package.
- c) Change in rate of customs duty and additional taxes and duties levied subsequent to issue of techno-economic clearance.
- d) Change in Indian Law resulting in change in cost.

The TEC further provides that 'The Customs Duty' payable shall be as per actual subject to a ceiling of Rs.48.029 Crores at Customs duty rate of 22% at Foreign Exchange Rate of Rs.39/USD' which has been acknowledged by the Petitioner.

The contention of the TNEB is that the Customs Duty shall be at actual subject to a ceiling rate of 48.029 Crores. If this was the intention of the CEA, the same should have been stated so, without further qualification on the rate of customs duty and the exchange rate. Further, as per the details obtained by the SPCL from CEA under the Right to Information Act, CEA itself had vide their letter dated 19-09-2006 considered an amount of Rs.56.445 Crores towards customs duty, as per the details furnished in which they had also considered BFXR at 1 US Dollar = 44.61. This means that though ceiling limit of Rs.48.029 Crores had been stipulated by CEA in the TEC, the same was subject to variation as per the stipulation in the TEC. Since the amount under Customs Duty proposed for inclusion in the Capital Cost by CEA at Rs.56.445 Crores is less than the actual custom duty paid at Rs.57.221 Crores.

The Customs duty is levied on the value of the imported equipment and the computation is on the basis of the exchange rate notified by the Customs Department at the time of actual customs clearance and the amount is paid to the Customs Dept. of the Govt. of India. Being statutory dues payable, the amount actually paid shall have to be considered under the completed Cost. The Commission may kindly consider only the customs duty amount as incurred under the Project Cost.

5.4. B. Different Exchange Rates

The SPCL in M.A.P 1 of 2012 detailed the cost incurred on the project. The PPA very clearly provides that "for purposes of determining the Capital Cost, all foreign currency loans and all foreign currency equity sources shall be converted into rupees at applicable Base Foreign Exchange Rate." Base Foreign Exchange rate or "BFXR" is defined in the PPA as the currency exchange rate between US \$ (or other applicable foreign currency) and Rupees utilized by the Company in computing the Rupee Capital Cost for all capital assets paid for by the Company in US Dollars (or other applicable foreign currency). If multiple exchange rates are utilized by the Company for different assets or group of assets, the BFXR shall be the weighted (according to the various amounts of US Dollars or other applicable foreign currency expended at different exchange rates) average of all such exchange rates.

SPCL has strictly adhered to the above definition and has arrived at the BFXR. The detailed working of BFXR with complete details of remittances made for every import of Capital Goods and certificates of applicable dollar conversion rates from State Bank of India had formed part of Statement of Base Foreign Exchange Rate made by SPCL to the CEA and TNEB in May 2001. As per the requirement of CEA, certificate from the Cost Auditor of the Respondent confirming the BFXR along with copies of relevant documentary evidence was also part of the original submission for approval of Capital Cost.

The reference to exchange rate at which equity was infused into the project for the purpose of arriving at the BFXR is irrelevant and also vividly demonstrative of not only the inability of TNEB to fully comprehend the provisions of the PPA and their tendency to mis-interpret the clearly laid out provisions of the PPA but also their repeated failure to take cognizance of the submissions made by SPCL way back in

May 2001. TNEB had earlier considered the BFXR as claimed by SPCL's original petition. The TNEB's plea to consider the liability side approach as the method for fixing the capital cost of the project at an appropriate exchange rate is not borne out of any provision in the Government of India notifications or regulations of the Commission. The averments of the TNEB in the amendment petition are not based on facts and are misleading in nature.

5.5. Debt-Equity Ratio & Excess Equity Deployed

In the definition of Capital Cost at Appendix D of the PPA, it has been clearly provided that in determining the amount of costs actually incurred in completing the Project, account shall be taken of, inter-alia, any change to the debt equity ratio from the ratio assumed in the Approved Capital Schedule. In fact, on applying the BFXR with respect to the foreign equity component as per the FFP approved by the CEA, the Debt-Equity Ratio approved as per FFP would be 67.50:32.50. The small variation in the debt equity ratio as per the actual financing of the Project may be therefore considered by the Commission while approving the capital cost.

5.6. Current Asset Considered as part of Capital Cost

The Cost of Leasehold land was not forming part of the Gross Block of fixed assets of the Company but was added to the Capital Cost. The reason for considering the deposit (refundable) made with SIPCOT as part of the Capital Cost, even though it was classified under Current Assets, Loans and Advances as per accounting norms, is that the deposit has been made for a lease term of 99 years and is not expected to be recovered by the Respondent during the end of the term of the PPA which is only 15 years. As per the extant regulations of the GOTN, land

situated in an industrial park, in this case, Bargur SIPCOT industrial area, the land is allocated by SIPCOT on lease basis as aforesaid. If the petitioner elects to take over the plant at the end of the PPA term, the lease rights would have to be transferred to the Petitioner together with the fixed assets of the company. Hence for all practical purposes, this cost very much forms a part of the Capital Cost of the Project. During the six years period after the capital cost data were submitted by SPCL, the same were scrutinized by CEA and the TNEB and no query was raised with respect to the above. In M.A.P.No.2 of 2007 filed by TNEB, the amount spent on leasehold land was considered as a part of the capital cost. The contention of the Petitioner to disallow the amount is borne out of afterthought and hence not to be considered.

5.7. Land Rs.0.036 Crores

Since the sole purpose of procuring the Pune land was to minimize the stamp duty impact involved in security creation in favour of the Term lenders of the Project, the same has been included in the Capital Cost claim. Documentary evidence for freehold land, namely, the Deed of Conveyance by the Vendor of the Land in favour of SPCL containing all requisite details was submitted by SPCL vide letter dated 03-03-2005.

5.8. Establishment and Development Expenditure - Establishment Expenditure Rs.1.159 Crores & Development Expenses - Rs.1.327 Crores:-

The claim towards Establishment and Development expenditure was substantiated by submission of detailed break-up and complete supporting documentation to CEA and TNEB vide communications dated 19-10-2004, 17-01-2005, 09-02-2005 and subsequent queries were addressed vide letters dated

18-11-2005 and 05-12-2005. All expenses incurred by the promoter companies during the project development stage and pre-operative stage were categorized and were claimed from the Project Company. SPCL asserts that there had been no double claim of the same expenses under 'Development Expenses' and Pre-Operative Expenses. Break-up of individual components of debit notes which were authenticated by the promoter Company and examined and approved by the Board of Directors of the SPCL together with all supportive documentation was provided in the aforesaid submissions of SPCL.

The Certificate of General break-down of project expenditure by an Independent Cost Auditor had formed part of the initial submission to the CEA on capital cost. Certificate dated 10-05-2001 from the Statutory Auditor on the Completed Capital Cost, after due examination of all relevant documents was also provided. TNEB is now seeking additional documents at this stage, after nearly 10 years of original submission to TNEB and CEA in the formats as prescribed by CEA and further documents submitted to TNEB during the period is 2005-2006. The demand for various documents to be submitted further illustrates the superficial and redundant approach of TNEB. In M.A.P.2 of 2007, TNEB sought disallowance of part of these expenses on ad hoc basis without proper reasoning, has now pleaded for rejection of the entire claim is absolutely baseless.

5.9. Construction Insurance – Rs.1.135 Crores

One of the covenants of the lenders was that the SPCL had to appoint an Insurance Consultant for examining the Insurance Covers required to be taken during the Construction phase of the project, with a view to mitigate the risks associated with the Project during construction. Accordingly, M/s. M F Consultants,

Mumbai, were appointed as Insurance Consultants. They had submitted a Report which envisaged various Insurance Policies to be taken. Copies of the Letter of Intent of IDBI and the Preliminary report on insurance submitted by M/s. M F Consultants were submitted to TNEB vide letter dated 08-12-2005. It was further explained that losses arising as a consequence of the occurrence of a risk under the EPC Contract was not the responsibility of the EPC Contractor and was therefore to be covered only by the Project Company.

It is a well known fact that under the EPC Contracts, the Contractor indemnifies the Owner against any loss arising out of loss or damage during the execution of the EPC Contract. No consequential liability is covered. Only on account of this, a separate line item towards 'Construction Insurance' under the head Hard Cost in the TEC was provided. In line with the TEC approval for Rs.12 Million towards Construction Insurance, the Project Company has paid premium towards the Insurance policies. There has been no violation of the terms of the TEC or the FFP. The marine delayed start-up policy covers consequential risks as a result of loss or damage to or delay in the delivery of the property. ALOP covers consequential risks as a result of loss or damage after its / their receipt at Site.

It was amply clarified that the advance loss of profit policy does not seek to cover any profit since during construction period there is no profit accruing to the Project Company. The intention was only to mitigate the risks in connection with construction and testing and to ensure compliance with the report of the Lenders' Insurance Consultant. There was no violation of the provisions of the TEC in this regard.

5.10. Operator Training – Rs.0.167Crores:-

In terms of the Supply Agreement with Wartsila, the Supplier shall provide all training manuals, instructions, class rooms and miscellaneous training materials and supplies as required. The Owner shall provide for all transport to and from Finland. Supplier shall provide all transport to Sub Suppliers and during the training.

Room and Board shall be arranged by Supplier but is the responsibility of the Owner.

It is evident from the above that all the travel, boarding and lodging related expenses of the Operators sent for training in Finland had to be borne by the Owner / SPCL. The EPC Contractor has only arranged room and Board for the trainees but expenses towards the same were incurred by the Project Company. Only these expenses had been included under "Operator Training" in the completed capital cost. The SPCL had not paid any amount to the EPC Contractor on account of "Operator Training" which was provided by the Contractor free of cost. Operators' Training is a line item approved under the FFP for Rs.1 Million. There had been an increase in this expenditure which may also be admitted considering the overall reduction in the Completed Capital Cost as per FFP approval.

5.11. O&M Mobilization Fee - Rs.1.30 Crores.

While it is admitted that at the time of seeking TEC approval for project cost, the above requirement was omitted by oversight to be included in the pre-operative expenses, SPCL had requested for inclusion of this amount since this has helped in the project achieving COD 2 1/2 months before the scheduled date and has thus resulted in considerable reduction in the Capital Cost as per FFP Approval.

5.12. Contingency – Rs.0.34 Crores.

The SPCL had vide letter dated 29-07-2004, explained in detail to TNEB with copy to CEA, the reason for Rs.34 lakh increase in the Cost of Township as against the approved cost of Rs.4.6 Crores. While the detailed project report was submitted on 29th January 1997, the project construction took place in 2000. Between 1997 and 2000, the prices of inputs such as Cement, Steel and Labour had shot up by more than 20%. After considerable bargaining with the Contractor, an increase of 7.39% was agreed to. Considering the time lag between the date of submission of DPR and the project construction time as well as the savings achieved in comparison to the actual price increase, the expenditure may be allowed.

5.13. Excess Dollar Expenses in EPC - Rs.0.004 Crores.

This is a minor excess which may be admitted by the Commission

5.14. IDC - Rs. 0.051 Crores.

LD and overdue interest arose primarily due to the delay and transfer of funds occasioned due to IFCI, midway of the project expressing that it would not be in a position to lend the remaining amount of the sanctioned amount. IFCI's risk perception of the project due to non-establishment of LC and non-operationalisation of ESCROW, which was the responsibility of TNEB under the PPA, is understood to have made them to limit their exposure. The process of finding an additional lender and completing the documentation and security formalities in consultation with all the lenders took four months thereby requiring the payment of interest at 1% to IDFC. Similarly, as a reaction to IFCI's pullout, SBI had apprehensions about the debt being drawn and levied commitment charges for the debt not drawn as per schedule. Thus these costs were incurred due to reasons beyond the control of the Petitioner.

5.15. Financing Charges (Financing Advisory Fee-Rs.0.252 Crores) Legal Stamping Fee Rs.0.045 Crores. & Management Equity Raising Fee Rs.0.124 Crores. etc.)

Financial Advisory Fee - The Actual amount incurred i.e., Rs.1.738 Crores is higher by Rs.0.228 Crores as compared to the "Restated Financial Advisory Fee" of Rs.1.51 Crores as explained vide SPCL's communication to TNEB dated 14-12-2005.

Legal and Stamping Fee: The actual amount incurred i.e., Rs.41.9 Lakhs towards legal and stamping fees is only marginally higher as compared to the "Restated Legal & Stamping Fee" of Rs.41.4 Lakhs explained vide SPCL communication to TNEB dated 14-12-2005.

Equity Raising Charges: The amount of Rs.60 lakhs which was actually incurred by SPCL towards Management fee is only marginally higher as compared to the "Restated Management Fee" of Rs.56.3 lakhs. Total Financial charges based on restated FFP is Rs.6.175 Crores as compared to actual financial charges incurred of Rs.6.227 Crores. The net increase is Rs.0.052 Crores only.

5.16. Proportionate Disallowance of soft cost

These disallowances are not applicable since there is no reduction in the hard cost as proposed by TNEB. The Commission may not consider these disallowances.

5.17. Other Issues

(i) TNEB claims that Savings in capital cost cannot be the criteria for allowing unapproved excess:

Except for the excess dollar expenditure, other two expenses cited by TNEB viz. Construction Insurance and Contingency Expenditure are those provided for under the TEC. These two expenses form part of the TEC approved cost. The averment of TNEB in their amendment petition may not be considered by the Commission.

(ii) TNEB requires that documentary proof needs to be furnished:

In this regard, all the documents as prescribed by CEA required to be submitted while seeking approval of the completed capital cost of the project were submitted by SPCL in May 2001 and additional documents sought by TNEB during the period 2005-06 were also submitted. It is incorrect to say that necessary documentary evidence towards equity raising charges had not been furnished by the SPCL. The Commission may consider all the submissions made by SPCL in M.A.P.No. 1 of 2012 and approve the expenses as claimed.

(iii) Methodology of accounting disallowances in debt and equity:

Since the SPCL has incurred capital cost within the approved limit as submitted in M.A.P. No. 1 of 2012, the Commission may approve the capital cost as such and also approve the small variation in the debt: equity ratio, which is also permitted under the provisions of the PPA.

(iv) Depreciation Rate to be ordered:

Rate of depreciation adopted by SPCL in raising tariff invoices was as per the provisions of the PPA and the GOI notifications. However, the issue of depreciation does not form a subject matter under the capital cost of the Project and TNEB cannot raise any issue related to depreciation rate in the amendment petition. The

Commission may note that the monthly tariff invoices were being submitted by the SPCL since April 2001 and the TNEB has been admitting the invoices with the depreciation rate as claimed.

The Commission may take the above facts on record and dismiss the amendment petition preferred by the TNEB.

6. Additional Submission by TANGEDCO dated 03-05-2013:-

6.1. SPCL has submitted a final hard cost of Rs.391.121 Crs. excluding IDC. The loan sanctioned for the project is Rs.311.20 Crs. As per the records available with TANGEDCO the loan drawn for the project until COD is Rs.283.92 Crs. and the total loan drawn for the project is Rs.305.84 Crs. There is no documentary evidence to show that the excess amount over and above the drawal of Rs.305.84 has been surrendered by SPCL.

6.2. The final project cost arrived by TANGEDCO is Rs.409.02 Crs. The details are enumerated below:-

Particulars	Claimed by SPCL (Rs. in Crs.)	As per TANG EDCO (Rs.in Crs.)	Details of disputed amounts	
Hard Cost	391.121	375.73	Submission made in the original petition and amendment petition.	
Financing Charges	6.227	5.86	Financial Advisory Fee Legal and stamping fee Management fee Total disputed amount	0.2 Cr. 0.045 Cr. <u>0.124 Cr.</u> Rs.0.369 Cr.
IDC	27.489	27.43	Disputed amount - Rs.0.06 Cr (claimed towards LD on interest, Interest on interest, interest due to delay in creation of security.	
Total Project cost	424.837	409.02		

6.3. Debt-Equity Ratio:-

Considering the loan sanction of Rs.311.2 Crs. for the project, Rs.97.82 Crs. (409.02 – 311.2) will be the project equity. The Debt Equity Ratio works out to 76.08:23.92. If debt of Rs.305.84 Crs. (actual drawal as per SPCL) is considered for project funding, the project equity will work out to Rs.103.18 Crs. in which case the DE ratio will be 74.77:25.23.

6.4. In the absence of any documentary evidence to the contrary, the sanctioned loan amount is to be considered as the debt portion and the balance is to be treated as equity, leaving the project DE at 76.08:23.92. Further, it is submitted that the FFP dated 12-08-1998 provides for ratio of Foreign Equity to Indian Equity to be in the ratio of 85% to 15%. The Commission on due prudence check may fix the DE ratio for further tariff calculation.

6.5. Inasmuch as the IDC has been worked out by SPCL considering the loan actually drawn till COD (Rs.282.92 Crs.) and this continues to remain the same, the claim of IDC by SPCL is in order excepting the disputed amount as noted above. Inasmuch as the equity does not exceed the normative equity of 30%, reworking of IDC does not arise.

6.6. Further the exchange rate protection is to be given for US \$ only as per FFP dated 12-08-1999. Hence, there is no protection for the INR converted into dollars. Hence, the foreign equity to be considered for the project cost is to be converted into INR @ Rs.44.2544 only which is the weighted average rate of inflow of foreign equity.

7. Contentions in the Counter filed on behalf of SPCL dated 12-07-2013 in response to TANGEDCO's Additional Submission:-

7.1. TANGEDCO has misconstrued the oral directions given by the Commission on 13-02-2013 and is seeking to make belated and untenable claims contrary to the documents already on record as also its pleadings. However, in order to place on record its response, SPCL submits as follows:

7.2. TANGEDCO has sought to make a claim that a prudence check is required to fix the Debt-Equity ratio for the purpose of tariff calculation. In this regard, it is submitted that though the loan sanctioned for the project was Rs.311.2 Cr the total loan actually drawn for the project was Rs.304.05 Cr. The actual loan drawn until 31-03-2001 was Rs.290.47 Crore as was originally submitted to TANGEDCO in connection with Interest on Debt computation, with copies of the communications from Banks in support of the same and finally the debt drawn stood at Rs.304.05 Cr as of 31-10-2001. The stand of TANGEDCO is erroneous, since the total loan drawn as of 31-03-2001 was erroneously shown as Rs.292.26 Cr. and thus shows excess drawal of Rs.1.79 Cr. However amounts drawn under debt during the period from April1, 2001 to 31-10-2001 (Rs.13.58 Cr.) as shown by TANGEDCO in their additional submission and as per the Petitioner's records being the same, the total loan availed is erroneously shown by TANGEDCO as Rs 305.84Cr. which is in fact Rs.304.05 Cr. Since there had been no drawal of debt beyond Rs.304.05 Cr., there was no question of any surrendering of excess drawal of loan. It is therefore conclusively established that the total debt availed was Rs.304.05 Cr.

7.3. TANGEDCO had in their additional submissions averred that the Capital Cost for the Project as per TANGEDCO's workings was Rs.409.02 Cr (which is inconsistent with their earlier working) without any detailed reasoning for the same.

7.4. The total cost of the project approved by lenders was broadly Rs.447.44 Cr. The loan sanctioned by the lenders amounted to Rs.311.2 Cr and the balance of Rs.136.24 Cr was to be funded through equity. This is as per the lending documents which were submitted to the then TNEB and CEA in May 2001. The debt equity ratio as per the lenders model is 69.55: 30.45, from which, it is evident that the minimum equity contribution was to be not less than 30% of the total project cost. The total equity actually infused into the project was Rs.136.24 Cr. Out of this, Rs.129.36 Cr has been considered for project cost purposes, being 30.45% of actual incurred capital cost of Rs.424.84 Cr. The balance amount of Rs.295.48 Cr.(69.55%) was funded through debt. SPCL incurred certain other expenses during project execution which were not provided under the TEC. Although the total expenditure incurred by SPCL was Rs.440.29 Cr., the capital cost incurred on the Project was restricted to Rs.424.84 Cr. The PPA provides for minor variation in Debt-Equity ratio subject to the approval of CEA.

7.5. Considering the total debt sanctioned or actual debt drawn for the purpose for financing of the project cost would be totally inappropriate. The submission of TANGEDCO in this regard appears to be clearly an after-thought in an attempt to make untenable claims.

7.6. During the period when the approval for the project cost was sought, debt equity proportion was 70:30 and no project would get financed by the FIs and Banks unless equity brought in was less than 30%. It is for this reason, CEA had also stipulated in the TEC that the debt equity ratio would be 70:30. Any small variation in the debt equity ratio was subject to the approval of the CEA. It is, therefore, unfortunate that TANGEDCO is seeking to make unsubstantiated and untenable claims to increase the debt component and reduce the equity component without any appreciation of the underlying principles. It is submitted that there has been no request for any specific documentary evidence on any aspect that forms part of any of the additional submissions by TANGEDCO and therefore the question of absence of any documentary evidence does not at all arise. Reference has been made by TANGEDCO to the ratio of Foreign Equity to Indian Equity with a plea to the Commission to fix the DE ratio, the purpose of which is not clear and is rather confusing. In any case the Commission may reject the TANGEDCO's averment to consider the sanctioned loan amount to be the debt portion, being without any basis.

7.7. With regard to the IDC, SPCL had sought approval for Rs.27.489 Cr. actually incurred which in fact was less than the IDC that would have been incurred, had the project been completed as per the agreed commissioning schedule. The amounts were actually incurred and hence the total amount of Rs.27.489 Cr. may be considered by the Commission.

7.8. The Base Foreign Exchange Rate (BFXR) computation as per the PPA would have to take into account, US Dollar currency utilized for the project. Therefore, all payments in Dollars irrespective of whether they were procured from foreign sources

or converted out of Indian Rupees and utilized towards purchase of capital assets, need to be considered. The Base Foreign Exchange Rate had therefore been computed on the basis of the provisions of the PPA. Exchange rate protection had been sought only for the foreign equity infused into the project as per the provisions of the FFP. Exchange rate protection for the Indian Rupees had not been sought as averred by TANGEDCO. The project cost determination is on the basis of actual expenditure on the project and the means of financing of the project includes debt and equity. These two aspects are distinct and separate. Therefore, the TANGEDCO's attempt in seeking to mix up the said issue and thereafter making a claim for reduction of the project cost is entirely untenable.

7.9.. TANGEDCO's attempt in the additional submissions is clearly in the nature of an afterthought and calculated to seek for reduction of the capital cost on the basis of untenable claims that are contrary to the established accounting practice and the terms of the PPA.

8. Additional Affidavit filed on behalf of TANEDCO dated 28-07-2014:-

8.1. As directed by the Commission in the Daily Order dated 27-02-2014, meetings were held with SPCL on 20-05-2014 and 04-07-2014. The TEC and FFP had been approved by the CEA which was also the Authority then to determine the completed capital cost of this project. Accordingly, the completed capital cost had been submitted to CEA on 26-05-2001 for approval. The Standing Committee had in the various meetings, dealt with the issue of completed capital cost.

8.2. As the Commissions were subsequently by law vested with the task of adjudicating the completed capital cost, CEA could not grant the approval. However, the Standing Committee of CEA had observed that Rs.417.89 Crs. was reasonable, vide CEA' Communication No.2/TN/31/96-PAC/1048-50, dated 10-05-2006 enclosed with the Ministry of Power's letter dated 10-10-2006. This document which formed the basis for the present discussions has however not been filed in the petition of TANGEDCO as well SPCL.

8.3. At the time of drafting the affidavit relating to the discussions between TANGEDCO and SPCL that the Standing Counsel as well as Senior Counsel for TANGEDCO had seen the documents and had observed that the said documents were relevant documents and permission of the Commission is to be obtained for making them part of the pleadings by marking them as additional documents.

9. Counter Affidavit by SPCL to the Additional Affidavit dated 28-07-2014 filed by TANGEDCO:-

9.1. During the course of discussions held on 20-05-2014, TANGEDCO discussed in detail, the basis for each of the items of original disallowance proposed by TANGEDCO and asked for some additional documents/substantiation with respect to some of the disallowances for finalising their view on the same. Accordingly, to the extent feasible, the SPCL provided clarifications and information to TANGEDCO vide letters dated 28-05-2014 and 02-06-2014. The understanding at that point of time was that based on the information/clarification provided, the issues were to be once again discussed and resolved to the extent possible, during the ensuing meeting.

9.2. However, when the next meeting was called for, TANGEDCO contended that no discussions could be initiated unless, the original disallowance recommended by CEA itself was agreed upon by SPCL as a starting point. This came as a total disappointment to SPCL and it made submissions that the very reason because of which a petition was filed before this Commission for approval of capital cost was that the original disallowance proposed by TANGEDCO was not acceptable and therefore, that could not be the starting point for present discussions.

9.3. When TANGEDCO refused to accept this submission of SPCL, SPCL sought a confirmation about agreement regarding certain numbers which were in dispute such as actual debt drawn, so that the Commission could take a decision faster atleast to that extent. However, TANGEDCO was not willing to discuss even the specific issues mentioned by the Commission, viz. the exchange rate and the debt-equity ratio, for which they had sought and obtained detailed explanations and documents from the respondent/petitioner during the past couple of months, unless SPCL first agreed in toto for the original disallowance recommended. Thus, at the meeting held on 04-07-2014, TANGEDCO commenced the discussion on a different note which was not only inconsistent with the tenor of earlier discussions, but also demonstrative of a predetermined mind-set of only reducing the completion cost without any valid reason, resulting in failure of process of negotiation.

9.4. The Standing Committee of the CEA was vested with the powers of determining the completed capital cost of the projects prior to the Electricity Act, 2003. Subsequent to the enactment of the above Act, the State Electricity

Regulatory Commissions / Central Electricity Regulatory Commission are the only authorities to determine the completed capital cost of power projects.

It is obvious that CEA had simply considered the recommendation of the TNEB and additionally reduced the completion cost by Rs.0.83 crores. The CEA was denuded of any jurisdiction. Further, the examination by CEA which is sought to be relied upon was relatable to only the recommendation of TNEB itself and there was no occasion to consider SPCL's position and responses at that stage. The TANGEDCO cannot seek to cite a correspondence out of context in an unfair manner and seek to derive any benefit out of the same.

9.5. Consequent to the Electricity Act, 2003, only the State Electricity Regulatory Commissions/ Central Electricity Regulatory Commission are vested with such powers. After the Electricity Act, 2003, TANGEDCO could not use the CEA's views. Hence any reference to communication from CEA in the matter of completion cost of the project is to be rejected. The Commission alone being vested with the powers of approving the completed cost of the Project, can approve the completed cost of the Project without any reference to any communication from CEA by examining the issues independently.

9.6. As per records available, CEA had not examined carefully the details furnished by the SPCL and instead simply adopted the recommendation of TNEB with further reduction in completion cost. The approval sought for the completed cost of the project at Rs.424.84 crores as per capital cost contemplated under the 'Terms and Conditions for Determination of Tariff Regulations' of the Commission evidences that SPCL was not willing to accept the completed cost as proposed by the then

TNEB in its Petition No. MAP 2 of 2007. Further during the previous hearings before the Commission, TANGEDCO had sought a number of documents to be examined with regard to the expenses proposed to be disallowed by them in their MAP 2 of 2007 and these were furnished by SPCL long back. These documents were related to Development Expenses, Construction, Supervision & Admn. expenses and Construction Insurance etc. No queries were raised nor clarifications sought by TANGEDCO subsequently on these documents.

9.7. TANGEDCO took the stand of initiating discussions with SPCL on the CEA recommended completion cost of Rs.417.89 Crores which was not acceptable. TANGEDCO were not ready to discuss all the original items of disallowance based on the documents further sought by them which were furnished by the SPCL. If TANGEDCO at this stage insists on the credibility of Rs.417.89 Crores arrived at by CEA as being reasonable, it still remains, there should not have been further issues raised by TANGEDCO under 'Amendment Petition and Additional Submission'.

9.8. CEA's recommendation was on account of further reduction in Customs Duty amount and hence this issue was referred to CEA. In fact, TNEB themselves forwarded the plea of the SPCL with details submitted, thereto. After receipt of CEA's recommendation received by TNEB from Ministry of Power, GOI, CEA agreed to call for a meeting with TNEB and SPCL at Chennai on 15-12-2006. SPCL was not called for this meeting and instead TNEB went ahead with filing their Petition No. MAP 2 of 2007. SPCL was not given any opportunity to explain the details on the various disallowances proposed by TNEB and agreed to by CEA in any of the fora. Most of the disallowances proposed by TNEB were arbitrary and without any valid reasoning. The Commission, after hearing the petition of TNEB and the SPCL, directed

submission of several documents sought by TANGEDCO related to the disallowances originally proposed by them and these were all furnished to them. There had been no further query raised by TANGEDCO.

10. Written Submissions filed by SPCL on 16-12-2015:-

10.1. (a) The following important points are placed for consideration:-

The Tariff Regulations 2005 of the Commission, under Chapter III, and Para 18 provides as follows:-

“18. Capital cost:-

- (1) Accurate computation of cost of service including return on investment is essential for determination of cost plus tariff. The Commission shall be guided by the following principles to compute the cost and return.
- (2) Investments made prior to the notification of these Regulations by the Generating Company and licensees shall be accepted on the basis of audited accounts.
- (3) The actual capital expenditure on the date of commercial operation for the original scope of work based on audited accounts of the Company / licensee limited to original cost may be considered subject to prudence check by the Commission.” x x x x

(b) The Gross Block as of 31-03-2001 as per Audited Accounts of the SPCL amounted to Rs.423.585 Crores. On addition of Cost of Leasehold Land (for which payment was made to TACID and hence part of the Project Cost but was not forming part of the assets of the Company) amounting to Rs.83.379 Lacs and payment to TACID (for laying water supply lines outside the Project premises and was part of the Project Cost but not forming part of the assets of the Company) of Rs.82.29 Lacs

and reduction of Rs.40.46 Lacs towards the cost of Freehold land at Samalpatti with corresponding stamp duty thereto (which was not part of the Project Cost since the Project was relocated), the Completed Capital Cost of Rs.424.837 Crores is arrived at. Copy of Audited Financial Statements for FY 2000-01 is available in the typeset filed on 11-05-2012 along with M.A.P.No.1 of 2012.

(c). The TNEB had deputed retired Chief Engineer of the Respondent Board for verifying the scope of the Project for its completion as per TEC. In February 2005 he visited the Project site and verified the equipment installed. No query was raised with regard to the scope of the Project, subsequent to his visit.

(d). The Respondent TNEB had also deputed 2 of their Accounts Executives for verifying the SPCL's Accounts for the expenditure incurred on the project. This was carried out in Feb./Mar.2005. No query was raised in respect of the same.

(e). As was brought out, cost of the Project as per the TEC accorded on 10.02.1998 was equivalent to Rs.391.86 Cr. (with Exchange Rate of Rs.39 per US Dollar). The same worked to be equivalent to Rs.431.38 Cr. taking into account FFP approved cost duly adjusting for Exchange Rate variation (Exchange Rate of Rs.44.607 per US Dollar) and actual Customs Duty paid. However, approval is sought only for Rs.424.84 Cr.

(f). The TEC (accorded on the same day, i.e, 10.02.1998) approved cost of the project of Madurai Power Corporation Private Ltd. (MPCPL) of comparable capacity, was equivalent to Rs.384.22 Cr. (with same Exchange Rate of Rs.39 per US Dollar)

against which MPCPL had originally sought approval for equivalent Rs.429.01 Cr. (with Exchange Rate of Rs.46.53 per US Dollar). While the incurred cost of the Project of SPCL includes Township at a cost of Rs.4.94 Cr. (including Rs.0.34 Cr considered under Contingency), MPCPL's incurred project cost does not include township. The Petitioner Company's incurred cost excluding 'Township' amounts to Rs.419.9 Cr, which is far less than of the incurred Cost of the project of MPCPL of comparable capacity. The SPCL's Project achieved commercial operation 6 (six) months ahead of the Project of MPCPL, though TEC approval was accorded for both projects on the same day.

(g). A few excesses in respect of certain line items such as Operator Training and O & M Mobilization Fee (included under "pre-operative expenses") were incurred by the SPCL. However, considering the fact that the finally arrived cost of Rs.424.84 crores is lower than the equivalent of the FFP approved cost of Rs.431.38 crores due to early commissioning of the project, such excesses may be considered and allowed by the Commission for approval.

10.2. The Commission may be pleased to fix the capital cost of the 7x15.094 MW (105.66 MW) power project of SPCL in Parandappalli Village, Pochampalli Taluk, Krishnagiri District, Tamil Nadu at US \$ 56.1083 Million + Rs.174.55 crores which works out to Rs.424.84 crores at the foreign exchange rate of 1US \$ = Rs.44.607 and approve the Debt Equity Ratio, with equity not less than 30%.

10.3. The objection of the TANGEDCO and the submissions of the SPCL on issue-wise are as follows:-

Sl. No	Issue	Amt (Rs.in Crs)	TANGEDCO's proposal as given in their note distributed during the hearing held on Nov. 26,2015	Company's submission
1.	Land not related to project.	0.036	Disallowed the situated in Pune since not located in the project area and not related to the project.	<p>1. Land purchase in Pune was solely for the purpose of minimizing stamp duty in security creation in favour of lenders which resulted in reduction of project cost.</p> <p>2. There was a substantial saving in stamp duty (stamp duty in Maharashtra vis-s-vis in TN - more than Rs.1 Cr).These have been explained earlier also.</p> <p>Hon'ble Commission may kindly decide.</p>
2.	Establishment &Development expenditure	1.152	<p>Expenditure incurred by the parent company M/s.SIV Industries. The total expenditure claimed under this head is Rs.2.46 Cr. The details are as below:</p> <p>DN 01.03.99 – Rs.2,02,60,910 DN 30.09.99 – Rs. 31,49,183 DN 15.12.99 – Rs. 12,52,722 Total Rs.2,46,62,815</p> <p>Since not found reasonable, the entire amount incurred towards salaries and a percentage of salaries is allowed as overheads.</p> <p>The lacunae found in the documentary evidences are given below: The book of</p>	<p>1. MOU for setting up the Project was originally signed between TNEB and SIV Industries Ltd. (SIV). Till such time the Project achieved financial closure, some of the activities were undertaken by SIV and spent for by SIV. After financial closure by the Project Company, expenses incurred by SIV were reimbursed by the Project Company. Complete details for the expenditure of Rs.2.47 Cr. were furnished to TNEB and these were towards the salary and wages of the employees as well as overheads and perquisites of the employees of SIV engaged in the project activities</p> <p>2. Complete details of expenditure incurred towards Est. & Dev. Expenses by the Promoter Companies claimed under debit notes from Project Company with detailed break-up and supporting documents were given to TNEB/TANGEDCO vide letters dated 19.10.2004,17.01.2005,09.02.2005,18.11.2005 & 05.12.2005. Expenditure has been duly certified by the Cost Auditor of the Company.</p>

		<p>accounts of M/s Samalpatti for the period 1.4.98 to 30.9.99 is not reflecting this amount payable to SIV industries.</p> <p>The basis for apportioning this expenditure to Samalpatti by SIV industries is not available in the debit notes furnished.</p> <p>How the share of administrative expenses has been arrived at is not furnished.</p> <p>Hence, the expenditure claimed under this head is actually related to this project or not is to be ascertained.</p>	<p>3. Audited Financials of the promoter companies for the relevant periods as sought by TNEB during the hearing had been furnished on 11.03.2013. Debit notes to the Project Company were duly supported by certificates of statutory auditors of Promoter Companies. TANGEDCO, in their additional submission dated 03.05.2013, have not commented on these documents and instead retained the same amount of disallowance under the head. Expenditure has actually been incurred and paid for by the Project Company and proposed disallowance is arbitrary without proper justification.</p> <p>4. After submission of additional details by the Company, as called for, there has been no further query from TANGEDCO in this regard. Now, after lapse of more than 2 years TANGEDCO have referred to the Company's books and had raised queries.</p> <p>5. The points raised now by TANGEDCO relate to debit notes of SIV Industries dated 01.03.1999 for Rs. 2, 02, 60,910 and Debit Note dated 30.09.1999 for Rs. 31, 49, 183, stating that the books of accounts the Company are not reflecting the amount payable to SIV Industries. In this regard, resolutions of the Board of Directors of the Company reflect acknowledgment of these debits and adjustment on account of the same as below:</p> <p>(a) Debit Note for Rs. 2,02,60,910 This matter is referred in Board minutes dated 17th Mar 1999; total outstanding to SIV Industries mentioned as Rs 29,601,724/- including earlier outstanding of Rs 93.41 Lakhs. It was resolved that out of Rs 29,601,724/- due and payable to SIV Industries Ltd, part payment of Rs 20,436,000/- be adjusted against Share Application Money</p>
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				<p>payable by them on 6,812,000 equity shares at Rs 3/- per share. Relevant extracts (certified) from the Minutes of the Board Meeting dated 17th Mar 1999 are enclosed.</p> <p>(b) Debit Note for Rs.31,49,183 This matter is referred in Board minutes dated 12th Oct 1999; Accounts were adopted in this meeting after the decision to consider this amount as part of Share Application Money(29,601,724+3,149,183)=32750907 less TDS Rs10.82 Lakhs=Rs 31,668,907/-. Relevant extracts (certified) from the Minutes of the Board Meeting dated 12th Oct. 1999 are enclosed.</p> <p>Total amount of Rs 2,34,10,093 is included under the head ' Current liabilities/Liabilities/Share Application Money from SIV Industries' in SPCPL's Balance Sheet dated 30th Sep 1999.</p> <p>Relevant extracts of the Minutes of the meeting of the Board of Directors held on 17th March 1999 and 12th Oct. 1999 and copy of the Balance Sheet of the Company dated 30th Sep. 1999 are enclosed at Annexure 1 . .</p> <p>In view of the documentary evidence now furnished, it is obvious that the expenses were incurred by the Promoter Company in the project activities of the Power Project.</p> <p><u>Further the expenditure is within the limits prescribed in the TEC.</u></p> <p>The Hon'ble Commission may kindly approve the total expenditure without any disallowance.</p>
3.	Construction Insurance	1.135	<p>Loan document does not provide for taking insurance policies such as ALOP, MDSU etc., There is no recommendation of the consultant for taking fuel stock insurance. Not mandatory as</p>	<p>1. While Erection All Risks Insurance Cover has been taken by the EPC Contractor and provided for under the EPC Contract, the Insurance Policies viz. Advance Loss of Profit Rs.55.85 lakhs) and Marine Delayed Start-up (Rs.56.69 lakhs) were required to be taken as per the recommendation of Insurance Consultant</p>

			<p>per the financing documents.</p>	<p>required to be appointed as per Financing Documents. Copy of the relevant portion in the Lenders' Agreement to the Project, which states, "Lending documents require appointment of an Insurance Consultant by the Project Company and insurance covers to be obtained as per their recommendation" had been furnished to TNEB. The same was complied with all relevant documents furnished to TNEB.</p> <ol style="list-style-type: none"> 2. TEC/FFP provides for a separate line item of Construction Insurance with a provision of Rs.1.20 Cr and the expenditure is within the aforesaid limit. 3. Considering the requirements of such additional insurance requirements for such non-recourse funded projects, the Format prescribed by CEA in their publication titled 'Guidelines for Formulation of Project Reports for Power Projects in Private Sector (June 1995)', the item of "Construction Insurance" appears as an item under 'IDC & Financing Cost'. This is specifically in addition to the insurance covered under EPC Cost. 4. In the case of the approval of the Project Cost of PPN Power Generating Company P Ltd. Insurance expenses towards Additional Loss of Profit (ALOP), in addition to the insurance under EPC Contract, had been approved by the Hon'ble Commission. 5. After perusal of documents, TNEB asked the documentary evidence for the recommendation from the Consultant for Insurance Cover taken for Fuel stock. The Company explained that there was no specific
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				<p>recommendation for this. However, since the fuel was being procured and stored before COD for commissioning purposes, the same needs to be insured and hence the expenditure. Amount paid for insurance Cover for fuel stock was Rs. 0.90 Laks.</p> <p>The pleading by TANGEDCO that such insurance requirements were not mandatory as per financing documents is not borne out of fact.</p> <p>Total expenditure incurred is within the limits provided for under this head in the TEC..</p> <p>The Hon'ble Commission may kindly approve the entire amount spent on this head under completed Capital Cost.</p>
4.	Operator Training	0.067	<p>The amount allowed in TEC is Rs.0.1 Cr. Actual expenditure incurred is Rs.0.167 Cr. The excess expenditure of Rs.0.067 Cr over and above TEC is disallowed. Expenditure incurred over and above TEC approval.</p>	<p>1. As per the provisions of the EPC Contract, the Supplier was to provide training and the Company (SPCPL) was to provide for all transport to and from Finland. Supplier was to provide transport within Finland. Lodging and Boarding was to be arranged by the Supplier but was the responsibility of the Company. Expenses incurred were towards the travel, boarding and lodging expenses of the personnel deputed for training to Finland. Approval is sought for the small excess of Rs.0.067 Cr. considering the overall saving in the Project Cost due to early commissioning.</p> <p>The Hon'ble Commission may kindly decide on the excess expenditure.</p>

5.	O&M Mobilization	1.159	<p>There is no provision for this expenditure in TEC. Hence amount incurred beyond the ceiling provided for pre-operative expense is disallowed.</p> <p>Not approved in TEC. (This item is to be clubbed with item no.3 under additional issues.</p>	<ol style="list-style-type: none"> 1. The expenditure was incurred on account of the request of the Project to mobilize O&M personnel well ahead of commissioning of the project. This helped in achieving commercial operation ahead of the schedule, resulting in considerable saving to the Project by way of IDC. Since the item was not originally included in the "Pre-Operative Exp.", SPCPL requested TNEB to consider the same under that head and also approve the excess expenditure of Rs.1.159Cr.TNEB/TANGED CO while seeking recommendation from CEA, had considered the Company's request and proposed disallowance of only Rs.1.159 Cr. out of Rs.1.30 Cr. incurred. 2. SPCPL submits that at the time seeking approval of Project Cost from CEA, this item of expenditure was omitted by oversight and the Company subsequently requested for inclusion of the same under 'Pre-Operative Exp.' and requested for approval of the excess expenditure of Rs.1.159 Cr. in view of the savings in the Completed Cost. 3. The excess expenditure over TEC is requested to be approved by the Hon'ble Commission. 4. The expense incurred for O&M Mobilization was essential to ensure that the project could commence commercial operation before schedule, which contributed to substantial reduction in project cost.
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				<p>The Project was commissioned and commercial operation commenced more than 6 month ahead of another similar project of comparable capacity for which TEC was accorded on the same day Having been actually incurred, the same may be allowed, in view of the overall reduction in project cost.</p> <p>Hon'ble Commission may kindly decide and approve this small excess under the Project Cost.</p>
6.	Development expenses		<p>Expenditure incurred by Parent company M/s Shapoorji & Pallonji. Since not found reasonable, only salaries and a percentage of salaries is allowed as overheads.</p> <p>An amount of Rs.25 lakhs has been paid by M/s Shapoorji & Co Ltd. To senior advisers on achieving the financial closure of M/s.SPC.</p> <p>This expenditure is an additional expenditure over and above the regular expenses.</p> <p>Hence, this amount should not be capitalized.</p> <p>Further an amount of Rs.7, 01,407 Lakhs included under this head pertains to the period prior MOU. Hence, the same is to be disallowed.</p>	<ol style="list-style-type: none"> 1. Till the Project Company achieved financial closure, the Promoters, viz. SIV Industries Limited and Shapoorji & Pallonji Company Limited, incurred expenditure towards project development, co-ordination with different Govt. depts. for seeking approvals etc and the management personnel and the staff of these companies were engaged in these activities. The expenses incurred by the Promoter Companies on account of the Project, were claimed from the Project Company through Debit Notes with details of expenditure incurred, duly certified by the Auditors. The debit notes were approved by the Board of Directors of the Project Company. 2. Detailed documentation was submitted to TNEB and CEA during their examination of the Project Cost details during the period 2004-05. 3. As per the earlier direction

		<p>The total expenditure claimed Rs.2.5 Cr which is a summation of 4 Debit Notes viz.,</p> <p>DN 31.03.99 – Rs.1,90,18,971 DN 12.10.99 – Rs. 19,96,055 DN 21.12.99 – Rs. 12,64,686 DN 7.1.2000 - Rs. 27,40,010 Total - Rs.2,50,19,722</p> <p>These debit notes have been raised by Shapoorji & Co on Samalpatti Co. This amount has been paid by Samalpatti Power Co.Pvt.Ltd., on 24.2.2000.</p> <p>On going through the Statement of Accounts of Shapoorji for the period 98-99, the amount receivable from Samalpatti in respect of DN dated 31.3.99 is not reflected.</p> <p>In as much as receivable is not reflected in the Account whether the expenditure claimed is actually related to this project or not is to be ascertained. The expenditure of Rs.7, 01,407/- and the incentive of Rs.25 lakhs minimum to be disallowed.</p>	<p>of the Hon'ble Commission, audited financials of the promoter companies viz. SIV Industries Limited and Shapoorji & Pallonji Company Limited for the relevant periods when debit notes were raised, had been submitted to TANGEDCO on 11-03.2013. Query relating to Debit Note of 31.3.99 has now been raised by TANGEDCO after more than 2 years of submission of relevant documents. After checking this matter with personnel of SP & Co. Limited, it is clarified that the amount of Rs. 1,90,18,971 is included under 'Schedule 11- Loans and Advances' and sub-head "(B) Advances , under item (i) Advances receivable in cash or in kind for value to be received – amounting to Rs.6,79,16,182. Extract of the relevant page No. 14 of the Balance Sheet of SP & Co. Limited for the FY 1998-1999 (which formed part of the documents submitted to TANGEDCO earlier on 11.03.2013, is enclosed at Annexure 2.</p> <p>4. The amount of Rs. 7 lakhs was spent during the period from Dec.1994 to Mar.1995 where as MOU was signed on 15th Feb. 1995. Though the MOU was signed on 15th Feb. 1995, a lot of preliminary activities were carried out by the promoter company to identify the site and capacity of the project etc. If at all, any disallowance is proposed, it should be restricted only to the proportionate expenses incurred prior to signing of MOU which works out to Rs.4.375 Lakhs only.</p> <p>5. The amount of Rs.25 lakhs paid to Company officials for achieving financial closure, is a part of their</p>
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				<p>remuneration and need to be considered as expenses. The Project achieved financial closure within a reasonable period of time which resulted in the Project achieving COD well ahead of schedule. This Project was commissioned more than 6 months ahead of another project of comparable capacity which also received TEC on the same date. The completed cost of the Project is also less than the other project.</p> <p><u>6. The Total expenses incurred is within the provisions under the head in the TEC.</u></p> <p>The Hon'ble Commission may kindly consider the total expenses for approval.</p>
7.	Contingency (civil works excess over TEC)	0.34	<p>The amount allowed in TEC for Township and colony is Rs.4.6 Cr. Actual expenditure incurred is Rs.4.94Cr.</p> <p>The excess expenditure of Rs.0.34Cr is claimed under contingency. The amount claimed for Township and colony is excess over the TEC approval and hence disallowed.</p>	<ol style="list-style-type: none"> 1. There was huge increase in the cost of township civil works actually incurred vis-à-vis TEC on account of time lag between the time when quotes for township works were obtained and the time of actual construction (which is nearly 3 years). 2. Instead of seeking approval for excess cost under Township, the contingency provision was proposed to be utilized, to keep the Project Cost less. 3. The contract for construction of staff quarters etc in the township were awarded to 'South India Corporation Limited' on 19th Feb. 1999. The works were awarded with 'No escalation'. 4. However, during the course of execution, after completing part of the works in Dec.1999, the contractor sought 15% escalation on account of increase in the construction cost.

				<p>5. Though the Company replied that no escalation was payable, the contractor continued with their pleas for payment of escalation, referring to increase in prices of diesel twice one on 07.10.1999 with 9.95% and the second on 13.10.1999 with 34.43%, which had affected their operational cost since they had engaged Batching Plant, Transit Mixers, Mixer Machines, Vibrators, Generator sets etc. The cost of cement had also increased from Rs.40 to Rs.50 per bag in Sep. 1999.</p> <p>6. Considering the steep increase in the input cost, the Company, based on the recommendation of the consultants, agreed for 10% escalation and advised the Company to raise its bills. Actual amount of escalation paid was Rs.39 Lakhs but the amount was limited to Rs.34 Lakhs only.</p> <p>Copies of the above referred correspondence are enclosed at Annexure 3.</p> <p>In view of the circumstances explained above, the Hon'ble Commission may kindly approve the amount under contingency of Rs. 34 Lakhs on account of escalation for township civil works.</p> <p>It would not be out of place to highlight that, in fact, the completed cost for which the Company has sought approval of the Hon'ble Commission is actually lower than that of other IPP with comparable capacity, although the TEC approved Capital cost of the Company was higher than that of such other IPP.</p>
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8.	Excess dollar expense.	0.004 (0.00 1 Conv erted at Rs.44 .609)	<p>TEC approved EPC cost is 55.978MUSD.</p> <p>The actual expenditure is 55.979MUSD.</p> <p>The amount of .001MUSD excess over TEC is disallowed.</p> <p>Excess over TEC approval.</p>	<p>1. Off-Shore Price of the EPC Contract as awarded to Wartsila was US\$ 55.9783 million. This Price was known to TNEB/TANGEDCO, since the EPC Contract was awarded after approval of TNEB. There is no justification for disallowing this cost on the grounds of excess expenditure. EPC Cost in FE @ US\$ 55.9783 million may kindly be approved by the Hon'ble Commission. TANGEDCO during the hearing on 26th Nov. 2015 did not object.</p> <p>The Hon'ble Commission may kindly approve the same.</p>
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9.	IDC	0.051	<p>The excess interest is due to delay in transfer of funds, delay in creation of security for loan from IDFC.</p> <p>SPC approached IDFC due to withdrawal by IFCI.</p> <p>Not due to TANGEDCO's fault.</p>	<p>Common submission for 9 10,11 and 12: <u>IDC & Financing Charges</u> <u>IDC:</u> The Company had sought approval for Rs 27.489 Cr actually incurred which in fact was less than the IDC that would have been incurred, had the project been completed as per the agreed commissioning schedule. The amount as per FFP was Rs 35.449 Cr. In case of MPCPL, penal interest charged by the banks on account of non creation of security in the form of escrow account, were agreed to be allowed, taking into consideration the saving in overall IDC being less than the provision in the TEC.</p> <p><u>Financing Charges:</u> Considering the possibility of increase in actual project cost during execution, debt was tied up for Rs. 311.2 Cr. Since the actual Debt amount for which lending documents were executed was Rs 311.2 Cr.</p> <p>The computation of Equity raising charges is based on exchange rate of Rs 39/US\$, whereas the BFXR was actually Rs 44.607/US\$.</p> <p>If the FFP is restated with the actual quantum of Debt as per Loan Agreement, i.e., Rs 311.2 Cr and BFXR of Rs 44.607/US\$, the restated financing and Equity raising charges amount to Rs 6.342 Cr as compared to actual charges incurred of Rs 6.227 Cr .</p> <p>In view of the above, the actual incurred Financing and Equity raising charges may be allowed by the Commission.</p> <p>In case of MPCPL, Equity Raising Fee upto certain limit, taking into account the Foreign Equity as proposed in the TEC (in the absence</p>
10	Financial Advisory fee	0.252 (now revised to Rs.0.218 Cr)	<p>The approved Financial Advisory fee amount as per FFP is 0.5% of INR loan amount.</p> <p>The actual loan drawn for the project is Rs.304.05Cr. The 0.5% of this amount will work out to Rs.1.520Cr.</p> <p>The company has claimed an amount of Rs.1.738Cr. The excess Claim of</p>	<p>of FFP) at the Actual Base Exchange Rate was agreed to be</p>

			Rs.0.218Cr (1.738-1.520) is to be disallowed. Original disallowance is Rs.0.252Cr (1.729-1.477). The same is now revised to Rs.0.218Cr.	allowed. Similarly, in the case of SPCPL also, total amount incurred being less than restated amount may be allowed. <u>Conclusion:</u> In case of another project of similar capacity, in the absence of approved FFP, variations in actual expenditures in Soft Cost have been proposed for admittance on the basis that the overall Soft Cost is less than the TEC level.
11	Legal and stamping fee related to loan	.045	Lump-sum amount approved in FFP Rs.0.375Cr. Amount claimed is Rs.0.42Cr. Rs.0.045Cr excess over the amount approved in FFP is disallowed. Excess over FFP approval.	In the case of SPCPL also, the total amount approved for IDC and Financing charges as per the FFP was Rs 41.066 Cr (Rs 35.449 Cr+ Rs 5.617 Cr), the total amount incurred was Rs 33.716 Cr (Rs 27.489 Cr+ Rs 6.227 Cr). There has been a total saving of Rs 7.35 Cr under the head of IDC and Financing Cost, because of which, the incurred capital cost is lower than the FFP capital cost
12	Management fee (Equity Raising charges)	0.124	Will not arise since now TANGEDCO wants to consider the entire debt drawn for the project.	
13 & 14	Soft cost IDC & FC		Will not arise since now TANGEDCO wants to consider the entire debt drawn for the project.	Since actual soft cost incurred is less than FFP approved soft cost, the same should be allowed at actuals irrespective of disallowance (if any) in hard cost. Strictly speaking, with higher incurred Hard Cost on account of higher BFXr and customs duty, the proportionate IDC (on the same basis of the proportion of IDC on the Hard Cost as per FFP) needs to be restated which will be much higher. Any exercise on comparison of incurred IDC with Allowable Hard Cost on proportionate basis as pleaded by TNEB/TANGEDCO shall have to be done with such restated IDC. In such a case there shall be no disallowance. Further, as explained in detail regarding debt:equity ratio at Sl. No. below under 'Additional Issues', debt in any case cannot

				be increased as pleaded by TANGEDCO, which is totally not in line with principles of funding for power projects in private sector as announced by the Govt. of India and also that the project would not get funded with lower equity and higher debt.
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1.	ADDITIONAL ISSUES Customs duty	9.18 2	Amount over and above the ceiling provided in the TEC is disallowed.	<ol style="list-style-type: none"> 1. TEC provides for exchange rate variation for foreign currency. Customs duty provided in TEC was 48.029 Cr. which would work out to 22% on US \$ component of the EPC Cost of 55.9783 million, which is also the CIF component with exchange rate of Rs.39 equal to one US\$. Customs Duty is paid on the basis of the exchange rate as notified by Customs Dept at the time of clearance of goods at the appropriate customs duty rate. The actual expenditure incurred on account of customs duty was Rs.57.211 Cr. for which documentary evidence was provided. 2. The specific provision on Customs Duty in the TEC was 'The Custom Duty payable shall be as per actual subject to a ceiling of 48.029 Cr. at Customs Duty rate of 22% at Foreign Exchange Rate of Rs.39/US\$.' The ceiling limit is specific related to the rate of customs duty of 22% and exchange rate of Rs.39/US\$. If the intention was to restrict Customs duty to Rs.48.029 Cr. as contended by TANGEDCO, the additional stipulation on rate of duty and exchange rate should not been stated by CEA in the TEC. 3. With regard to the query raised during the hearing on 26.11.2015, on customs duty rate of 60% paid on some consignment, it is clarified 'List of Goods' to be imported for availing project rate of customs duty was got attested by the sponsoring authority, TNEB and the Govt. of Tamil Nadu. While all the goods were cleared by the customs dept. at the prevailing project rate, grouting materials of small value, one of the items (included in the attested list of goods) was assessed under merit rate as may be seen from the relevant Bill of Entry. In this regard, as per the Customs Act, 1962
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				<p>under Section 17, Assessment of Duty, the assessing officer has authority to reassess the duty leviable on the goods, as he considers. Hence duty paid on grouting materials was higher than the project rate of duty. However, Duty has been actually incurred which was paid to GOI and hence shall be allowed. Details related to the computation of the customs duty, Bill of Entry wise with rate of customs duty along with the copies of the Attestation of the goods for project import by TNEB/Govt. of TN, Supplier's Invoices, copies of Bill of Entries and Extract the relevant portion on the authority vested with the assessing offices, are all enclosed at Annexure 4, from which it may be seen that only the amount of customs duty actually spent was claimed under the completed cost.</p> <p>3. The contention of TANGEDCO that there was excess cost on account of customs duty is totally erroneous and should be rejected.</p> <p>The interpretation of TANGEDCO on the provisions in the TEC is not correct. Customs Duty paid to Government, being actual expenditure may kindly be allowed. by the Hon'ble Commission.</p>
2.	Deposit to TACID	0.83 4	<p>Amount paid is treated as revenue expenditure as per the books of accounts. Hence, should not be capitalized.</p> <p>Lease Agreement is for a period of 99 years. PPA is for a period of 15 years. Hence, the amount to be capitalized shall be</p>	<p>1. Leasehold is for 99 years and the amount paid is shown as advance in the books.</p> <p>2. The amount paid is almost the cost of Land and SIPCOT allocates land for project only on leasehold basis.</p> <p>3. Same details were given to TNEB and CEA in 2001 and no dispute was raised. TNEB had, in their original petition, agreed to the inclusion of the cost under project cost. The proposed disallowance is an afterthought.</p> <p>4. This is an expenditure incurred on the Project which has been verified by TNEB.</p>

			reduced proportionately i.e. $0.834 * 15/99 = 0.126$.	<p>5. The current proposal of TANGEDCO of considering proportionate amount on the basis of PPA TERM and the Term of the Lease is not in line with their own pleading earlier.</p> <p>6. The Lease Advance to TACID/SIPCOT was paid much before COD. Hence the Lease Advance plus interest@12% accrued till COD, which works out to Rs.1.14 Cr., would be considered for payment of interest by TANGEDCO at the Working Capital Interest Rate as prevailing from time to time, through-out the Term of the PPA. With this proposal, the Lease Advance of Rs. 0.834 Cr. may be reduced from the Capital Cost.</p> <p>The Hon'ble Commission may kindly consider the same.</p>
3.	O&M Mobilization fee	0.141 (1.3-1.159)	<p>The entire expenditure proposed to be disallowed since no provision for this expenditure is available.</p> <p>To be combined with item no.5 above.</p>	<p>1. This is further to the disallowance already proposed by TANGEDCO only on the excess after considering the O&M Mobilization Expenses as 'Pre-Operative Expenses. And seeking disallowance of Rs.1.159 Cr. referred to at Sl. No5 of the first list. This additional disallowance treating the total O&M Mobilization Expenses to be disallowed as an afterthought.</p> <p>2. It would not be out of place to highlight that, in fact, the Capital cost for which the Company has sought approval of the Hon'ble Commission is actually lower than that of other IPPs with comparable capacity although the TEC approved Capital cost of the Company was higher than that of such other IPPs.</p> <p>It is requested that Hon'ble Commission may not consider this disallowance.</p>

4.	Exchange rate difference		<p>Difference in the exchange rate to be adopted as Base Exchange Rate. Rs.44.25/USD is to be adopted instead of adopting Rs.44.609.</p> <p>Commission to take a view.</p>	<ol style="list-style-type: none"> 1. Submission of TANGEDCO in their counter pleading that BFXr should be computed only on the basis of inward remittance rate of exchange for the equity is erroneous since this does not comply with provisions contained in FFP and PPA. As per PPA <u>total expenses in FE incurred for acquiring assets should be converted to equivalent INR</u> to establish the BFXR. BFXr had been computed only on this basis and submitted to TNEB and CEA in May 2001. Basis of considering BFXr only for equity deployed, as being pleaded by TNEB/TANGEDCO would imply that INR spent in procuring FE for acquiring assets is to be totally ignored, which is incorrect. 2. TANGEDCO's repetition of their statement is baseless and does not take into account INR spent is purchasing USD for funding Project expenditure. TANGEDCO's original petition (MAP 1 of 2007) proposes acceptance of BFXr at 1 USD = INR 44.61 as computed by SPCPL. TANGEDCO's additional plea to consider liability side approach in computing BFXr is not borne out of any GOI Notifications and Regulations of the Commission. 3. Base Foreign Exchange Rate (BFXR) computation as per the PPA would have to take into account, US Dollar currency utilized for the project. Therefore, all payments in Dollars irrespective of whether they were received from foreign sources or procured using Indian Rupees at SBI Selling Rate and utilized towards purchase of capital assets need to be considered. The Base Foreign Exchange Rate had therefore been computed on the basis of the provisions of the Power Purchase Agreement.
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				<p>4. If the contention of TANGEDCO for using only the inward exchange rate for US Dollars directly received (Rs. 44.25 per US Dollar), total Indian Rupees spent on procuring the balance quantum of US\$ required for payment against imports which was far higher than the exchange rate of Rs.44.608 per US\$, need to be considered, which would result in total equivalent Indian Rupees remaining the same, with BFXr at a lower rate.</p> <p>The Hon'ble Commission may kindly the details furnished above and fix the BFXr at Rs. 44.607, as pleaded by the Petitioner.</p>
5.	Debt equity ratio		<p>1) The capital cost claimed by M/s.SPC is Rs.424.854Cr .</p> <p>2) The debt drawn for the project is Rs.304.05Cr.</p> <p>3) The final capital cost approved by the Hon'ble TNERC will be the capital cost for the purpose of tariff.</p> <p>4) The entire debt drawn for the project should be considered as debt for purpose of tariff.</p> <p>5) The balance i.e. Approved capital cost less Actual debt drawn</p>	<p>1. Till such time project cost is approved, SPCPL had been billing on the basis of CEA approved capital cost of INR 431.39 Cr. With debt: equity ratio of 70:30. However, SPCPL had sought approval of completed cost of the project at INR 424.84 Cr. with small variation in debt: equity ratio. This issue is being mixed up by TANGEDCO.</p> <p>2. SPCPL submits that the figure of 55.9783 Million USD @ Rs 44.607/USD is the actual USD spent for procurement of Capital Assets of the project in Foreign currency (with complete proof of remittance submitted to CEA and TNEB). SPCPL has provided the Capital Cost of INR 431.39 Cr. as per approval in the Firm Financial Package, adjusted for exchange rate variation and customs duty actually incurred. The latest Billing data referred by TANGEDCO is the amounts of Equity (with break-up of Foreign Currency and Indian Rupees) and the Loan component which would comprise the 70:30- Debt to Equity Ratio as per FFP Approval, based on which the components of Fixed Charge claim of the Company's</p>

		<p>will be the equity of the project.</p> <p>6) As per TEC approval of CEA the debt equity ratio is 70:30.</p> <p>7) The power of CEA now vests with this Hon'ble Commission.</p> <p>8) As per the proviso to the Regulation 21 of the Terms and Conditions for determination of Tariff Regulations of TNERC, if the actual equity employed is less than 30%, the actual debt and equity shall be considered for determination of return on equity in tariff computation.</p>	<p>Invoice, i.e., Interest on Debt and Return on Equity are to be computed. These are two different approaches.</p> <p>3. SPCPL has requested approval of debt: equity ratio of 69.50:30.50, which implies a little excess equity and the same, may be considered by Hon'ble Commission, as per the provisions in the PPA.</p> <p>4. In the definition of Capital Cost at Appendix D of the PPA, it has been clearly provided that in determining the amount of costs actually incurred in completing the Project, account shall be taken of, inter-alia, any change to the debt equity ratio from the ratio assumed in the Approved Capital Schedule. In fact, on applying the BFXR with respect to the foreign equity component as per the Firm Financial Package approved by the Central Electricity Authority (CEA), the Debt-Equity ratio approved as per Firm Financial Package would be 67.50:32.50. The small variation in the debt equity ratio as per the actual financing of the Project may be therefore considered by the Hon'ble Commission, while approving the capital cost.</p> <p>5. TANGEDCO has sought to make a claim that a prudence check is required to fix the Debt-Equity ratio for the purpose of tariff calculation. In this regard, it is submitted that though the loan sanctioned for the project was Rs. 311.2 Cr the total loan actually drawn for the project was Rs. 304.05 Cr. All details related to the same were earlier furnished to TNEB?TANGEDCO and no further query was raised by them on the quantum of debt finally availed.</p> <p>6. The total cost of the project approved by lenders was broadly Rs 447.44 Cr. The loan sanctioned by the lenders amounted to Rs 311.2 Cr and</p>
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				<p>the balance of Rs 136.24 Cr was to be funded through equity. This is as per the lending documents which were submitted to the then TNEB and CEA in May 2001. The debt equity ratio as per the lenders model is 69.55: 30.45, from which, it is evident that the minimum equity contribution was to be not less than 30% of the total project cost.</p> <p>7. The total equity actually infused into the project was Rs.136.24 Cr. Out of this, Rs 129.36 Cr has been considered for project cost purposes, being 30.45% of actual incurred capital cost of Rs 424.84 Cr. The balance amount of Rs 295.48 Cr (69.55%) was funded through debt. The Company incurred certain other expenses during project execution which were not provided under the TEC. Although the total expenditure incurred by the Company was Rs.440.29 Cr, the Capital Cost incurred on the Project was restricted to Rs.424.84 Cr. The PPA provides for minor variation in Debt-Equity ratio subject to the approval of CEA.</p> <p>8. The Company therefore submits that considering the total debt sanctioned or actual debt drawn for the purpose for financing of the project cost would be totally inappropriate. The submission of TANGEDCO in this regard appears to be clearly an after-thought in an attempt to make untenable claims.</p> <p>9. During the period when the approval for the project cost was sought, debt equity proportion was 70:30 and no project would get financed by the FIs and Banks unless equity brought in was less than 30%. It is for this reason that the CEA had also stipulated in the TEC that the debt, equity ratio would be 70:30 and that</p>
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				<p>any small variation in the debt equity ratio was subject to the approval of the CEA.</p> <p>The Hon'ble Commission may kindly decide on the debt:equity ratio with equity not less than 30%.</p>
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11. Written Submissions of TANGEDCO dated 21-12-2015:-

Issue 1: Land Cost (Rs.3,60,000/-):

SPCL has included the cost of land situated in Pune in the project capital cost. The above land is not part of the project site. This land is not utilized for the project and cannot be treated as part of the project. Therefore, disallowance of this expenditure has been proposed by TANGEDCO which was also agreed to and considered by the CEA during the finalization of capital cost. Therefore, the cost of the land situated in Pune is to be disallowed for the purpose of capital cost.

Issue 2: Establishment and Development Expenditure (Rs.1,15,21,620/-):

Apportionment of the overheads such as salary, administration and general expenses incurred by the promoter company (M/s.SIV Industries) to SPCL has been included to the capital cost and claimed under this head. The basis for apportioning this expenditure to SPCL is not available in the debit notes raised by SIV industries. The basis on which the share of administrative expenses has been arrived at is not furnished.

The total debit notes raised by M/s.SIV Industries are given below:-

Debit Note date	Amount (in Rs.)
01-03-1999	2,02,60,910
30-09-1999	31,49,183
15-12-1999	12,52,722
Total	2,46,62,815

The following are the debit notes raised by another promoter company viz., Shapoorji & Pallonji Ltd.

Debit Note date	Amount (in Rs.)
31-03-1999	1,90,18,971
12-10-1999	19,96,055
21-12-1999	12,64,686
07-01-2000	27,40,010
Total	2,50,19,722

In connection with the above debit notes, after submission of the Annual Accounts of SIV Industries Ltd., and Shapoorji Pallonji & Co. Ltd., certain clarifications were sought by TANGEDCO in the e-mail dated 23-05-2014 for which reply was furnished by SPCL in their letter dated 02-06-2014.

The total of the debit notes raised by both the promoter companies as on 30.09.1999 is for Rs.4,24,29,064 (2,02,60,910 + 31,49,183 + 1,90,18,971). The books of accounts of SPCL do not reflect the liability towards this expenditure which has been included to the capital cost.

The above disallowance was also agreed to and considered by the CEA during the finalization of capital cost.

Issue 3: Construction Insurance (Rs.1,13,45,347/-):

The Erection, Procurement & Construction (EPC) Contract of the project provides for Erection All Risk Insurance, as part of the contract. SPCL in addition to the Erection All Risk Insurance (EAR) provided in the EPC contract had taken the following additional insurance policies.

Type of insurance	Insurance amount (Rs.)
Advance Loss of Profit (ALOP)	55,85,385
Marine Delay Start up (MDSU)	56,69,790
Fuel Stock	90,172
Total	1,13,45,347

As per the Financing Documents, SPCL has to finalize the insurance plans by appointing a reputed consultant. There is no recommendation of the consultant to take Fuel Stock insurance.

Both ALOP and MDSU are to cover the loss in profit arising due to delay in commissioning the project i.e. two policies for the same purpose have been taken by SPCL exclusively for the comfort of the company. In fact there had been no delay in the commissioning of the project and they have been commissioned ahead of schedule.

Hence, disallowance of the cost incurred towards these additional insurance policies is in order and the same should not be allowed to be capitalized, in as much as the same was also agreed to and considered by the CEA during the finalization of capital cost.

Issue 4: Operator Training Expense (Rs.6,70,000/-):

The TEC approved amount for operator training expense is Rs.10,00,000/-. The expenditure claimed under this head is Rs.16,70,000/-. The excess over TEC is Rs.6,70,000/-. This disallowance was also agreed to and considered by the CEA during the finalization of capital cost. Therefore, the amount of Rs.6,70,000/- is to be disallowed for the purpose of capital cost.

Issue 5: O&M Mobilisation fee (Rs.1,30,00,000/-):

TEC does not provide for O&M mobilisation fee as a line item. Hence, the entire expenditure of Rs.1,30,00,000/- incurred under this head is to be disallowed. The stand of TANGEDCO is further fortified by the following comments of the CEA found in the Record Notes of Discussion of the Standing Committee Meeting held on 13.01.2005.

"While discussing the hard cost, CE (TPIA) indicated that the IPP had included Rs.1.3 crores extra towards O&M mobilisation fee which according to them was not provided in TEC due to oversight on their part. The Chairman stated that this expenditure cannot be allowed in the completion cost."

Issue 6: Development expenses (Rs.1,26,35,517/-):

Apportionment of the overheads such as salary, Administration & General expenses incurred by the promoter company (M/s.Shapoorji & Pallonji Co.) to SPCL has been included to the capital cost and claimed under this head. The total debit notes raised by M/s.Shapoorji Pallonji & Co. Ltd. are given below:-

Debit Note date	Amount (in Rs.)
31-03-1999	1,90,18,971
12-10-1999	19,96,055
21-12-1999	12,64,686
07-01-2000	27,40,010
Total	2,50,19,722

The total debit notes were raised by another promoter company viz M/s.SIV Industries:-

Debit Note date	Amount (in Rs.)
01-03-1999	2,02,60,910
30-09-1999	31,49,183
15-12-1999	12,52,722
Total	2,46,62,815

In connection with the above debit notes, after submission of the Annual Accounts of SIV Industries Ltd., and Shapoorji Pallonji & Co. Ltd., certain clarifications were sought by TANGEDCO in the e-mail dated 23-05-2014 for which reply was furnished by the company in their letter dated 02-06-2014.

The total of the debit notes raised by the Promoter companies and to be paid by SPCL as on 30-09-1999 is for Rs.4,24,29,064/- (2,02,60,910+31,49,183+1,90,18,971). The balance sheet of SPCL for the period 01.04.1998 to 30.09.1999

does not reflect the liability towards this expenditure. The books of accounts of M/s.Shapoorji for the period 1998-99 do not reflect this amount.

An amount of Rs.25,00,000/- has been paid as incentive to M/s.Shapoorji & Pallonji Co. for achieving financial closure. Payment of incentive to the promoter company itself will only lead to unnecessary increase of the capital cost of the project and hence this amount should not be capitalized. An amount of Rs.7,01,407/- relating to the period prior to signing of MOU is also included.

Further the amount disallowed by TANGEDCO has been considered by CEA while arriving at the final capital cost.

Issue 7 Contingency (Rs.34,00,000/-):

An amount of Rs.4,60,00,000/- has been allowed under 'Township expenses' in the TEC approved capital cost as a line item. Against this the company has incurred an amount of Rs.4,94,00,000/- under the head 'Township expenses'. The excess over TEC expenditure of Rs.34,00,000/- has been claimed under "Contingency".

Definition of Contingency in Accounting Standard No.4

"A contingency is a condition or situation, the ultimate outcome of which, gain or loss, will be known or determined only on the occurrence, or non-occurrence, of one or more uncertain future events."

Para 4.2 of the AS 4 states that the fact that an estimate is involved by itself cannot be categorized as contingency as long as there is nothing uncertain about the fact that these obligations have been incurred.

Based on the above the excess over TEC approved expenditure in respect of 'Township expenses' included to the capital cost of the project cannot be categorized under contingency and claimed as a part of capital cost.

Comments of CEA:

CEA in the Record notes of Discussions of the Standing Committee Meeting held on 13.01.2005 vide para 27, has recorded as below in respect of the expenditure claimed under contingency:

"Chief Engineer (TPIA) stated that out of the contingency provision of Rs.0.4 crores, the IPP has adjusted Rs.0.34 crores for increase in cost of township. The Chairman stated that this adjustment out of contingency cannot be allowed since no FE variation or change in law is involved in this case"

The works have been awarded with "No escalation". The above disallowance was also agreed to and considered by the CEA during the finalization of capital cost. Hence, this claim should be disallowed.

Issue 8: Excess dollar expenditure:

The approved expenditure towards EPC is 55.978 MUSD as per TEC. Whereas the summation of the expenditure rounded off to third decimal, works out to 55.979 MUSD. The disallowance is due to rounding off error and the same is not insisted upon by TANGEDCO.

Issue 10: IDC (Rs.5,10,000/-):

CEA in their letter dated 06.08.2001 requested the company to give reasons for the cancellation of a portion of debt by IFCI during construction period. For this the company, in their letter dated 10.09.2001 had replied that IFCI cancelled the loan because they had a financial crunch and they were unable to continue the disbursement of the loan.

Further, in the letter dated 07.01.2005 addressed to CEA, SPCL has stated that in the midway of the project IFCI expressed their inability to lend the balance amount and that IDFC came in as a new lender.

The CEA in their letter dated 23.08.2004 had asked the company to give justification for 'LD on interest' and 'overdue interest' paid to IDBI, commitment charges paid to SBI and interest paid to IDFC @ 1% due to non-creation of security. For this, in the letter dated 06.10.2004, the company had stated that LD on interest & Overdue interest were due to delay in transfer/receipt of funds. The company had further mentioned that revised documentation and security creation in favour of IDFC took four months and hence 1% was paid.

From the above correspondences, it is evident that the disallowance of Rs.5,10,000/- in IDC is correct and the same was not due to TANGEDCO's fault. Hence, disallowance of the amount of Rs.5,10,000/- is correct and the same should not form part of capital cost.

This disallowance of TANGEDCO was also agreed to and considered by the CEA during the finalization of capital cost.

Issue 11: Financial Advisory fee (Original disallowance of Rs.25,20,000/- now revised to Rs.21,80,000):

The FFP approved by CEA provides for Financial Advisory Fee of 0.5% of debt amount of Rs.275.891Cr which comes to Rs.1.379 Cr. In the details submitted by SPCL to CEA in their letter dated 10.09.2001 as part of final capital cost details, the debt portion is shown as Rs.295.474 Cr. The original disallowance of TANGEDCO was based on this debt amount.

SPCL has included, as part of capital cost of the project an advisory fee of Rs.1.738 Cr. SPCL has requested to allow the excess over amount of Rs.0.228Cr (1.738-1.510). SPCL worked out the amount of Rs.1.510 Cr by considering a debt of Rs.301.973Cr ($301.973 \times 0.5\%$), which is 70% of the provisional capital cost (Rs.431Cr) billed to TANGEDCO.

The actual total loan drawn for the project is Rs.304.05Cr as mentioned in the tariff invoices and the details of completed capital cost submitted by the company. The financial advisory fee @ 0.5% of 304.05Cr comes to Rs.1.52Cr. Hence, the amount excess over Rs.1.52Cr which comes to Rs.0.218Cr (1.738-1.52Cr) is to be disallowed.

This disallowance of TANGEDCO was also agreed to and considered by the CEA during the finalization of capital cost.

Issue 12: Legal and stamping fee (Rs.4,50,000/-):

A lumpsum amount of Rs.37,50,000/- has been provided in the FFP dated 12.08.99 towards legal and stamping fee. An amount of Rs.42,00,000/- has been claimed by the company as part of their final completed capital cost. The amount of Rs.4,50,000/-- ($42,00,000 - 37,50,000$) has been incurred over and above the amount approved in the FFP. The excess over FFP approval needs to be disallowed.

In the letter dated 19.02.2002 CEA had communicated their comments on the financial and commercial aspects in respect of the project of SPCL. The comment of CEA in respect of legal and stamping fee is given below:

"The Legal fee of Rs.4.20 Million (lump-sum) has been indicated in the Final Financial Package. However, at the time of Firm Financial Package approved by

CEA, Lump-sum provision of RS.3.75 Million towards Legal fee was allowed. Hence, the Legal fee for the Final Financial Package shall be restricted to CEA approved figure of Rs.3.75 Million."

CEA has also considered this disallowance during finalisation of the capital cost of this project. Hence, the amount excess over FFP approval should not form part of the completed capital cost.

Issue 13: Management Fee under Equity raising charges (Rs.12,40,000/-):

Management Fee at 0.75% of the equity invested by the investors other than the promoters is allowed in the FFP approved by the CEA. The Management fee as per FFP is Rs.0.435 Cr for the foreign equity of 14.8556 MUSD at Rs.39/USD.

In the details submitted by SPCL to CEA in their letter dated 10.09.2001 as part of final capital cost details, the foreign equity inflow from Covanta, who is the investor other than the promoter, is 14.21 MUSD (Equivalent INR Rs.63.406Cr @ Rs.44.62/USD). The rate of 0.75% of Rs.63.406Cr works out to Rs.0.476Cr.

In the details submitted by SPCL to CEA in their letter dated 10.09.2001, it has claimed an amount of Rs.0.5Cr towards Management fee for the foreign equity and Rs.0.1Cr for the Indian equity which is not allowed as per FFP. The CEA in their letter dated 23.08.2004 had also sought clarification from the company in connection with the claim of Management fee of 0.75% for all equity participants when the same is allowed only in Covanta Energy. Hence the excess amount of Rs.0.124Cr (0.6-0.476) is to be disallowed.

The above disallowance has also been taken into consideration by CEA while arriving at the final capital cost.

Issue 14 & 15: Proportionate IDC and FC:

The disallowance under this head will not arise inasmuch as TANGEDCO requests the Commission to consider the entire debt of Rs.304.05 Cr drawn for this project, as debt, for the purpose of tariff.

Issues raised subsequent to the original petition:**Issue 1: Customs Duty (Rs.9.181Cr)**

The TEC dated 10.02.1998 provides for payment of customs duty as follows:

"The custom duty shall be as per actuals subject to ceiling of Rs.48.029 crores at custom duty rate of 22% at FE rate of Rs.39/US\$."

The customs duty claim as part of final capital cost is Rs.57.21Cr. This amount is the actual custom duty incurred by SPCL which is more than the prescribed ceiling. The actual cost incurred by SPCL is over and above the ceiling by Rs.9.181Cr and needs to be disallowed.

Issue 2: Deposit to TACID (Rs.0.708Cr):

An amount of Rs.0.834Cr has been deposited to TACID for taking on lease the project land, for a period of 99 years. The amount is treated as current asset in the books of accounts of SPCL. Hence, should not be capitalized.

Even if it is to be considered that the amount has been spent for the project, the lease period is for 99 years whereas the PPA period is 15 years. Hence, the amount proportioned to 15 years alone is to be capitalized and not the entire deposit amount, as the company has the use of the land for the balance period.

The amount proportioned to 15 years works out to Rs.0.126Cr which alone can form part of the completed capital cost. The balance amount of Rs.0.708Cr (0.834-0.126) is to be disallowed.

Issue 3: O&M mobilisation fee:

The submissions made in respect of Issue 5 above are applicable under this head also.

Issue 4: Exchange Rate Difference:

Exchange rate to be adopted as Base Exchange Rate of the project is Rs.44.25/USD instead of adopting Rs.44.609, as claimed by SPCL. Rs.44.25/USD is the weighted average rate of the foreign equity inflow. The Commission may determine the BFXR to be adopted for this project based on the submissions already made by TANGEDCO in the Counter Affidavit filed in respect of MAP No.1 of 2012.

Issue 5: Debt Equity Ratio:

The capital cost claimed by M/s.SPCL is Rs.424.854Cr. The debt drawn for the project is Rs.304.05Cr. The final capital cost approved by the Commission will be the capital cost for the purpose of tariff. The entire debt drawn for the project should be considered as debt for the purpose of tariff. The balance i.e approved capital cost less Actual debt drawn will be the equity of the project. The contention of SPCL in their written submissions dated 16.12.2015 that the total expenditure incurred by the company was Rs.440.29 Cr and that the capital cost was restricted to Rs.424.84 Cr is contradicting SPCL's own stand in their written submission and the certificate of the cost auditor.

As per TEC approval of CEA the debt equity ratio is 70:30. The power of CEA now vests with the Commission. As per the proviso to the Regulation 21 of the Terms and Conditions for determination of Tariff Regulations of TNERC, if the actual

equity employed is less than 30%, the actual debt and equity shall be considered for determination of return on equity in tariff computation. The actual debt drawn for the project has to be necessarily in the project. Therefore, the arrived capital cost minus the actual debt drawn shall only be the equity employed in the project. Hence, in arriving at the debt to equity ratio the entire debt drawn for the project shall be considered as debt for the purpose of tariff.

12. Counter of SPCL dated 13-01-2016 to the Written Submissions of TANGEDCO in the matter of fixation of capital cost of the project:-

12.1. Under quite a number of items proposed for disallowance, TANGEDCO had chosen to make a reference to the submission made by TANGEDCO to CEA with their proposal for disallowance which had been considered by CEA during the finalization of capital cost. In this regard, in the meeting held by CEA on 22.11.2005 , there was no participation of project companies. CEA itself had stated in the minutes of the Standing Committee, as per the Electricity Act, 2003, the completion cost for thermal power projects are not required to be approved by Central Electricity Authority. As per this Act, the completion cost and the consequent tariff is to be approved by State Regulatory Commission. CEA's recommendations therefore have no statutory basis and are not to be relied upon and in addition thereto, since the consideration by CEA was without the participation of SPCL and without any inputs from SPCL, it ought not to have been relied upon. It is further emphasized that in the same minutes of the meeting taken by CEA, at para (ix) with regard to Samalpatti DGPP, it is stated as follows:-

"(ix) CE (TPIA) stated that the IPP had given its response vide their letter dated 18 Nov. 05 to TNEB with a copy to CEA on the various cost

expenditures which TNEB propose to disallow. He requested TNEB to review the clarification given by the company and intimate final cost reductions to CEA within a week time.”

Thus the entire process, far from having been concluded by CEA was still at a preliminary stage.

12.2. TANGEDCO on their own, without any discussions/seeking any further clarifications from SPCL, on 24.12.2005 made a reference to CEA with its recommendations for completed cost of Rs.418.72 Cr., i.e. with a disallowance of Rs.6.12 Cr. CEA, vide their communication dated 10-05-2006 to the Ministry of Power, Government of India, had recommended a final completion cost of Rs.417.89 Cr., involving additional disallowance of Rs.0.83 Cr. SPCL obtained a copy of this communication from CEA on 28-09-2006, under RTI Act. From the note submitted by CEA to the Ministry of Power, it was not clear whether CEA had examined the details of disallowances proposed by TANGEDCO with reference to the additional documents sought by TANGEDCO and submitted by SPCL to TANGEDCO. In view of the same, immediately SPCL had written to CEA and TANGEDCO for review of the disallowances, with documentary support. The same was endorsed and forwarded by TANGEDCO to CEA. CEA had agreed to call SPCL for discussions in the presence of TANGEDCO on 15th Dec. 2006, which meeting did not take place. All these details were earlier submitted to the Commission by SPCL in its counter affidavit submitted on 19-08-2014 in response to TANGEDCO's additional affidavit submitted on 28-07-2014, after TANGEDCO had called and discussed with SPCL in the matter of completed cost of the Project, as per the directions of this Commission.

12.3. In the case of the *G.V.K. Industries Limited And ... vs Central Electricity Authority* in which GVK Industries filed a writ seeking order of the High Court of Delhi for a direction to the CEA to take a decision on the approval of the completed cost of the petitioner's power project in Andhra Pradesh, the High Court of Delhi in its order dated 27th Feb. 2006, while dismissing the petition of GVK Industries Ltd has held, inter-alia, as follows:-

“--- the opinion of the CEA that it no longer possesses power to compute the completed capital cost, that in fact the continuance of this exercise would be inconsistent with the Electricity Act, cannot be faulted or repulsed.----”

“----- Whilst the repealed statutory provisions specified that the completed capital cost was to be computed /approved by the CEA, the present Act reposes in the SEA the power to determine the tariff including the capital cost of the completed power project.....”

In the above referred case, CEA themselves had admitted that they no longer possess power to compute the completed cost, after the enactment of the Electricity Act, 2003 and the High Court of Delhi had held that this opinion of CEA cannot be faulted. In the case of the fixation of capital cost also the reference by TANGEDCO to CEA seeking their advice and CEA's response to the same was after the enactment of the Electricity Act 2003. The submissions by TANGEDCO relying upon the recommendation of CEA is therefore legally and factually untenable.

12.4 In the case of *Madurai Power Corporation P.Limited (MPCPL)*, a project of comparable capacity, it is understood that both MPCL and TANGEDCO, after mutual discussions as per the direction of the Commission, had made their final submission after having mutually agreed to the completed cost as per the directions of the Commission in the daily order dated 05-10-2015, in which it is *inter-alia* stated,

"orders reserved". The principles followed by TANGEDCO in MPCL's case may kindly be applied in the case of the project of SPCL also.

12.5. The Commission may fix the Capital Cost of 7X15.094 MW (105.66 MW) Power Project of the Petitioner Company, Samalpatti Power Company Private Limited in Parandappalli Village, Pochampalli Taluk, Krishnagiri District, Tamil Nadu at US \$ 56.1083 Million + Rs.174.55 Crores which works out to Rs.424.84 Crores at the foreign exchange rate of 1 US\$ = Rs.44.607 and to approve the Debt Equity Ratio, with equity not less than 30%.

13. Findings of the Commission:-

13.1. TANGEDCO has filed the Petition for finalization of Capital Cost in respect of Samalpatti Power Company Pvt. Ltd. (SPCL), in Parandaipalli Village, Pochamapalli Taluk, Krishnagiri District, Tamil Nadu. This project was executed through the MOU route based on the liberalization policy of the Government of India in the early 1990s. The Respondent was proposing to establish a 100.0 MW Diesel Engine Generating Power Plant as per MOU. The capacity of the project was enhanced to 105.66 MW which was approved by the Petitioner Board on 17-09-1997 and by the GOTN on 21-09-1997. Approval under Section 18(A) of the then Electricity (Supply) Act, 1948 for the revision in the capacity of the project was given by GOTN on 21-09-1997. Approval under Section 44 of the then Electricity (Supply) Act, 1948 for setting up of 105.66 MW DGPP was accorded by the Petitioner Board on 26-09-1997.

13.2. The SPCL's power project consists of 7 Units of 15.094 MW capacity Diesel Engines each, totaling to 105.66 MW. The terms and conditions of the PPA are broadly in line with the Government of India Tariff Notification dated 30-03-1992.

The PPA was signed on 22-05-1998 for establishment of 105.66MW capacity project.

13.3. It is stated that the project so proposed by SPCL was approved subject to the capping that the completed cost of the scheme shall not exceed Rs.390.822 Crores and the Techno Economic Clearance accorded by the CEA on 10-02-1998 is clear that it is subject to review, after financial closure and furnishing of a Firm Financial Package (FFP) for the project by SPCL within a period of 6 months from the date of issue of the letter.

13.4. After obtaining the said TEC, SPCL vide their letter dated 10-05-1999 submitted FFP of Rs.390.82 Crores (US\$ 55.978 Million + Rs.172.508 Crores at an exchange rate of US\$ - Rs.39/-) for approval of CEA. The FFP was approved by CEA in August 1999.

13.5. It is stated that in the PPA, the capital cost ceiling of the project was mentioned as Rs.391.864 Crores (US\$61.222 Million at an Exchange rate of 1US\$ = Rs.39.00 + Rs.153.098 Crores) was approved by GOTN and CEA. The capital cost mentioned in Appendix D to PPA further provided that for the purpose of finalizing the capital cost, SPCL shall permit access to papers, documents and records as may be considered necessary by the TNEB and the CEA, at the time of approval of the final cost.

13.6. In the meanwhile, Electricity Regulatory Commission Act, 1998 was enacted and the said Act was deemed to have come into force on 25-04-1998. The Act was mainly intended for establishment of Electricity Regulatory Commissions for

rationalization of electricity tariff, transparent policies regarding subsidies promotion of efficient and environmental benign policies and for matters connected therewith or incidental thereto. The Act further prescribed the powers and functions of the Regulatory Commissions, for the purpose of achieving the objectives.

13.7. The execution on the project was commenced by SPCL and ultimately the generator was synchronized with the Grid and after completion of test to prove its rating SPCL declared its Commercial Operation of the power plant with effect from 01-03-2001.

13.8. Under the Electricity Act, 2003 which came into force on 10-06-2003, the power which was hitherto exercised by the CEA, namely, fixation of the capital cost (which in turn requires determination of the tariff at which the electricity has to be purchased by the State Electricity Boards from various power generating companies) came to be vested with the Commission.

13.9. The Commission in exercise of its powers under section 61 of the Electricity Act, 2003 read with Section 181 thereof and all other powers enabling in that behalf had on 24-06-2005 notified the Tamil Nadu Electricity Regulatory Commission (Terms and Conditions for determination of Tariff) Regulations, 2005. The said tariff regulations prescribe under Chapter II, the power to determine tariff and other various norms therefor. Chapter III of the said Regulations provides for the fixation of the capital cost and the various norms that are crucial for arriving at the capital cost. Besides this, the said Regulations also lay down various other provisions for effectively complying with the provisions of the Electricity Act, 2003.

13.10. In pursuance to the arrangements entered into between the TNEB and SPCL, namely, the terms and conditions of the PPA, the Respondent SPCL on 26-05-2001 submitted all the necessary records to the CEA for fixing the final capital cost of the project and requested the CEA to fix the capital cost at Rs.424.863 Crores (US\$ 56.109 Million at an Exchange rate of Rs.44.61 + Rs.174.555 Crores). This letter was also addressed by SPCL to the Secretary, Energy Department, GoTN with a request to approve the same.

13.11. It can be seen that even during 2006, both the parties have been exchanging correspondence and discussions with the CEA, in order to finalize the completed capital cost of the project. The completed capital cost submitted by the Company was Rs.424.863 Crores. The capital cost issue was discussed on 13-01-2005 in New Delhi in the Standing Committee meeting convened by CEA. The Standing Committee meeting was held on 22-11-2005 and the subject was further discussed with concerned officials of CEA on 23-11-2005. On 03-01-2006 also, both the parties had a meeting with CEA and submitted documents before the CEA in respect of the completed cost of the project.

13.12. It is stated that pending finalization of the capital cost by the CEA, TNEB was making monthly energy bill payments provisionally based on the capital cost ceiling of Rs.431.38 crores (agreed between the parties) from 01-03-2001 onwards. Further, the Petitioner Board has also stated that from 26-09-2005 onwards, the monthly energy bills were provisionally made on the actual completed capital cost of Rs.424.84 crores submitted by SPCL to CEA.

13.13. It is stated that the computation of capital cost was done by CEA considering the following factors/definitions/Notification:

- i) Capital Cost as defined in the PPA (Appendix D)
- ii) Change in Law as defined in the PPA (Article 1 & Article 16)
- iii) Engineering, Procurement and Construction (EPC) Contract.
- iv) GOI, MoP Notification dated 30-03-1992 (especially para 1.2 and para 1.3).

The calculation used for determining the capital cost by TANGEDCO is as follows:

Sl. No.	Detailed A/c Head	Arrived Capital cost by TNEB				Rs. in Crores.
		US \$			INR	
		US \$ Mn.	Ex rate	Eq. Rs.	Rs. in Crore	
1.	Land and Preliminary Expenses				0.901	0.901
	Total - A	0.000		0.000	0.901	0.901
2.	EPC Cost					
2.1.2	Diesel Generator Island	41.827	44.6	186.588	1.351	187.939
2.1.3.	BOF Mechanical	9.333	44.6	41.634	14.419	56.053
2.1.4	BOP Electrical & C&I	3.165	44.6	14.119	5.614	19.733
2.1.5	Switchyard			0.000	7.972	7.972
2.1.7	Fuel Storage Handling System			0.000	4.812	4.812
2.1.8	Initial Spares	1.654	44.6	7.378	0.000	7.378
2.1.9.	Civil Works				14.892	14.892
2.1.10	Erection Testing and Commissioning			0.000	9.147	9.147
2.1.15	Local Transportation			0.000	4.750	4.750
2.1.16	Consultancy Engg.					
	Adj. for additional exp under \$ component	0.0010	44.6	-0.004		-0.004
	Total B	55.978	44.609	249.715	62.957	312.672
2.2.1.	Custom Duty				57.211	57.211
2.2.2.	Other taxes and duties					
	Total C	0.000		0.000	57.211	57.211

3.	Non EPC Cost					0.000
3.1.1.	External Water System			0.000	0.823	0.823
3.1.8	Establishment & Construction Supervision			0.000	1.325	1.325
3.1.9	Township & Colony			0.000	4.600	4.600
3.1.11	Construction Insurance			0.000	0.000	0.000
3.1.12	Operators Training			0.000	0.100	0.100
3.1.13	Start-up cost			0.000	0.713	0.713
3.2.	Taxes and Duties					
	Total – D	0.000		0.000	7.561	7.561
4.	Overheads					
4.1.	Development Expenses				1.892	1.892
4.2.	Legal Fee, etc.				0.586	0.586
4.5.	Consultancy & Engg				1.097	1.097
4.6.	Pre-Operative Expenses including O & M Mobilization				4.000	4.000
	Total E	0.000		0.000	7.575	7.575
	Hard Cost = (A+B+C+D+E)	55.978	44.609	249.715	136.205	385.920
	IDC				27.438	27.438
	FC				- 0.366	-0.366
					5.806	5.806
					-0.077	-0.077
	Soft Cost F= IDC + FC	0.000	0.000	0.000	32.801	32.801
	Total Project Cost = A+B+C+D+E+F	55.978	44.609	249.715		418.720

In the light of the above, the final capital cost furnished by SPCL is to be examined.

The Petitioner disputed admission of certain items in the completed Capital Cost for various reasons.

13.14. The issues that are to be resolved are as follows:

- i) Land Cost – Rs.3,60,000/-
- ii) Establishment and Development Expenses – Rs.1,15,21,620/-
- iii) Construction Insurance – Rs.1,13,45,347/-
- iv) Operator Training Expense – Rs.6,70,000/-
- v) O & M Mobilization fee – Rs.1,30,00,000/-

- vi) Development Expenses – Rs.1,26,35,517/-
- vii) Contingency – Rs.34,00,000/-
- viii) (a) Excess Dollar Expenditure – Rs.40,000/-
(b) Excess Dollar Expenditure under Consultancy and Engineering and pre-operative - NIL
- ix) Interest During Construction (IDC) – Rs.5,10,000/-
- x) Financial Advisory fee – Rs.25,20,000/-
- xi) Legal and stamping fee – Rs.4,50,000/-
- xii) Management fee under Equity raising charges – Rs.12,40,000/-
- xiii) Proportionate IDC and FC – Rs.4,43,000/-

13.15. On 27-02-2014, Commission advised both the parties to have one more meeting to try to resolve the issues which are still in dispute and directed to list the matter thereafter. In the Additional affidavit filed on behalf of TANGEDCO dated 28-07-2014, it has been stated that Meetings were held with SPCL on 20-05-2014 and 04-07-2014.

13.16. SPCL in its Counter Affidavit to the Additional Affidavit dated 28-07-2014 filed by TANGEDCO has stated that during the course of discussions held on 20-05-2014, TANGEDCO discussed in detail, the basis for each of the items of original disallowance proposed by TANGEDCO and requested for some additional documents/substantiation with respect to some of the disallowances for finalizing their view on the same. Accordingly, to the extent feasible, the SPCL provided clarifications and information to TANGEDCO vide letters dated 28-05-2014 and 02-06-2014. Further, it has been stated that TANGEDCO contended that no

discussions could be initiated unless, the original disallowance recommended by CEA itself was agreed upon by SPCL as a starting point for which SPCL was not acceptable.

13.17. SPCL has stated that they sought a confirmation about agreement regarding certain numbers which were in dispute such as actual debt drawn, so that Commission could take a decision faster atleast to that extent. However, TANGEDCO was not willing to discuss even the specific issues mentioned by the Commission, viz. the exchange rate and the debt-equity ratio, for which they had sought detailed explanations and documents from the respondent/petitioner during the past couple of months, unless SPCL first agreed in toto for the original disallowance recommended. Further, it is stated that on 04-07-2014, TANGEDCO commenced the discussions, but on a different note, which was not only inconsistent with the tenor of earlier discussions, but also demonstrative of a predetermined mind-set of only reducing the completed cost of the project resulting in failure of process of negotiation.

13.18. It has been stated by SPCL that CEA has considered the recommendations of TNEB and additionally reduced the completed cost by Rs.0.83 crores. SPCL insisted that after the advent of the Electricity Act, 2003 only State Electricity Regulatory Commission/ Central Electricity Regulatory Commission are vested with such powers. Further, SPCL has also stated that after the Electricity Act, 2003, TANGEDCO could not use the CEA's views and hence, any reference to the communication from CEA in the matter of completion cost of the project is to be

rejected. Further, they requested the Commission to approve the completed cost of the project by examining the issues independently.

13.19. TANGEDCO recommended the completed cost of US\$55.978Million + Rs.169.009 Crore @ an Exchange rate of Rs.44.61/USD equivalent to Rs. Rs.418.72 Crores to CEA. The CEA has examined the completion cost as recommended by TNEB and a completion cost of US \$ 55.978 Mn+Rs.168.174 Cr. @ ex-rate of Rs.44.61 equivalent to Rs.417.89 Crores was considered by CEA.

13.20. CEA's recommendation on capital cost was on account of further reduction in Customs Duty amount and hence this issue was referred to CEA. After receipt of acceptance of CEA's recommendation from Ministry of Power, GOI, CEA agreed to call for a meeting with TNEB and SPCL at Chennai on 15-12-2006. It is stated that SPCL was not called for the meeting and TNEB filed the Petition No. M.A.P. No. 2 of 2007in Tamil Nadu Electricity Regulatory Commission. The Commission after hearing the petitioner TNEB and the Respondent SPCL directed SPCL for submission of several documents sought by TANGEDCO.

13.21. SPCL in its written submissions dated 16-12-2015 has stated that the cost of the Project as per the TEC accorded on 10-02-1998 was equivalent to Rs.391.86 Crores (with an exchange rate of Rs.39 per US\$). The same worked to be equivalent to Rs.431.38 Crores taking into account FFP approved cost duly adjusting for Exchange Rate variation (Exchange Rate of Rs.44.607 per US Dollar) and actual Customs Duty paid. However, approval is sought only for Rs.424.84 Crores as capital cost of the Project.

13.22. SPCL has stated that on 10-02-1998 (same day), the TEC of MPCL was also approved for a comparable capacity with a cost equivalent to Rs.384.22 Crores (with same Exchange Rate of Rs.39 per USD) against which MPCL had originally sought approval for equivalent Rs.429.01 Crores (with an exchange rate of Rs.46.53 per USD) as Capital Cost of the Project.

13.23. **i) Land Cost – Rs.3,60,000/-**

13.23.1. TANGEDCO contended that as per records, SPCL has purchased a small piece of land situated in Pune in Maharashtra in order to provide as security and assignment of project contracts in favour of the lenders IDBI, Mumbai Lead Security Agent in order to save stamp duty. The expenditure incurred is neither in accordance with TEC dated 10-02-1998 nor is in accordance with FFP dated 12-08-1999 approved by CEA. It is stated that it is a clear violation of clause 3(xi) of FFP dated 12-08-1999 issued by CEA, which provides that the terms and conditions of TEC would remain unaltered until and unless specifically notified subsequently by CEA. It is further stated that the value of the land would have appreciated by now. TANGEDCO contended that as the land is not part of the project site it cannot be treated as part of project cost. Hence, they proposed to disallow the expenditure and it is stated that the same was also considered by CEA during the finalization of capital cost.

13.23.2. In reply to the above averments SPCL has stated that the sole purpose of procuring Land in Pune was to minimize the stamp duty impact involved in security creation in favour of the Term lenders of the Project, hence the same was included in the capital cost claim.

13.23.3. Commission's findings:

Land is a Fixed Asset. Land is an asset which always has an appreciated value. In our case, the said disputed land is also situated in Pune and it is not connected with the Project as the Project is located in Parandapalli Village, Pochampalli Taluk, Krishnagiri District, Tamil Nadu. Hence, Commission is not inclined to allow this expenditure. Hence, the expenditure incurred for purchase of land amounting to Rs.3,60,000/- is disallowed.

13.24. ii) Establishment and Development Expenditure – Rs.1,15,21,620/-

13.24.1. TANGEDCO in its written submissions had contended that the apportionment of the overheads such as salary, administration and general expenses incurred by the promoter company (M/s. SIV Industries) to SPCL has been included in the capital cost and claimed under this head. The basis for apportioning this expenditure to SPCL is not available in the debit notes raised by SIV Industries. The basis on which the share of administrative expenses has been arrived at is not furnished.

The total debit notes raised by M/s. SIV Industries are given below:

Debit Note dated	Amount (in Rs.).
01-03-1999	2,02,60,910/-
30-09-1999	31,49,183/-
15-12-1999	12,52,722/-
Total	2,46,62,815/-

The debit note raised by the 2nd promoter company M/s. Shapoorji & Pallonji Ltd. are as follows:

Debit Note dated	Amount (in Rs.).
31-03-1999	1,90,18,971/-
12-10-1999	19,96,055/-

27-12-1999	12,64,686/-
07-01-2000	27,40,010/-
Total	2,50,19,722/-

13.24.2. TANGEDCO has stated that on receipt of Annual Accounts of M/s. SIV Industries Ltd. and M/s. Shapoorji Pallonji & Co. Ltd. certain clarifications were sought by TANGEDCO in their email dated 23-05-2014 and the same was replied by SPCL in their letter dated 02-06-2014. The total of the debit notes raised by both the promoter companies as on 30-09-1999 is for Rs.4,24,29,064/-(2,02,60,910/- +31,49,183/-+1,90,18,971/-) It is stated by TANGEDCO that the books of accounts of SPCL does not reflect the liability towards this expenditure which has been included to the capital cost. Finally TANGEDCO has stated that this disallowance was also agreed to and considered by the CEA during the finalization of capital cost.

13.24.3. In respect of the above objection raised by TANGEDCO, SPCL has stated that the claim towards Establishment and Development expenditure was substantiated by submission of detailed break-up and complete supporting documentation to CEA and TNEB vide communications dated 19-10-2004, 17-01-2005 and 09-02-2005 and subsequent queries were addressed vide letters dated 18-11-2005 and 05-12-2005.

13.24.4. Further, it has been stated by SPCL that all the expenses incurred by the promoter companies during the project development stage and pre-operative stage were categorized and were claimed from the Project Company and SPCL asserts that there had been no double claim of the same expenses under 'Development Expenses' and Preoperative Expenses, Break-up of individual

components of debit notes which are authenticated by the promoter Company and Board of Directors of the SPCL together with all supportive documentation were provided in the aforesaid submissions of SPCL.

13.24.5. The Resolutions of the Board of Directors of the Company reflect acknowledgment of these debits and adjustment on account of the same as below:

a) Debit Note for Rs.2,02,60,910/-

This matter is referred in Board minutes dated 17th March 1999; total outstanding to SIV Industries mentioned as Rs.2,96,01,724/- including earlier outstanding of Rs.93.41 lakhs. It was resolved that out of Rs.2,96,01,724/- due and payable to SIV Industries Ltd. part payment of Rs.2,04,36,000/- be adjusted against Share Application Money payable by them on 68,12,000 equity shares at Rs.3/- per share.

b) Debit Note for Rs.31,49,183/-

This matter is referred in the Board Minutes dated 12th October 1999. Accounts were adopted in this meeting after the decision to consider this amount as part of Share Application Money (2,96,01,724/- + 31,49,183/-) =3,27,50,907/- less TDS Rs.10.82 lakhs = Rs.3,16,68,907/-.

Total amount of Rs.2,34,10,093/- is included under the head 'Current liabilities/Liabilities/Share Application Money from SIV Industries' in SPCL's Balance Sheet dated 30th September 1999.

In view of the documentary evidence now furnished, it is obvious that the expenses were incurred by the Promoter Company in the project activities of the Power Project.

13.24.6. Commission's findings:

TANGEDCO has stated that the apportionment of overheads such as salary, Administration and General expenses incurred by the promoter company (M/s. SIV Industries) to M/s. Samalpatti Power Company is not available in the Debit Notes raised by M/s. SIV Industries and the basis on which the share of administrative expenses has been arrived at is not furnished.

In reply to the above averments, SPCL in its written submissions has stated that it had already submitted the complete details of expenditure incurred towards Establishment and Development Expenses by the Promoter Companies claimed in the debit notes from Project Company with break-up details and supporting documents were given to TANGEDCO through various letters.

The break-up of cost incurred with supporting documents towards the claim of legal, technical, commercial and other expenses were not submitted to the Commission for deciding on the allowing or disallowing of these items. Instead, SPCL has submitted the Minutes of the Meeting of the Board of Directors of SPCL on 17th March 1999 and 12th October 1999. The Debit Note raised by the promoter company and accepted by the SPCL is between the two companies (i.e. promoting company and new company) and any expenses incurred relating to the project will be added to the capital cost of the project. The fixed charges are calculated based on the final capital cost of the project. If there is any dispute on allowing/disallowing a claim, then the person who claims the money should satisfy the other party for accepting such claims. Without proper vouchers and proof of apportionment of expenses for the new company (SPCL) allowing of the disputed amount of development expenses is not possible.

Hence, the disputed amount of Rs.1.152 Crores is hereby disallowed and the plea of SPCL is not considered as the same lacks documentary evidences supported with proof of payment.

13.25. (iii) Construction Insurance – Rs.1,13,45,347/-

13.25.1. TANGEDCO contended that the Erection, Procurement & Construction (EPC) Contract of the project provides for Erection All Risk Insurance (EAR), as part of the contract. SPCL in addition to the EAR provided in the EPC contract had taken the following additional insurance policies.

Type of Insurance	Insurance amount (Rs.)
Advance Loss of Profit(ALOP)	55,85,385/-
Marine Delay Start up (MDSU)	56,69,790/-
Fuel Stock	90,172/-
Total	1,13,45,347/-

13.25.2. TANGEDCO contended that as per the requirement of the Financing Documents, SPCL has to finalize the insurance plans by appointing a reputed Consultant. Further, it has stated that there is no recommendation of the Consultant to take Fuel Stock Insurance.

13.25.3. Both ALOP and MDSU are to cover the loss in profit arising due to delay in commissioning of the project and the Project has been commissioned ahead of schedule without any delay.

13.25.4. Finally, TANGEDCO has stated that the additional insurance policies have to be disallowed and should not be capitalized in as much as the same was also agreed to and considered by the CEA during the finalization of capital cost.

13.25.5. In reply to the above contentions of the TANGEDCO, SPCL has stated as follows:

- (1) While Erection All Risk Insurance Cover has been taken by the EPC Contractor and provided for under the EPC Contract, the Insurance Policies viz. ALOP – Rs.55.85 lakhs and MDSU – Rs.56.69 lakhs were required to be taken as per the recommendation of Insurance Consultant, required to be appointed as per Financing Documents. Copy of the relevant portion in the Lenders' Agreement to the Project, which states, "*Lending documents require appointment of an Insurance Consultant by the Project Company and insurance covers to be obtained as per their recommendation*" had been furnished with all relevant documents to TANGEDCO.
- (2) TEC/FFP provides for a separate line item of Construction Insurance with a provision of Rs.1.20 Crore and the expenditure is within the aforesaid limit.
- (3) Considering the requirements of such additional insurance requirements for such non-recourse funded projects, the Format prescribed by CEA in their publication titled "Guidelines for Formulation of Project Reports for Power Projects in Private Sector (June 1995)" the item of "Construction Insurance" appears as an item under IDC & Financing Cost'. This is specifically in addition to the insurance covered under EPC Cost.
- (4) Further, in case of approval of the Project Cost of PPN Power Generating Co. Pvt. Ltd. Insurance expenses towards ALOP, in addition to the insurance under EPC Contract, had been approved by the Commission.
- (5) In respect of Fuel Stock Insurance, SPCL has stated that TNEB requested documentary evidence for the recommendation from the Consultant for Insurance Cover taken for Fuel Stock. It is stated that there was no specific recommendation in respect of Insurance cover for Fuel Stock. However, since the fuel was procured

and stored before COD for commissioning purposes, the same needs to be insured and hence, the expenditure amount of Rs.0.90 lakhs paid for insurance Cover for Fuel Stock need to be allowed.

(6) Further, the expenditure incurred is within the limits provided for under this head in the TEC.

13.25.6.Commission’s findings:

It is stated that the Construction Insurance is a line item both in TEC and FFP. Further, the Common Loan Agreement dated 16-12-1999, entered into between the Lead Institution and Financial Institutions have a condition for appointment of a Consultant to advise the Company on Insurance Plans to be taken for the Project.

“(k) appointed a reputed Insurance Consultant and finalized insurance plans to the satisfaction of the Lenders”.

SPCL appointed M/s. M.F. Consultants, Mumbai to advise in respect of Risk Management and Insurance Consultancy. The Insurance Consultants recommended the company to take insurance relating to Marine All Risk Cover, Marine Consequential Loss Cover, Erection All Risk Cover and ALOP (for delay in startup). The Insurance Consultants did not recommend any insurance for the Fuel Stock maintained in the Plant Site.

The Commission while approving the Capital Cost of another project, M/s. PPN Power Generating Co. Pvt. Ltd. in M.A.P. No. 1 of 2007 has approved the Insurance disputed under Advance Loss of Profit.

Since, the Lenders document contains a condition for appointment of Insurance Consultant and finalize the insurance plans to the satisfaction of Lenders, an amount of Rs.55,85,385/-disputed towards ALOP and an amount of Rs.56,69,790/- towards Marine Delay Start Up is allowed as the Consultant has

recommended for those Insurance Plans. As SPCL could not show any recommendations from the Consultant for the Insurance of Fuel Stock, the same is disallowed. Hence, an amount of Rs. 1,12,55,175/- (Rs.55,85,385/- + Rs.56,69,790/-) is admitted for the purpose of Capital Cost and an amount of Rs.90,172/- towards Insurance for Fuel Stock is disallowed.

13.26.(iv) Operator Training- Rs.6,70,000/-

13.26.1. TANGEDCO contended that as per TEC an amount of Rs.10,00,000/- has been allocated for operator training expense. SPCL has claimed an expenditure of Rs.16,70,000/- which resulted in an excess over the amount approved in the TEC which is Rs.6,70,000/-. TANGEDCO has also stated that the claim has not been properly supported with relevant details or by way of any documents viz. no. of employees attended, no. of days, etc. Further, TNEB has stated that this disallowance was also agreed by CEA during the finalization of capital cost.

13.26.2. In response to the above, SPCL has stated that as per the provisions of the EPC Contract, the Supplier was to provide training and the Company has to provide for all transport to and from Finland. Lodging and Boarding was to be arranged by the Supplier but that was the responsibility of the Company. Expenses incurred were towards the travel, boarding and lodging of the personnel deputed for training to Finland.

13.26.3. SPCL has requested the Commission to allow the excess cost of Rs.0.067 Crores considering the overall saving in the Project Cost due to early commissioning.

13.26.4.Commission’s findings:

TANGEDCO contended that they are agreeable for an expenditure of Rs.10,00,000/- towards Operator’s Training as approved in TEC and they desired that the excess amount of Rs.6,70,000/- spent over and above the TEC should not be approved by the Commission. The reasons given by SPCL for admission of the said disputed amount, as to allowing this expenditure considering the overall savings in the Project Cost is not considered by the Commission as any increase in expenditure would amount to increase in the Project cost. Hence, Commission disallows the excess expenditure of Rs.6,70,000/- incurred over and above the limit set in TEC.

13.27. (v) O & M Mobilization – Rs. 1,30,00,000/-

13.27.1. TANGEDCO contended that O & M Mobilization fee is not approved by CEA in the TEC dated 10-02-1998. The SPCL is not entitled to any expenditure which is not approved by CEA as the same will be violating the terms and conditions prescribed in TEC as well as in FFP. Clause 3(viii) of FFP clearly provides that

“Any change in terms & conditions affecting the FFP should be brought to the knowledge of CEA”.

Further, clause 3(xi) of FFP provides that

“All the terms and conditions of TEC would remain unaltered until and unless specifically notified subsequently by the Authority.”

13.27.2. Hence, the entire expenditure incurred amounting to Rs.1,30,00,000/- under this head is to be disallowed. It is further stated by TANGEDCO that the stand of TANGEDCO is fortified by the following comments of the CEA found in the

Record Notes of Discussion of the Standing Committee Meeting held on 13-01-2005.

Para 26 of the Record Notes of the CEA dated 13-01-2005 communicated by CEA vide letter No.2/TN/19-94-PAC/143-53, dated 03-02-2015 is extracted below:

“While discussing the hard cost, CE (TPIA) indicated that the IPP had included Rs.1.3 crores extra towards O & M mobilization fee which according to them was not provided in TEC due to oversight on their part. Chairman stated that this expenditure cannot be allowed in completion cost.”

13.27.3. In reply to the above arguments of TANGEDCO, SPCL has stated that the expenditure was incurred on account of the request of the Project to mobilize O & M personnel well ahead of commissioning of the project. This helped in achieving commercial operation ahead of the schedule, resulting in considerable saving to the project by way of IDC. Since, the item was not originally included in the “Pre-operative Expenses” and requested TNEB to consider the same under that head and also to approve the excess expenditure of Rs.1.159 crore. It is further stated by SPCL that TNEB while seeking recommendation from CEA, had considered the Company’s request and proposed a disallowance of Rs.1.159 Crore out of incurred expenses of Rs.1.30 Crores.

13.27.4. SPCL has also stated that at the time of seeking approval of the Project Cost from CEA, this item of expenditure was omitted by oversight and the Company subsequently requested for inclusion of the same under “Pre-operative expenses” and requested for approval of the excess expenditure of Rs.1.159 Crore

in view of the savings in the Completed Cost and requested the Commission to approve the excess expenditure over the TEC limit.

13.27.5. SPCL further stated that the expenses incurred for O & M Mobilization was essential to ensure that the project could commence commercial operation before schedule, which contributed to substantial reduction in the project cost. The Project was commissioned and commercial operation commenced more than 6 months ahead of another similar project of comparable capacity for which TEC was accorded on the same day. SPCL has finally stated that having incurred the same may be allowed in view of the overall reduction in project cost.

13.27.6. Commission's findings:

As per TEC approved by the CEA on 10-02-1998, expenses under O & M Mobilization were not included. Further, even in the FFP approved by the CEA dated 12-08-1999, the expenses under this head are not included.

Clause 3 (viii) of FFP clearly provides that any change in terms and conditions affecting the FFP should be brought to the knowledge of CEA.

Further, Clause 3 (ix) of FFP provides that all the terms and conditions of TEC would remain unaltered until and unless specifically notified subsequently by the Authority.

Though SPCL has stated that the expenditure has been incurred towards O & M Mobilization which enabled the project to complete ahead of the scheduled date of operation, the fact is that this expenditure has not been included in the cost component of TEC. SPCL has also stated that this item was left out by oversight and subsequently requested for inclusion in the capital cost. Whereas, in the Record Notes on Discussion of the Standing Committee Meeting held on 13-01-2005

communicated by CEA vide letter No. 2/TN/19/94-Pac/143-53, dated 03-02-2015, the Chairman of the Standing Committee has also commented that the said item will not be allowed in the completed cost.

In view of the above, Commission also feels that any item not included as a component of the capital cost approved while issuing the TEC and FFP shall not be allowed by the Commission. Inclusion of the expenditure incurred along with the other items without previous approval of cost will automatically increase the overall capital cost of the Project which the CEA itself has not agreed. Hence, the total claim under this head amounting to Rs.1,30,00,000/- is disallowed by the Commission.

13.28.(vi) Development Expenses – Rs.1,26,35,517/-

13.28.1. TANGEDCO contended that the apportionment of the overhead expenses incurred by the promoter company such as Administration and General expenses incurred by the promoter company (M/s. Shapoorji & Pallonji Co.) to SPCL has been included to the capital cost and claimed under this head.

The total debit notes raised by M/s. SIV Industries are given below:

Debit Note dated	Amount (in Rs.).
01-03-1999	2,02,60,910/-
30-09-1999	31,49,183/-
15-12-1999	12,52,722/-
Total	2,46,62,815/-

The debit notes raised by another promoter company viz. M/s. Shapoorji & Pallonji Ltd. are as follows:

Debit Note dated	Amount (in Rs.).
31-03-1999	1,90,18,971/-
12-10-1999	19,96,055/-
27-12-1999	12,64,686/-
07-01-2000	27,40,010/-
Total	2,50,19,722/-

13.28.2. TANGEDCO has stated that on receipt of Annual Accounts of SIV Industries Ltd. and Shapoorji Pallonji & Co. Ltd. certain clarifications were sought by TANGEDCO in their email dated 23-05-2014 and the same was replied by SPCL in their letter dated 02-06-2014. The total of the debit notes raised by both the promoter companies as on 30-09-1999 is for Rs.4,24,29,064/-(2,02,60,910/-+31,49,183/-+1,90,18,971/-) It is stated by TANGEDCO that the books of accounts of SPCL does not reflect the liability towards this expenditure which has been included to the capital cost.

13.28.3. TANGEDCO has also stated that this disallowance was also agreed to and considered by the CEA during the finalization of capital cost.

Record Notes of CEA's Standing Committee Meeting on 13-01-2005:

"Para28 – Chief Engineer (TPIA) stated that even though the overall cost of overheads is less than the FFP cost while comparing the line-wise items of overheads, it is noted that in some of the items there is increase whereas in some other items, there is reduction. Chairman stated that wherever there is increase in cost the same needs to be restricted to TEC level".

(a) In reply to the above contentions of TANGEDCO, SPCL has submitted that till the Project Company achieved financial closure, the Promoters, viz. SIV Industries and Shapoorji & Pallonji Co. Ltd. incurred expenditure towards project development, co-ordination with different Govt. Departments for seeking approval, etc. and the staff and management of these companies were engaged in these activities. The expenditure incurred by the Promoter Companies on account of the Project, were claimed from the Project Company through Debit Notes with details of expenditure incurred duly certified by the Auditors and the same were also

approved by the Board of Directors of the Project Company. Detailed documentation was submitted to TNEB and CEA during 2004-05. As per the directions of the Commission, the audited financials of the promoter companies' viz. SIV Industries and Shapoorji & Pallonji were submitted for verification.

(b) The amount of Rs.1,90,18,971/- is included under "Schedule 11 – Loans and Advances" and sub-head "(B) Advances, under item (i) Advances receivable in cash or in kind for value to be received – amounting to Rs.6,79,16,182/ -in the Balance Sheet of Shapoorji & Pallonji Co. Ltd for the FY 1998-99.

(c) An amount of Rs.7 lakhs was spent during the period from December 1994 to May 1995 whereas MOU was signed on 15th February 1995. Though MOU was signed on 15th February 1995, it is stated that lot of preliminary activities were carried out by the promoter company to identify the site and capacity of the project, etc. If any disallowance needs to be made, then expenses claimed prior to signing of the MOU which works out to Rs.4.375 lakhs only has to be made.

(d) An amount of Rs.25 lakhs was paid to the officials of the Shapoorji & Pallonji Co. Ltd. for achieving financial closure is part of their remuneration and needs to be considered as expenses. It is stated that the project achieved its financial closure within a reasonable period of time which resulted in the Project achieving COD ahead of 6 months before.

(e) Finally it is stated that the total expenses incurred is within the provisions under the head in the TEC and requested the Commission to allow the total expenses for approval.

13.28.4. Commission's findings:

TANGEDCO's submission that the expenditure incurred prior to signing of MOU amounting to Rs.7,01,407/- cannot be included under the Development expenses sounds to be reasonable. Apportioning of any overheads such as Salaries, Administrative and General Expenses, should be supported by documents and proof of payment of those documents should also be submitted for accepting a claim. In the present case, it has been disputed by TANGEDCO that an amount of Rs.25,00,000/- has been paid as incentive to senior advisors by M/s. Shapoorji & Co. Ltd. on achieving the financial closure of SPCL. Incentive amount of Rs.25,00,000/- paid for achieving financial closure is not allowed to be included in the Project Cost as the company has already paid salary and other expenses. Out of the total debit note amount of Rs. 2,50,19,722/- raised by M/s. Shapoorji & Pallonji Ltd. and Rs.2,46,62,815/- raised by M/s. SIV Industries amounting to Rs.4,96,82,537/-, TANGEDCO had disputed only Rs.1.152 Crs under the head Establishment and Development expenses and Rs.1.26 Crores under the head Development expenses.

The claim made by SPCL lacks documentary evidence and for raising any claim the same has to be supported with proof of payment. TANGEDCO has disputed the method of apportioning of expenses of the Promoter Company. In the absence of justification of apportionment and proof for payment of such claim, the admission of the disputed amount of Rs.1.26 Crores is rejected by the Commission.

13.29. (vii) Contingency – Rs.34,00,000/-

13.29.1. TANGEDCO contended that an amount of Rs.4,60,00,000/- has been allowed under 'Township expenses' in the TEC approved capital cost as a line item.

Whereas, the company has incurred an amount of Rs.4,94,00,000/- under the head 'Township expenses'. The excess over expenditure amounting to Rs.34,00,000/- has been claimed under "Contingency".

TANGEDCO has cited the definition of Contingency in Accounting Standard No.4.

"A contingency is a condition or situation, the ultimate outcome of which, gain or loss, will be known or determined only on the occurrence or non-occurrence of one or more uncertain future event".

Para 4.2 of the AS 4 states that the fact that an estimate is involved by itself cannot be categorized as contingency as long as there is nothing uncertain about the fact that these obligations have been incurred.

13.29.2. Hence, based on the above definition, the excess over TEC approved expenditure in respect of 'Township expenses' cannot be included in the capital cost of the project and cannot be termed as contingency.

Comments of CEA:

In the Record Notes of Discussions of Standing Committee meeting held on 13-01-2005, it has been recorded as follows:

"Chief Engineer (TPIA) stated that out of the contingency provision of Rs.0.4 crores, the IPP has adjusted Rs.0.34 crores for increase in cost of Township. Chairman stated that this adjustment out of contingency cannot be allowed since no FE variation or change in law is involved in this case".

The works have been awarded with "No escalation". The CEA has also agreed to the above disallowance as above.

13.29.3. In reply to the above contentions of TANGEDCO, SPCL has stated the following as reasons for admission of the Contingency amount of Rs.34 lakhs.

(1) There was a huge increase in the cost of township civil works actually incurred vis-à-vis TEC on account of time lag between the time when quotes for township works were obtained and the time of actual construction (nearly 3 years).

(2) Instead of seeking approval for excess cost under Township, the contingency provision was proposed to be utilized to keep the Project cost less.

(3) The contract for construction of staff quarters etc. in the township were awarded to 'South India Corporation Ltd.' on 19th February 1999. The works were awarded with "No escalation". But however, during the course of execution, after completing part of the works in December 1999 the contractor sought 15% escalation on account of increase in the construction cost.

(4) It is stated that initially though the company (SPCL) replied the Contractor that no escalation is payable, the contractor continued with their pleas for payment of escalation referring to increase in the prices of diesel twice one on 07-10-1999 with 9.95% and the second on 13-10-1999 with 34.43% which had affected their operation cost since they had engaged the Batching Plant, Transit Mixers, Mixer Machines, Vibrators, Generator sets, etc. Further, the cost of cement had also increased from Rs.40/- to Rs.50/- per bag in September 1999.

4. Considering the steep increase in the input cost, the Company based on the recommendations of the consultants, agreed for 10% escalation and paid Rs.39 lakhs whereas the claim amount was limited to Rs.34 lakhs only and requested the Commission to allow the above expenditure in view of the submissions made above.

13.29.4. Commission's findings:

While issuing TEC approval, the CEA has clearly stated that the above completed cost shall not exceed except on account of

- (a) Variation in foreign exchange rate in respect of US Dollars,
- (b) Interest during Construction and the financing charges as per actuals but not exceeding the amount as detailed in Annexure-I unless otherwise revised by CEA while according concurrence under Section 31 of E(S) Act 1948 after review of the financial package.
- (c) Change in the rate of customs duty and additional taxes and duties levied subsequent to issue of TEC and
- (d) Change in Indian Law resulting in change in cost.

The total claim made by SPCL in respect of Township is Rs.4.94 Crores and TANGEDCO has already accepted for allowing Rs.4.60 Crores to be included in the Capital Cost stating that the excess expenditure amount of Rs.34 lakhs shall not be included under the head "Contingency".

The Accounting Standards No. 4 has defined "Contingency".

"A Contingency is a condition or a situation, the ultimate outcome of which, gain or loss, will be known or determined only on the occurrence or non-occurrence of one or more uncertain future event".

In the present case, for construction of Township, SPCL before issuing contract should have considered the escalation aspect and should have awarded the contract with due care. But in actual, the escalation agreed by SPCL has led to exceeding the cost beyond the approved cost and the CEA has clearly specified that change in the capital cost would not be accepted for items / heads other than specified in 2(i) (a) to (c).

Hence, claiming an additional expenditure incurred over and above the approved cost of TEC level cannot be entertained as the approval for the Project Cost with means of finance, funding and head wise expenditure has been issued by CEA. In view of the same the additional expenditure amount of Rs.34 lakhs under the head "Contingency" is hereby disallowed by the Commission.

13.30. (viii) (a) Excess Dollar Expenditure in EPC– Rs.40,000/-

13.30.1. TANGEDCO in its written submissions dated 21-12-2015, has stated that the approved expenditure towards EPC as per TEC is 55.978 MUSD. Whereas the summation of the expenditure was rounded off to third decimal, this works out to 55.979 MUSD. Further, the disallowance is due to rounding off error and it is stated by TANGEDCO that the same is not insisted upon.

13.30.2. (b) Excess Dollar Expenditure under Consultancy and Engineering and pre-operative expenses - NIL

TANGEDCO, in its petition has raised this issue. TANGEDCO contended that the expenditure incurred in US\$ under consultancy and engineering (Rs.0.055 Million) and under pre-operative expenditure (Rs.0.067 Million) are converted into Rupees at base Forex rate and added to the rupee expenses under the concerned head and the total is limited up to FFP level. However, there will be no FERV benefit for the US\$ converted into rupees.

13.30.3. SPCL in its written submissions dated 16-12-2015 has stated that the Off-Shore Price of the EPC Contract as awarded to Wartsila was 55.9783 MUS\$. This price was known to TNEB/TANGEDCO, since the EPC Contract was awarded

after approval of TNEB. The Company has requested that there is no justification for disallowing this cost on the grounds of excess expenditure. EPC Cost in Foreign Exchange at 55.9783 MUS\$ may kindly be approved by the Commission. Further, TANGEDCO did not object to this on the hearing dated 26-11-2015.

13.30.4. Commission's findings:

From the submissions of both the parties, it can be seen that the Off-Shore price of the EPC Contract was awarded after approval of TNEB i.e. @ 55.9783 MUSD and TANGEDCO in the hearing dated 26th November 2015 has agreed to allow the disputed amount of Rs.40,000/- as it was convinced that the issue is only due to rounding off. Commission after hearing both the parties also accepts the reasons stated by both the parties and allows this Rs.40,000/- to be included in the Completed Cost of the Project.

13.31. (ix) Interest During Construction (IDC) : Rs.5,10,000/-

13.31.1. TANGEDCO in its written submission contended that the CEA in their letter dated 06-08-2001 requested the company to give reasons for the cancellation of a portion of debt by IFCI during construction period and in reply to this query, SPCL has stated that IFCI cancelled the loan because they had a financial crunch and they were unable to continue the disbursement of the loan.

13.31.2. SPCL in its Petition in M. A. P. No. 1 of 2012 has provided the details which are as follows:

Liquidated damages – to IDBI	– Rs .2,329/-
Liquidated damages – to IFCI	- Rs. 840/-
Overdue Interest paid to SBI	- Rs. 67,371/-
Additional interest at 1% paid to IDFC upto the date of	

Creation of Security		- Rs. 4,36,586/-
Commitment Fee paid to SBI		- Rs .2,89,723/-
Total amount	=	Rs. 7,96,849/-

13.31.3. Further, SPCL in its letter dated 07-01-2005 addressed to CEA, has stated that in the midway of the project IFCI expressed their inability to lend the balance amount and the IDFC came in as a new lender.

13.31.4. TANGEDCO had referred to CEA's letter dated 23-08-2004 wherein, CEA has enquired the company to give justification for "LD on interest" and 'overdue interest' paid to IDFC @ 1% due to non-creation of security. SPCL has replied CEA vide letter dated 06-10-2004 that LD on interest & overdue interest were due to delay in transfer/ receipt of funds. The company had further mentioned that revised documentation and security creation in favour of IDFC took four months and hence 1% was paid.

13.31.5. TANGEDCO has further contended that the additional interest amount of Rs.5,10,000/- is not due to any reason attributable by TANGEDCO but due to IFCI and requested the Commission to disallow the above amount of Rs.5,10,000/- under this head.

13.31.6. SPCL in its written submissions dated 16-12-2015 has stated that the Company had sought approval for Rs.27.489 Crores actually incurred which in fact was less than the IDC that would have been incurred had the project been completed as per the agreed commissioning schedule. The amount as per FFP was Rs.35.449 crores.

13.31.7. Commission's findings:

In the present issue, it is stated by SPCL that in the midway the Lender IFCI has pulled out and expressed its inability to lend the balance amount out of sanctioned amount for the Project due to its financial crunch. It is seen from the Companies statement that they identified the IDFC who in turn agreed to provide the balance amount of loan already committed by IFCI.

It is stated by SPCL that due to revised documentation and security creation in favour of IDFC took four months' time they have paid 1% towards overdue interest to IDBI and commitment charges to SBI and 1% interest paid to IDFC.

In respect of SPCL's reference to another IPP, M/s. Madurai Power Corporation Pvt. Ltd. (MPCL), the additional interest paid to PFC was due to non-creation of security by TANGEDCO. In that case, TANGEDCO has also agreed for an additional interest which was due to non-creation of security. But here in case of SPCL, the additional expenditure is due to payment of overdue interest, commitment charges paid to SBI and due to non-creation of security to IDFC and not due to the fault of TANGEDCO. In this case, it is attributable only to SPCL and due to backing out of IFCI in the middle of funding of the project stating the reason as financial crunch in IDFC, it could not extend the disbursement of balance loan amount which in turn has created a scenario making the company to search for a fresh lender.

Further, IFCI in its Lr. No.Chera /Pr /4981/2000-8222, dated 30th August 2000(Page no.260 of SPCL's Petition) has addressed SPCL stating that consequent to IDFC's sanction of RTL of Rs.414 million, IFCI has reduced the RTL to that extent. In the said letter, IFCI has also stated that "they have decided to

waive the pro-rata share in the upfront fee paid by the Company as also the commitment charges in full. The pro-rata share of the up-front fee amount paid by the Company would be adjusted against the Interest falling due as on 01-10-2000”.

Any business always has risk and in the present case the levy of liquidated damages, overdue interest paid to SBI and additional commitment charges paid to SBI is not due to the default on the part of TANGEDCO but due to pulling out of a Financial Institution. The IFCI has also committed through the above letter that it would waive the commitment charges in full and pro-rata share of the upfront fee against the interest to be paid by SPCL. As the cause for the overdue interest, commitment charges, etc. is not attributable on the part of TANGEDCO, the excess interest amount of Rs.5.10 lakhs is not allowed to be included in the capital cost.

13.32. (x) Financial Advisory fee – Rs.25,20,000/-

13.32.1. The original disallowance proposed by TANGEDCO in the petition was Rs.25,20,000/- but now TANGEDCO has revised this amount to Rs.21,80,000/-

13.32.2. The Final Financial Package approved by CEA provides for Financial Advisory Fee of 0.5% of debt amount of Rs.275.891 Crores which comes to Rs.1.379 Crores. Reference has been cited to the letter dated 10-09-2001 addressed to CEA wherein it has been stated that the debt portion is shown as Rs.295.474 Crores. The original disallowance of TANGEDCO has been arrived at based on this.

13.32.3. TANGEDCO has further stated that the company (SPCL) has included as part of capital cost of the project an advisory fee of Rs.1.738 crore. SPCL has requested to allow the excess over amount of Rs.0.228 Crore (1.738 – 1.510). The company worked out the amount of Rs.1.510 Crores by considering a debt of Rs.301.973 Crores ($301.973 * 0.5\%$), which is 70% of the provisional capital cost (Rs.431 Crores) billed to TANGEDCO.

13.32.4. The actual total loan drawn for the project is Rs.304.05 Crores as per the details of completed capital cost submitted by the company. The financial advisory fee of 0.5% of 304.05 Crores comes to Rs.1.52 Crores. Hence, excess amount over Rs.1.52 Crore, comes to Rs.0.218 Crore (1.738 Cr. – 1.52 Cr) is to be disallowed.

13.32.5. Further, the disallowance on this issue was also agreed to and considered by CEA during finalization of capital cost.

13.32.6. In response to the above averments of TANGEDCO, SPCL in its Counter dated 27-12-2012 has filed its reply. In that it has stated that the actual amount incurred is Rs.1.738 Crores and the same is higher by Rs.0.228 Crore as compared to the “Restated Financial Advisory Fee” of Rs.1.51 Crores as explained vide SPCL’s communication to TNEB dated 14-12-2005 and requested the Commission to approve the Financial Advisory Fee in full i.e. Rs.1.738 Crores.

13.32.7. Commission's findings:

As per the FFP approved by the CEA, the Financial Advisory Fee has been calculated at 0.5% of the Debt amount which resulted in Rs.1.379 Crores. This amount is arrived on the total debt amount of Rs.275.891 Crores. (275.891 Cr. * 0.5% = 1.379 Crores).

In the CEA's Record Notes on discussion dated 13th January 2005, in para 37, the Director (F & CA) has also stated that *"IPP has indicated more amount on certain items of financing charges. Chairman said that these charges would be restricted as per the approved Financial Package or actual whichever is less"*.

Though the total debt sanctioned for the project is Rs.311.2 Crores and the actual debt drawn for the project is Rs.304.05 Crores, Commission is considering a Debt Equity ratio of 70: 30 on the final completed cost of the Project and in the FFP also, the CEA has considered a Debt Equity ratio of 70: 30. In the FFP, the Financing Charges amounting to Rs.1.379 Crores has been calculated considering Debt at 70% of the Project Cost.

Hence, Commission allows the financing charges on the Debt amount of Rs.295.474 Crores and calculated the financing charges at 0.5% on this amount which resulted in a disallowance of Rs.0.258 Crore (Rs.1.738 Cr. - Rs.1.48 Cr.). If the total debt drawn amounting to Rs.304.05 Crores is considered then the total amount of Rs.311.2 Crores sanctioned as loan would also be considered. But here, as the loan is limited to 70% of the Project cost even though Debt and Equity is available in excess than what is required for this project. The amount already disputed by TANGEDCO is only Rs.0.252 Crore. Hence, the amount disputed by TANGEDCO under the head amounting to Rs.0.252 Crore is disallowed.

13.33. (xi) Legal and stamping fee – Rs.4,50,000/-

13.33.1. TANGEDCO contended that under Financing Charges Upfront charges, a lump sum amount of Rs.37,50,000/- has been provided in the Final Financial Package(FFP), dated 12-08-1999 towards legal and stamping fee. An amount of Rs.42,00,000/- has been claimed by SPCL as part of their final completed capital cost. The amount of Rs.4,50,000/- (Rs.42,00,000 – Rs.37,50,000) has been incurred over and above the amount approved in the FFP. TANGEDCO requested that the excess over FFP approval shall not be allowed by the Commission.

13.33.2. TANGEDCO further stated that in the letter dated 19-02-2002, CEA had communicated their comments on the financial and commercial aspects in respect of the project of SPCL. The comment of CEA is as follows:

“The legal fee of Rs.4.20 Million (lump-sum) has been indicated in the FFP. However, at the time of FFP approved by CEA, lump-sum provision of Rs.3.75 Million towards legal fee was allowed.” Hence, the Legal fee for the FFP shall be restricted to the CEA’s approved figure of Rs.3.75 Million.

13.33.3. TANGEDCO has stated that the CEA has also considered the disallowance during finalization of the capital cost of this project and requested the Commission that the excess over amount approved in FFP should not form part of the completed capital cost.

13.33.4. SPCL in its Counter dated 27-12-2012 has stated that the actual amount incurred towards legal and stamping fees is Rs.41.9 lakhs which is only

marginally higher as compared to the “Restated Legal and Stamping Fee” of Rs.41.4 Lakhs explained vide SPCL’s letter dated 14-12-2005.

13.33.5. Further, SPCL in its written submission has requested the Commission stating that in case of another project of similar capacity, in the absence of approved FFP, variations in actual expenditures in Soft Cost have been proposed for admittance on the basis that the overall Soft Cost is less than the TEC level.

13.33.6. In the case of SPCL also, the total amount approved for IDC and Financing charges as per the FFP was Rs.41.066 Crores (Rs.35.449 Crores + Rs.5.617 Cr), the total amount incurred was Rs.33.176 Cr. (Rs.27.489 Cr. + Rs.6.227 Cr.). There has been a total saving of Rs.7.35 Cr. under the head of IDC and Financing Cost, because of which the incurred capital cost is lower than the FFP capital cost.

13.33.7. Commission’s findings:

The CEA vide letter No.2/TN/31/96-PAC/7005-27, dated 12th August 1999 has approved the FFP subject to certain conditions. The first such condition is that *“the project shall be executed in accordance with this approved financial package and no change shall be made without prior approval of the concerned State Government and Central Electricity Authority.”*

While according approval for FFP, under the head Financing Charges, CEA has considered only a lump sum amount of Rs.37.5 lakhs in respect of Legal and Stamping Fees.

Record Notes of CEA

“Para37 Director (F & CA) stated that the IPP has indicated more amount on certain items of financing charges. Chairman said that these charges would be restricted to as per the approved financial package or actual whichever is less.”

When there is a specific approval of expenditure to be incurred, the same shall not exceed the approved quantum. Increase in expenses will automatically increase the completed cost of the project. Comparison with other IPP's should not be made where no FFP approval was accorded by CEA to the other IPP. Hence, the Stamping and legal charges is allowed to the extent of Rs.37.5 lakhs and an additional expenditure amounting to Rs.4,50,000/- incurred over and above the FFP is disallowed.

13.34.(xii) Management Fee under Equity raising charges- Rs.12,40,000/-

13.34.1. TANGEDCO contended that 0.75% of the equity invested by the investors other than the promoters is allowed as Management Fee in the FFP approved by the CEA. The Management fee as per FFP is Rs.0.435 Crore for the foreign equity of 14.8556 MUSD at Rs.39/USD (Ogden Energy- Other Foreign Equity).

13.34.2. Further, in the details submitted by SPCL to CEA in its letter dated 10-09-2001, as part of final capital cost details, the foreign equity inflow from Covanta, who is the investor other than the promoter, is 14.21 MUSD (equivalent INR Rs.63.406 Crores @ Rs.44.62/USD). The management fee allowable as per FFP is Rs.0.476 Crore ($63.406 \times .75\% = 0.476$ crore).

13.34.3. TANGEDCO had cited SPCL's letter dated 10-09-2001, wherein the company has claimed an amount of Rs.0.5 Crore towards Management fee for the foreign equity and Rs.0.1 Crore for the Indian equity which is not allowed as per FFP. For the claim raised by SPCL, CEA in its letter dated 23-08-2004 had also sought clarification from the company in connection with the claim of Management fee of 0.75% for all equity participants and the same is allowed only in respect of Covanta Energy. In view of the above, TANGEDCO requested the Commission to disallow the excess amount of Rs.0.124 Crore (Rs.0.6 Crore – Rs.0.476 Crore). TANGEDCO further stated that the above disallowance has also been taken into consideration by CEA while arriving at the final capital cost.

13.34.4. SPCL in its Counter dated 27-12-2012 has stated that an amount of Rs.60 lakhs which was actually incurred by SPCL towards Management fee is only marginally higher as compared to the "Restated Management Fee" of Rs.56.3 lakhs. Total financing charges based on restated FFP is Rs.6.175 Crores as compared to actual financial charges incurred of Rs.6.227 Crores. The net increase is Rs.0.052 Crore.

13.34.5.Commission's findings:

While according approval of FFP, under Equity Raising Charges, the CEA has considered the Management fee only in respect of the Ogden Energy II. Ogden Energy is the only investor under "Others" category. CEA has approved 0.75% on the equity to be brought in by Ogden Energy.

Hence, the excess expenditure amount of Rs.12.40 lakhs is hereby disallowed.

**13.35. (xiii) Soft cost Proportionate IDC and FC:- Rs.0.443 Crore
(0.366 Cr. + 0.077 Cr.)**

13.35.1. TANGEDCO in its original petition has raised the disallowance under this head to an extent of Rs.0.443 Crore. TANGEDCO in its amended petition dated 01-12-2012 and in the Counter filed in respect of M.A.P.1 of 2012, has contended that SPCL is not entitled to the entire amount and if at all entitled it can only be charged proportionately to the extent of loan considered for capital cost for the purpose of billing to be determined by the Commission. TANGEDCO now in their written submission requested the Commission to consider entire debt amount of Rs.304.05 Crores drawn for this project, as debt, for the purpose of tariff.

13.35.2. SPCL in its Counter dated 27-12-2012 filed in response to TANGEDCO's amended petition in respect of this issue has stated that these disallowances are not applicable since there is no reduction in the hard cost as proposed by TNEB and requested the Commission not to consider the same.

13.35.3. Further, SPCL in its written submission contended that since the actual soft cost incurred is less than FFP approved soft cost, the same should be allowed at actuals irrespective of disallowance (if any) in hard cost. Further, SPCL has stated that with higher incurred Hard Cost on account of higher BFxr and customs duty, the proportionate IDC (on the same basis of the proportion of IDC on the Hard Cost as per FFP) needs to be restated which will be much higher. Any exercise on comparison of incurred IDC with allowable Hard Cost on proportionate basis as pleaded by TANGEDCO shall have to be done with such restated IDC. In such cases there shall be no disallowance.

13.35.4. Further, SPCL has also stated that as explained in detail regarding debt-equity ratio at Sl. No.5 below under 'Additional Issues', debt in any case cannot be increased as pleaded by TANGEDCO, which is totally not in line with principles of funding for power projects in private sector as announced by the Govt. of India and also that the project would not get funded with lower equity and higher debt.

13.35.5. Commission's findings:

In respect of this item TANGEDCO in its written submission has stated that the disallowance under this head will not arise as it has requested the Commission to consider the entire debt amount drawn for this project amounting to Rs.304.05 Crores for the purpose of tariff.

The actual Debt drawn and Equity brought-in for the project is in excess than what is required. Hence, as the Commission is considering only a Debt Equity ratio of 70:30 and as there is disallowances in the hard cost, the Commission considers the disallowance of Rs.0.443 Crore (Soft cost IDC Rs.0.366 Cr. + Soft Cost FC Rs.0.077 Crore)

13.36. Additional issues raised by TANGEDCO in its Amendment Petition dated 01-12-2012.

- 1. Customs Duty – Rs.9.182 Crores**
- 2. Deposit to TACID – Rs.0.84 Crore**
- 3. O & M Mobilization fee – Rs.0.141 Crore**
- 4. Exchange Rate Difference**
- 5. Debt Equity Ratio**

TANGEDCO had raised the new issues in their Amendment Petition and SPCL has also filed their objections to the above issues and both the parties submitted their written submissions on the above issues. Let us discuss the above issues one by one and the first issue is the dispute raised in the Customs Duty.

13.36.1. Customs Duty: Rs.9.182 Crores.

13.36.1.1. TANGEDCO in its amendment petition dated 01-12-2012 has contended that with regard to Customs Duty, para 3, sub-paragraph (iv) of the TEC approval granted by CEA on 10-02-1998, reads as under:

“The Customs Duty shall be as per actual, subject to ceiling of Rs.48.029 Crores at Customs duty rate of 22% at Foreign Exchange at Rs.39/USD.”

13.36.1.2. On the contrary to the above, the claim made by SPCL works out to Rs.57.211 Crores with a rider that, at the time when the TEC was applied for by SPCL, the Company has wrongly worked out the Custom Duty and consequent to this, the actual duty paid works out to Rs.57.211 Crores as against Rs.48.029 Crores submitted and approved by CEA while granting the TEC.

13.36.1.3. TANGEDCO has further stated that the above contention is purely an afterthought because it is a fact that SPCL had approached the CEA for approval of the capital cost and while doing so, no such request for amending the expenses incurred towards excess Custom Duty was asked for. Further, it needs to be mentioned here that while approving the FFP on 12-08-1999, CEA has clearly mentioned in para 3 (xi) which reads as under:

“All other terms and conditions of TEC would remain unaltered until and unless specifically notified subsequently by the Authority.”

13.36.1.4. Hence, any claim in deviation of the terms and conditions while approving the TEC cannot be countenanced now, as sought to be done by SPCL. The completed cost is not in line with the TEC approval accorded by CEA on 10-02-1998 with regard to Customs Duty because the same has exceeded the ceiling amount, Equity deployed, equity raising charges and stamping charges, Financing Charges for loans, etc. With regard to customs duty, since the expenditure amount has also exceeded the ceiling amount and it works out to Rs.9.18 Crores out of which Rs.48 lakhs does not find a place in the FFP submitted by the Respondent to the CEA.

13.36.1.5. In response to the above averments, SPCL in its counter affidavit dated 27-12-2012 has stated that the EPC Cost component of the Project Cost as per TEC is US\$ 55.9783 million and Rs.62.958 Crores. The Dollar portion of the EPC Cost, i.e. 55.9783 million, is CIF value of all imported equipment for the project. If the exchange rate of Rs.39 per US\$ and the rate of customs duty at the time of TEC approval @ 22% on the CIF cost (both as per TEC) are considered, then the customs duty amount would work out to Rs.48.0294 Crores ($55.9783 \text{ MUSD} \times 39/\text{USD} \times 22\% / 10$). This is the amount provided under the head "Taxes and Duties on EPC items" in the Abstract of the Project Cost contained at Annexure I to the TEC.

13.36.1.6. It was stipulated in the TEC that the completed capital cost shall not exceed except on account of

- (a) Variation in foreign exchange rate in respect of US Dollars.
- (b) Interest during construction and the financing charges as per actuals but not exceeding the amount as detailed in Annexure – I to the TEC unless otherwise reviewed by CEA, while according concurrence under Section 31 of the Electricity Supply Act, 1948 after review of the financial package.

(c) Change in rate of customs duty and additional taxes and duties levied subsequent to issue of techno-economic clearance.

(d) Change in Indian Law resulting in change in cost.

SPCL has further stated that the TEC further provides that “The Customs Duty payable shall be as per actual subject to a ceiling of Rs.48.029 Crores at Customs duty rate of 22% at Foreign Exchange Rate of Rs.39/USD which has been acknowledged by the Petitioner.

13.36.1.7. SPCL in its additional affidavit dated 28-07-2014 has also stated that the CEA’s recommendation was on account of further reduction in Customs Duty amount and hence this issue was referred to CEA. TNEB has forwarded the details to CEA.

13.36.1.8. Further, SPCL in its written submissions dated 16-12-2015 has contended that TEC provides for exchange rate variation for foreign currency. Customs duty provided in TEC was Rs.48.029 Crores which would works out to 22% on US Dollar component of the EPC Cost of 55.9783 MUSD, which is also the CIF component with exchange rate of Rs.39 equal to one US Dollar. Customs Duty is paid on the basis of the exchange rate as notified by Customs Department at the time of clearance of goods at the appropriate customs duty rate. The actual expenditure incurred on account of customs duty was Rs.57.211 Crores for which documentary evidence was provided.

13.36.1.9. The specific provision on Customs Duty in the TEC was “Customs Duty payable shall be as per actual subject to a ceiling of Rs.48.029 Crores at Customs Duty rate of 22% at Foreign Exchange Rate of Rs.39/US\$”. The ceiling limit is specific related to the rate of customs duty of 22% and exchange rate of Rs.39/US\$. If the intention was to restrict Customs duty to Rs.48.029 Crores as contended by

TANGEDCO, the additional stipulation on rate of duty and exchange rate should not have been stated by CEA in the TEC.

13.36.1.10. With regard to the query raised during the hearing on 26-11-2015, customs duty rate of 60% paid on some consignment, SPCL clarified that the "List of Goods" to be imported for availing project rate of customs duty was got attested by the sponsoring authority, TNEB and the Govt. of Tamil Nadu. While all the goods were cleared by the customs department at the prevailing project rate, grouting materials of small value, one of the items (included in the attested list of goods) was assessed under merit rate as may be seen from the relevant Bill of Entry. In this regard, as per the Customs Act, 1962 under Section 17, Assessment of Duty, the assessing officer has authority to reassess the levy leviable on the goods, as he considers. Hence, duty paid on grouting materials was higher than the project rate of duty. However, Duty has been actually incurred which was paid to GOI and hence shall be allowed. Details related to the computation of the customs duty, Bill of Entry-wise with rate of customs duty along with the copies of the Attestation of the goods for project import by TNEB/Govt. of Tamil Nadu, Suppliers Invoice, copies of Bill of Entries and Extract of the relevant portion on the authority vested with the assessing offices, are enclosed at Annexure 4 from which it may be seen that only the amount of customs duty actually spent was claimed under the completed cost.

13.36.11. Finally, SPCL has also stated that the contention of TANGEDCO that there was excess cost on account of customs duty is totally erroneous and should be rejected. The interpretation of TANGEDCO on the provisions in the TEC is not correct and requested the Commission to allow the Customs Duty paid to Government, being actual expenditure incurred.

13.36.1.12. Commission's findings:

The dispute under the head Customs Duty amounting to Rs.9.182 Crores is not included in the Original Petition of TANGEDCO filed in 2007. It has been included as an additional item in the Amended Petition filed during 2012.

CEA, while issuing TEC has estimated the Completed Cost of the Project as US\$61.222 Million + Rs.153.098 Crores in its Office Memorandum vide Fl. No. 2/TN/31/96- PAC/1445-68, dated 10-02-1998.

Paragraph 2 (i) of the above TEC is as follows:

"2(i) The above completed cost shall not exceed except on account of:

(a) Variation in foreign exchange rate in respect of US Dollars.

(b) Interest during construction and the financing charges as per actuals but not exceeding the amount as detailed in Annexure – I to the TEC unless otherwise reviewed by CEA, while according concurrence under Section 31 of the Electricity Supply Act, 1948 after review of the financial package.

(c) Change in rate of customs duty and additional taxes and duties levied subsequent to issue of techno-economic clearance.

(d) Change in Indian Law resulting in change in cost.

Para (3) This techno-economic clearance is subject to the fulfilment of the following conditions:

(iv) The custom duty shall be as per actuals subject to the ceiling of Rs.48.029 Crores at custom duty rate of 22% at Base Exchange rate of Rs.39/US\$.

Secondly, the CEA has also approved the FFP in respect of SPCL on 12-08-1999. The CEA accorded its approval to the FFP based on the

completed cost of US\$55.978 Million + Rs.172.508 Crores including IDC & FC of Rs.41.066 Crores at an exchange rate of US\$ = Rs.39.00.

Paragraph 3 of the said letter is as follows:

“3. The approval of final financial package is, however, subject to the following conditions:-

(i) The project shall be executed in accordance with this approved financial package and no change shall be made without prior approval of the concerned State Government and Central Electricity Authority.

(ii) The Final Financial Package shall be adjusted to be compatible with the total cost of the Project Finally approved.

(iii) Exchange rate protection would be available for US\$ only.

x x x

(viii) The change, if any, in any of the parameters or terms and conditions, which may affect the approved Financial Package, shall immediately be brought to notice of the Authority.

x x x

(xi) All other terms and conditions of TEC would remain unaltered until and unless specifically notified subsequently by the Authority.”

The final financial package approved by CEA is based on the completed cost of US\$55.978 Million + Rs.172.508 Crores including IDC & FC of Rs.41.066 Crores at an exchange rate of one US\$= Rs.39.00.

Customs Duty approved in TEC as well as in FFP is Rs.48.029 Crores. The same is subject to Exchange Rate Variation. While approving TEC, the CEA has also stated in 2(i) that the above cost shall not exceed except on account of

(c) *“Change in rate of customs duty and additional taxes and duties levied subsequent to issue of techno economic clearance.”*

SPCL in its petition has submitted the Statement showing completed project cost with schedules. In that in Schedule 6 and in Schedule No. 5(a) the details relating to the rate of customs duty, invoice price, Forex rate, etc. have been provided. The reason for increase in customs duty has also been submitted. The increase in customs duty were due to wrong duty calculation basis assumed by SPCL while calculating the customs duty for TEC and FFP, Change in Law, Foreign Exchange Variation, and Additional Duty on Merit. This was also certified by a Cost Accountant. SPCL has also submitted that the increase in customs duty due to the reasons stated above is Rs.9.182 Crores. The break-up of items which contributed to increase in customs duty is as follows:

Details	(Rs. in Million)	
	Amount	Amount
Customs Duty assessed in TEC and FFP		480.29
Difference due to Wrong Duty calculation basis assumed	4.80	
Change in Law	8.36	
FERV	77.14	
Additional Duty on Merit	1.51	
Net increase in duty actually paid	91.82	91.82
Total Customs duty actually paid by the Company		572.11

SPCL has also submitted the capital cost recommended by CEA to the Ministry of Power obtained through Right to Information Act, 2005 and the CEA has also communicated the recommendations made by CEA vide letter No. RTI/CE-05/1589, dated 19th September 2006. In that the CEA has arrived at a customs duty amount of Rs.56.445 Crores for the import of Equipments for the Project. The customs duty amount of Rs.56.445 Crores is calculated taking the rate at 22.38% at FE rate of Rs.44.61/USD.

Still there is a difference amount of Rs.0.766 Crore disallowed by CEA under the head customs duty and the CEA has recommended the completed capital cost of SPCL to Ministry of Power for approval.

TANGEDCO has only depended on the conditions laid down in the TEC and FFP and did not provide any specific reason for rejecting the difference amount of customs duty claimed by SPCL. Though CEA has approved the customs duty amount of Rs.48.029 Crores calculated at 22% with a foreign exchange rate of Rs.39/- per USD on the EPC Cost of 55.9783 MUS\$ in both TEC and FFP but has included a rider that these cost may be increased due to specific conditions provided in the respective approvals. As per the above approval of CEA and due to other reasons stated above, the claim under customs duty has been increased from Rs.48.029 Crores to Rs.57.112 Crores by SPCL

TANGEDCO's stand for disallowance of customs duty without adducing proper reasons for disallowing the increase in customs duty amount of Rs.9.182 Crores and without any cost break-up or specific reason for disallowing the amount cannot be accepted by the Commission. Further, the actual Customs Duty paid to the GOI has been verified. Hence, under the head Customs duty, Commission is allowing Rs.57.211 Crores to be included in the Completed Cost of the Project.

13.36.2. Deposit to TACID – Rs.0.834 Crore

13.36.2.1. TANGEDCO contended that the cost incurred towards lease hold land is actually the amount deposited for land leased from TACID (presently SIPCOT) for 99 years as indicated in clause 14 of Notes to accounts of Annual Report for 2000-01. They further contended that this claim need not be allowed as part of capital expenditure because the same is in the nature of current asset. Further, if at all the

amount needs to be serviced the same has to be serviced at a borrowing rate suitably discounted by giving less weightage for the initial years considering the inflation and the lease period of 99 years. In any event, this is not in line with clause 2.2 of the GOI Notification issued on 30-03-1992 with regard to tariff determination of projects approved under MOU route. The relevant clause reads hereunder wherein it provides to consider the capital expenditure only for the completed capital cost.

“2.2 The capital expenditure of the project is to be financed as per the approved financial package set out in the techno-economic clearance of the authority”.

.....

“The actual capital expenditure incurred on completion of the project shall be the criterion for the fixation of tariff”

13.36.2.2. It is evident that even if the project is completed before the scheduled dated i.e. less than 14 months, it does not mean that SPCL is automatically entitled to the entire capital cost as requested by the SPCL. The cost reduction due to early completion should necessarily pass on to the TNEB.

13.36.2.3. In the hearing dated 26th November 2015, TANGEDCO has pleaded that the Lease Agreement is for the period of 99 years and the PPA is for a period of 15 years. Hence, the amount to be capitalized shall be reduced proportionately (i.e. Rs.0.834 Crore *15/99=Rs.0.126 Crore).

13.36.2.4. In reply to the above averments, SPCL in their written submissions has stated that the Leasehold is for 99 years and the amount paid is shown as advance in the books. The amount paid is almost the cost of Land and SIPCOT allocated the land for the project only on leasehold basis.

13.36.2.5. Some details were given to TNEB and CEA in 2001 and no dispute was raised. TNEB had, in their original petition, agreed to the inclusion of the cost

under the project cost and the expenditure incurred has been verified by TNEB. The proposed disallowance is only an afterthought. The Lease Advance to TACID/SIPCOT was paid much before COD. Hence, the Lease Advance plus interest @ 12% accrued till COD, works out to Rs.1.14 Crores and the same has to be considered for payment of interest by TANGEDCO at the Working Capital Interest Rate as prevailing from time to time, throughout the Term of the PPA. With the above proposal SPCL requested that the Lease Advance of Rs.0.834 Crore may be reduced from Capital Cost.

13.36.2.6.Commission's findings:

SPCL has obtained the land from TACID (presently SIPCOT) on lease for 99 years. TANGEDCO contended that as the land is leased for 99 years and the term of the PPA signed is only for 15 years it cannot consider the total expenditure as part of the Capital Cost. Further, TANGEDCO requested the Commission to consider only a proportionate amount of Rs.0.126 Crore ($\text{Rs.0.834 Crore} \times 15/99$) to be included in the capital cost.

In response to the above submissions of TANGEDCO, SPCL has requested the Commission to consider the advance paid to TACID with an interest @ 12% accrued till COD which works out to Rs.1.14 Crores has to be considered for payment throughout the term of the PPA.

As the amount paid to TACID is towards advance for securing the land on lease for the project, and as the amount paid is for 99 years, the obligation of TANGEDCO is only upto the term of contract i.e. term of the Power Purchase Agreement which is only 15 years.

Hence, the amount paid to TACID can be proportioned for 15 years and the same shall be allowed to be included in the capital cost. Once it is included in the

capital cost then it will get the return through recovery of Fixed Cost for the whole term of the project. Out of total amount of Rs.0.834 Crore Commission allows Rs.0.126 Crore related to the term of contract and disallows Rs.0.708 Crore which relates to period beyond the term of PPA.

13.36.3.O & M Mobilization fee – Rs.0.141 Crore (1.30Cr. – 1.159Cr.)

13.36.3.1. TANGEDCO contended that the entire expenditure proposed is to be disallowed since no provision for the expenditure is available and requested to combine this with item no. 5 of the original petition.

13.36.3.2. In reply to the above averments, SPCL has stated that this is further to the disallowance already proposed by TANGEDCO only on the excess after considering the O & M Mobilization Expenses as 'Pre-operative Expenses' and seeking disallowance of Rs.1.159 Crores referred to at Sl. No. 5 of the first list. This additional disallowance treating the total O & M Mobilization Expenses to be disallowed is an afterthought and sought approval of the capital cost which is lower than that of other IPPs with comparable capacity although the TEC approved Capital Cost of the Company was higher than that of such other IPPs and requested the Commission to allow the entire expenditure.

13.36.3.3..Commission's findings:

This has already been discussed under the head O & M Mobilization fee and the amount claimed under this head is disallowed as the SPCL has failed to get the approval of the CEA after the approval of the TEC/FFP.

13.36.4.(4)Exchange Rate Difference

13.36.4.1. TANGEDCO in its amended Petition has contended that in so far as the SPCL's claim towards capitalization of the Exchange rate at various places and at various points of time considered different exchange rates. Further, SPCL did not furnish the equity and loan funding of the project as certified by a Statutory Auditor. The funding of the project based on the information available works out to be as follows:

(All figures in Million)

Particulars	Equity		Loan		Equity + Loan		Capital Cost		SPC Petition
	FC	INR	FC	INR	FC	INR	Rs./USD	Rs.	Page no.
Actual means of finance as approved by the Lenders	26.93	204.36		3112	26.93	3316.36	43.00	4474.40	237
Billing Latest	24.66	194.12		3019.74	24.66	3213.87	44.61	4313.98	Annexure A to the amended petition

13.36.4.2. The entire loan is funded through Indian rupee and that a portion of equity is funded through USD viz. 26.93 Million USD only and the same have been considered @ Rs.43/USD. However, for the purpose of billing in so far as the equity is concerned, the equity deployed in foreign currency is considered at USD 24.66 Million at an exchange rate of Rs.44.61/USD and whereas the inward remittance of equity holding as enclosed along with the MAP 1of 2012 filed by the Respondent company at page No.249 of the petition has been considered at an exchange rate of Rs.44.25907/USD. The inward remittance made by the promoters and the weighted average exchange rate as on the date of inward remittance are tabulated below from the data furnished in the Petition for easy of reference:

Inward Remittance made by Promoters:

Sl. No.	Equity Inward Remittance	USD (Millions)	Rs.(Millions)	Rs./ USD
1	Wartisila India Power Investment	3.386	149.89	
2	Ogden Energy India (Samalpatti) Ltd.	15.0957	667.93	
3	Goa Holding Ltd.	3.3887	149.94	
4	Fenmor Energy Ltd.	4.3058	190.77	
	Total	26.176	1158.53	44.25907

Calculation of Base Exchange rate for Foreign Equity Inflow

Sl. No.	Particulars	Date	Source Details			SPC Petition Page No.
			Equity			
			US \$	Ex Rate	INR	
1	Equity	20-9-1999	2,193,000.00	43.43	95,241,990	398
2	Equity	22-11-1999	522,752.00	43.23	22,598,569	398
3	Equity	24-11-1999	3,110,000.00	43.22	1,34,414,200	398
4	Equity	24-11-1999	517,963.13	43.22	22,386,366	398
5	Equity	24-11-1999	174,230.00	43.22	7,530,221	398
6	Equity	26-11-1999	182,036.87	43.25	7,873,095	398
7	Equity	25-04-2000	706,810.00	43.50	30,746,235	409
8	Equity	24-04-2000	3,157,530.00	43.50	137,352,555	409
9	Equity	26-04-2000	685,000.00	43.54	29,824,900	409
10	Equity	24-05-2000	1,442,354.00	43.83	63,218,376	416
11	Equity	24-05-2000	323,868.00	43.83	14,195,134	416
12	Equity	26-05-2000	350,000.00	43.83	15,340,500	416
13	Equity	24-07-2000	4,629,667.00	44.56	206,297,962	423
14	Equity	24-07-2000	1,003,000.00	44.56	44,693,680	423
15	Equity	24-07-2000	1,039,296.00	44.56	46,311,030	423
16	Equity	25-07-2000	1,282,977.58	44.64	57,272,119	423
17	Equity	28-08-2000	1,322,977.00	45.63	60,367,441	432
18	Equity	28-08-2000	297,016.00	45.63	13,552,840	432

19	Equity	28-08-2000	334,000.00	45.63	15,240,420	432
20	Equity	28-08-2000	417,155.29	45.63	19,034,796	432
21	Equity	31-01-2001	315,000.00	46.26	14,571,900	457
22	Equity	01-02-2001	1,970.00	46.26	91,132	457
23	Equity	01-02-2001	411,690.00	46.26	19,044,779	457
24	Equity	05-02-2001	321,724.00	46.25	14,879,735	457
25	Equity	05-02-2001	1,433,162.00	46.25	66,283,743	457
26	Equity	07-02-2001	1,000.00	46.23	46,230	457
		Total	26,176,178.87	44.25	1,158,409,947	

13.36.4.3. In Appendix “D” of the PPA calculation of payments, under Clause 1 Definition, Capital Cost determination has been laid down there and the relevant portion of the clause read as follows:

“.....For purposes of determining the Capital Cost, all foreign currency loans and all foreign currency equity sources shall be converted into Rupees at the applicable Base Foreign Exchange Rate.”

13.36.4.4. The Commission may adopt the above mentioned methodology being a liability side approach. Consequently, the Commission may consider adopting the weighted average exchange rate as set out below.

13.36.4.5. TANGEDCO has further contended that the basis on which the Base Foreign Exchange Rate (BFXR) has been arrived at by the Company has not been detailed. In any event, the same is not in line with the BFXR defined by the Company in Appendix D and one considers the three different rates of exchange considered for working out capital cost namely, Rs.44.61/USD, Rs.44.25607/USD and Rs.43/USD. The same will not achieve the desired effect.

The *Base Foreign Exchange Rate (BFXR)* is defined as follows:

“BFXR” or the “Base Foreign Exchange Rate” shall mean the currency exchange rate between US Dollars (or other applicable foreign currency and Rupees utilized by the Company in computing the Rupee Capital Cost for all capital assets paid for by the Company in US Dollars (or other applicable foreign currency). If multiple exchange rates are utilized by the Company for different assets or group of assets, the BFXR shall be the weighted (according to the various amounts of US Dollars or other applicable foreign currency expended at different exchange rates) average of all such exchange rates;and”

13.36.4.6. TANGEDCO requested the Commission to consider the liability side approach as the method for arriving/fixing of the capital cost of the project at an appropriate exchange rate. The rate arrived at by the Petitioner is based on the data furnished which works out to Rs.44.25907/USD. It is stated that the Respondent Company should support the claim by getting necessary certificate from its Statutory Auditor enclosing necessary calculation. It is also stated that due to this the reduction towards capital cost would works out to Rs.88.74 lakhs (24.65MUSD * (Rs.44.61- Rs.44.25).

Having regard to the above, Commission may consider liability side approach as the method while arriving/fixing of the capital cost of the project at an appropriate exchange rate Rs.44.25907 /USD and at the rate of Rs.43/USD.

13.36.4.7. In response to the above averments, SPCL in its Counter to the above amended petition has stated that SPCL in its Petition M.A.P. No.1 of 2012 has submitted the cost incurred on the project with details. SPCL reiterated that the

provisions of PPA relating to the Capital Cost, and the Base Foreign Exchange Rate definition have to be considered by the Commission. Further, SPCL has also stated that it has strictly adhered to the above definition and has arrived at the BFXR. The detailed working of BFXR with complete details of remittances made for every import of Capital Goods and certificates of applicable dollar conversion rates from State Bank of India had formed part of Statement of Base Foreign Exchange Rate have been submitted by SPCL to the CEA and TNEB in May 2001. As per the requirements of CEA, certificate from the Cost Auditor of the Respondent confirming the BFXR along with copies of relevant documentary evidences were also part of the original submissions for approval of Completed Capital Cost.

13.36.4.8. The reference to exchange rate at which equity was infused into the project for the purpose of arriving at the BFXR is irrelevant and also vividly demonstrative of not only the inability of TNEB to fully comprehend the provisions of the PPA and their tendency to misinterpret the clearly laid out provisions of the PPA but also their repeated failure to take cognizance of the submissions made by SPCL way back in May 2001. TNEB had earlier considered the BFXR as claimed by SPCL's original petition. TNEB's plea to consider the liability side approach as the method for fixing the capital cost of the project at an appropriate exchange rate is not borne out of any provisions in the GOI Notifications or regulations of the Commission. The averments of the TNEB in the amended petition are not based on facts and are misleading in nature.

13.36.4.9. SPCL in its written submissions has stated that BFXR computation as per the PPA would have to be taken into account, US Dollar currency utilized for the project. Therefore, all payments in Dollars irrespective of whether they were received from foreign sources or procured using Indian Rupees at SBI Selling Rate

and utilized towards purchase of capital assets needs to be considered. The BFXR had therefore been computed on the basis of the provisions of the PPA.

13.36.4.10. SPCL has stated that the Exchange rate protection had been sought only for the foreign equity infused into the project as per the provisions of the FFP. Exchange rate protection for the Indian Rupee had not been sought as averred by TANGEDCO. The project cost determination is on the basis of the actual expenditure on the project and the means of financing of the project includes debt and equity. These two aspects are distinct and separate. Therefore, TANGEDCO's attempt in seeking to mix up the said issue and thereafter making a claim for reduction of the project cost is entirely untenable.

13.36.4.11. SPCL has further stated that if the contention of TANGEDCO for using only the inward exchange rate for US Dollars directly received (Rs.44.25/USD), total INR spent on procuring the balance quantum of US\$ required for payment against imports which was far higher than the exchange rate of Rs.44.607/USD, needs to be considered, which would result in total equivalent Indian Rupees remaining the same, with BFXR at lower rate. Finally, SPCL requested the Commission to consider the details stated above and fix the BFXR at Rs.44.607/USD.

13.36.4.12. Commission's findings:

In respect of the present issue, TANGEDCO has requested the Commission to consider the inward remittance of Equity and the exchange rate relatable to the inward remittances of Equity. TANGEDCO did not dispute to the quantum of the Equity brought in as Foreign Equity. Instead they dispute the method of calculating the BFXR based on the expenditure incurred.

In this regard, the BFXR is defined in Appendix D of the PPA and the same is reproduced below:

The *Base Foreign Exchange Rate (BFXR)* is defined as follows:

“BFXR” or the “Base Foreign Exchange Rate” shall mean the currency exchange rate between US Dollars (or other applicable foreign currency and Rupees utilized by the Company in computing the Rupee Capital Cost for all capital assets paid for by the Company in US Dollars (or other applicable foreign currency). If multiple exchange rates are utilized by the Company for different assets or group of assets, the BFXR shall be the weighted (according to the various amounts of US Dollars or other applicable foreign currency expended at different exchange rates) average of all such exchange rates;and”

Going by the provisions of the PPA, it is clear that if multiple exchange rates are utilized by the Company for different assets or group of assets, the BFXR shall be the weighted (according to the various amount of US Dollar or other applicable foreign currency expended at different exchange rates) average of all such exchange rates”.

Further, the EPC Cost payable as per TEC and FFP is 55.9783 MUSD. The Equity brought in by SPCL is 26.176 MUSD. SPCL in its additional submissions in the Counter dated 12-07-2013 has also stated that the Exchange rate protection had been sought only for the foreign equity infused into the project as per the provisions of the FFP. Exchange rate protection for the Indian Rupees had not been sought. The Project cost determination is on the basis of actual expenditure incurred on the project and the means of financing of the project includes debt and equity.

As the provisions of the PPA, it is very clear that the weighted average rate of dollar expended shall be taken for arriving the BFXR. SPCL has stated that

it has limited the claim of Exchange rate protection only to the Foreign Equity infused into the Project in US Dollars.

In view of the provisions of the PPA, the BFXR for the project is to be adopted at Rs.44.607/USD.

13.36.5. 5.0 Debt Equity Ratio

13.36.5.1. TANGEDCO in its amended petition has contended that as per the records produced by SPCL, the project was financed at a debt-equity ratio of 69.50:30.50 and on this basis the tariff ratio has been claimed as against the FFP approval accorded by CEA, which was based on the debt equity ratio of 70:30. TANGEDCO in its Counter filed in respect of M.A.P. No.1 of 2012, has raised this issue on the debt-equity ratio of 70:30 vide its letter dated 15-12-2011, 26-04-2012 and 06-06-2012 and the Respondent SPCL disputed the above contention of TANGEDCO vide its letter dated 23-12-2011 and 22-06-2012 by stating that the debt-equity ratio should be in the order of 69.5:30.5.

13.36.5.2. TANGEDCO has further stated that SPCL has claimed funding of the project by way of foreign currency at 55.9783 Million USD @ Rs.44.607/USD plus INR of Rs.181.682 Million totaling to Rs.4313.80 Million. Whereas the actual mix of currency utilized for claiming equity and loan deployed in relation to the project is 24.66 Million USD @ Rs.44.61 plus INR of Rs.3213.87 Million, totaling to Rs.4313.98 Million. The basis for considering two different mix one for asset side and another for liability side needs due detailing for considering the liability side approach of determining the tariff. The same is tabulated below:

(All figures in Million)

Particulars	Equity		Loan		Equity+ Loan		Capital Cost		SPC Petition Pg. no.
	FC (USD)	INR	FC (USD)	INR	FC (USD)	INR	USD	Rs.	
Billing Latest	24.66	194.12		3019.74	24.66	3213.87	44.61	4313.98	
Petition	NA	NA	NA	NA	55.9783	181.682	44.607	4313.80	6

13.36.5.3. Further, TANGEDCO has contended that Annexure-II of the TEC issued by CEA vide FI.No.2/TN/96-PAC/1445-68, dated 10-02-1998 in respect of tentative financial package (page no. 197 of the petition) and the annexure-II of FFP issued by CEA vide No.2/TN/31/96-PAC/7005-27, dated 27-08-1999 (pg. No. 216 of the petition) provides for funding the project at an debt equity ratio of 70:30. Whereas, SPCL while billing has claimed an amount of Rs.129.42 Crores as equity for a completed Project cost of Rs.424.84 Crores which works out to 30.46% as equity deployed in the project which is not in line with approval accorded by CEA and requested the Commission to restrict the equity in line with the approval accorded by CEA read with GOI tariff notification dated 31-03-1992 to 30%.

13.36.5.4. TANGEDCO further submitted that clause 3(xi) of FFP dated 12-08-1999 issued by CEA provides that, the terms and conditions of TEC would remain unaltered until and unless specifically notified subsequently by CEA. In view of the foregoing, the change in debt equity ratio of 70:30 needs to be considered and not debt-equity ratio of 69.35:30.65 as claimed by the petitioner. Further, clause 3(xvii) of TEC dated 10-02-1998 issued by CEA provides that, the FFP shall not be inferior to the tentative financial package and the approval provides for a debt-equity of 70:30 in the tentative financial package. Whereas, the equity deployed in the project has exceeded 30%. Further, the promoter's equity in USD has exceeded the

amount provided for in the tentative financial package and requested the Commission to disallow the excess equity.

13.36.5.5. SPCL in its written submission dated 16-12-2015 has contended that as per the TEC accorded on 10-02-1998 was equivalent to Rs.391.86 Crore (with Exchange rate of Rs.39/USD). The same worked to be equivalent to Rs.431.38 Crores taking into account FFP approved cost duly adjusting for Exchange Rate variation (Exchange rate of Rs.44.607/USD) and actual Customs Duty paid. However, SPCL had sought approval of completed cost of the project at Rs.424.84 Crores.

13.36.5.6. SPCL further submitted that the figure of 55.9783 Million USD @ Rs.44.607/USD is the actual USD spent for procurement of Capital Assets of the project in Foreign Currency (with complete proof submitted to CEA and TNEB). SPCL has requested the Commission for the approval of debt equity ratio of 69.50:30.50, which implies a little excess equity and the same may be considered by the Commission, as per the provisions of the PPA. Further, SPCL has stated that in the definition of Capital Cost at Appendix D of the PPA, it has been clearly provided that in determining the amount of costs actually incurred in completing the Project, account shall be taken of, inter-alia any change to the debt equity ratio from the ratio assumed in the Approved Capital Schedule. Further, on applying the BFXR with respect to the foreign equity component as per the FFP package approved by the CEA, the Debt equity ratio would be 67.50:32.50. The small variation in the debt equity ratio as per the actual financing of the Project may be therefore considered by the Commission, while approving the capital cost.

13.36.5.7. The total cost of the project approved by the lenders was broadly Rs.447.44 Crores. The loan sanctioned by the lenders amounted to Rs.311.2

Crores. Though the loan sanctioned for the project was Rs.311.2 Crores, the total loan amount actually drawn for the project was Rs.304.05 Crores and the balance of Rs.136.24 Crores (as per the copy of the Audited Financial Statements of the Company for FY2000-01 enclosed at page No.601 of the document in Petition No. M.A.P. 1 of 2012) was to be funded through equity. This is as per the lending documents which were submitted to the TNEB and CEA in May 2001. The debt equity ratio as per the lenders model is 69.55:30.45, from which, it is evident that the minimum equity contribution was to be not less than 30% of the total project cost.

13.36.5.8. The total equity actually infused into the project is Rs.136.24 Crores. Out of this, Rs.129.36 Crores has been considered for the project cost purposes, being 30.45% of actual incurred capital cost of Rs.424.84 Crores. The balance amount of Rs.295.48 Crores (69.55%) was funded through debt. Further, SPCL has stated that the company incurred certain other expenses during project execution which were not provided under the TEC. Although, the total expenditure incurred by the company was Rs.440.29 Crores, the Capital Cost incurred on the Project was restricted to Rs.424.84 Crores. The PPA provides for minor variation in the debt equity ratio subject to the approval of the CEA.

13.36.5.9. The Company has stated that considering the total debt sanctioned and out of which the actual debt drawn for the purpose for financing the project cost would be totally inappropriate.

Further, SPCL has stated that the Company had restricted the amount under Capital Cost, as per the scrutiny of the Cost Auditor to Rs.424.84 Crores in line with TEC and FFP and as per the certificate issued by the Cost Auditor, the Project Cost excludes the margin money on working capital provided by the Company.

13.36.5.10. SPCL has also referred to Regulation 21 of the TNERC's (Terms and Conditions for Determination of Tariff) Regulations, 2005 in respect of debt equity ratio and the same is extracted below:

“21. Debt-Equity Ratio:

“For the purpose of determination of tariff, debt-equity ratio as on date of commercial operation of Generating Station and transmission projects, sub-station, distribution lines or capacity expanded after the notification of these Regulations shall be 70:30. Where equity employed is more than 30% the amount of equity shall be limited to 30% and the balance amount shall be considered as loans, advanced at the weighted average rate of interest and for weighted average tenor of the long term debt component of the investment:

Provided that in case of a Generating Company or other licensees, where actual equity employed is less than 30%, the actual debt and equity employed is less than 30%, the actual debt and equity shall be considered for determination of return on equity in tariff computation.”

13.36.5.11. SPCL has further stated that TANGEDCO's interpretation of the provisions of the Commission is totally misplaced. As per the provisions, normally the debt-equity ratio shall be 70:30. Only in cases where the actual equity employed is less, actual debt and equity shall be considered. In the present case, the actual debt drawn and equity infused into the project were much higher than what is required. The Company had earlier pleaded for allowing higher equity of 30.45% and debt of 69.55%, since small variation was permissible.

13.36.5.12. During the period when the approval for the project cost was sought, debt equity proportion was 70:30 and no project would get financed by the Financial Institutions and Banks unless equity brought in was less than 30%. It is for this

reason that the CEA had also stipulated in the TEC that the debt, equity ratio would be 70:30 and that any small variation in the debt equity ratio was subject to the approval of the CEA. SPCL finally requested the Commission to consider a debt equity ratio with equity not less than 30%.

13.36.5.13. Commission's findings:

The CEA while approving the TEC on 10-02-1998 has approved the funding of the Project at a Debt Equity ratio of 70:30. In the case of SPCL, the CEA has also approved the FFP. Further, while approving the FFP on 12-08-1999 and on the basis of the FFP, the total cost of the project shall be US\$55.978 Million + Rs.172.508 Crores including IDC & FC of Rs.41.066 Crores at an exchange rate of US\$ = Rs.39/-.

While approving the FFP also, the CEA has adopted the funding of the Project as 70: 30 as Debt Equity ratio which was also as per the GOI Notification issued on 30-03-1992. But in reality during construction stage of the Project, more funds were secured through debt and equity and the funds sourced were not in the same proportion as approved by the CEA. SPCL in its statement has stated that out of the sanctioned loan amount of Rs.311.20 Crores for the Project they have obtained loans to the tune of Rs.304.05 Crores.

In respect of Equity, the total equity actually infused into the project was Rs.136.24 Crores. Out of the total equity, Rs.129.36 Crores has been considered for project cost purposes, being 30.45% of actual incurred capital cost of Rs.424.84 Crores. SPCL has also stated that the balance amount of Rs.295.48 Crores (69.55%) was funded through debt. Even though the total expenditure incurred on the project was Rs.440.29 Crores, it has stated that it had restricted the capital cost

of the Project to Rs.424.84 Crores. The PPA provides for minor variation in Debt-Equity ratio subject to the approval of the CEA.

The Debt Equity ratio as per Regulation 21 of the TNERC's (Terms and Conditions for Determination of Tariff) Regulations, 2005 of the Commission in respect of debt equity ratio and the same is extracted below:

“21. Debt-Equity Ratio:

“For the purpose of determination of tariff, debt-equity ratio as on date of commercial operation of Generating Station and transmission projects, sub-station, distribution lines or capacity expanded after the notification of these Regulations shall be 70:30. Where equity employed is more than 30% the amount of equity shall be limited to 30% and the balance amount shall be considered as loans, advanced at the weighted average rate of interest and for weighted average tenor of the long term debt component of the investment:

Provided that in case of a Generating Company or other licensees, where actual equity employed is less than 30%, the actual debt and equity employed is less than 30%, the actual debt and equity shall be considered for determination of return on equity in tariff computation.”

In respect of SPCL, though the PPA provides for minor deviations in the Debt Equity ratio and the total debt drawn and equity infused into the project is more than 70: 30 ratio Commission considers a Debt Equity ratio of 70:30 for this project.

13.37. Other issues:

13.37.1. TANGEDCO in its Amendment Petition has requested the Commission to indicate the methodology of accounting disallowance in debt and equity. Further, it has also requested the Commission to order on the weighted average rate of depreciation on finalization of capital cost for the Project.

In respect of the above issues, the Commission is restricting itself to the issues which affects only the finalization of the completed cost i.e. capital cost.

Commission has allowed certain items disputed by TANGEDCO and disallowed certain items based on the discussion in the foregoing pages.

13.37.2. The final completed cost of the Samalpatti Power Company Pvt. Ltd. located in Parandapalli Village, Pochampalli Taluk, Krishnagiri District, Tamil Nadu at US\$55.9783 Million + Rs.169.35 Crores in INR which works out to Rs.419.05 Crores at the foreign exchange rate of 1US\$ = Rs.44.607.

13.38.1. The summary of the ruling in respect of the above capital cost is as follows:

- i. Land Cost amounting Rs.3,60,000/- is disallowed in full.
- ii. Establishment and Development Expenses – Rs.1.152 Crores is disallowed.
- iii. Construction Insurance Rs.1.1255 Crores (Rs.55,85,385/- towards ALOP and Rs.56,69,790/- towards Marine Delay Start up) is allowed and Rs.0.009 Crore towards Fuel Stock Insurance is disallowed.
- iv. Operator Training expenses amounting to Rs.6.70 lakhs is disallowed.
- v. O & M Mobilization fee amount to Rs.1.30 Crores is disallowed in full (raised in both original petition and in the amendment petition).
- vi. Development Expenses amounting to Rs.1.2635 Crores is disallowed in full.
- vii. Additional expenses amount of Rs.34.00 lakhs “Township Expenses” claimed under the head Contingency is disallowed.

- viii. Excess dollar expenses due to rounding off amounting to Rs.40,000/- is allowed.
- ix. The claim towards Liquidated damages, Overdue interest, Commitment fee paid to SBI, etc. under the head Interest During Construction amounting to Rs.5.10 lakhs is disallowed.
- x. Financial Advisory fee of Rs.25.20 lakhs is disallowed.
- xi. Legal and stamping fee amounting to Rs.4.50 lakhs is disallowed.
- xii. Management fee under Equity raising charges amounting to Rs.12.40 lakhs is disallowed.
- xiii. Soft cost proportionate IDC and FC amounting to Rs.0.443 Crore is disallowed.

13.38.2. In respect of Additional Issues, the decision of the Commission is as follows:

1. In Customs Duty the total amount disputed by TANGEDCO is Rs.9.182 Crores. Commission allows the disputed amount in full to be included in the Completed Cost.
2. In Deposit to TACID Rs.0.126 Crore is allowed and an amount of Rs.0.708 Crore is disallowed.
3. The Base Exchange Rate to be adopted for the Project is Rs.44.607/USD .
4. The Debt Equity ratio approved for the project is 70:30 on the completed cost of the Project.

13.39. With the above ruling and directions in M.A.P. No.2 of 2007 and M.A.P. No. 1 of 2012 relating to fixing of completed capital cost of SPCL are finally disposed of. The completed capital cost as approved in this order will have to be taken into account for arriving at the tariff as per the PPA entered into between the parties.

The monthly invoices may be redrawn from the date of CoD.

In the definitions in Appendix D, under the head Capital Cost it has been stated that *“When the Actual Capital Cost is finalized, the amount of overcharge or undercharge will be refunded or paid (as the case may be) in twelve equal payments at the time of the payment of the next twelve Billing Period Payments after such finalization”*.

13.40. However, in the case of SPCL, the 15 years term of the PPA was already completed on 29-02-2016 and the adjustment of overcharge or undercharge of amount cannot be done in the Billing period payments, the same can be done immediately within a period of three months from the date of issue of this order.

There would be no Order as to cost.

14. Appeal:-

An appeal against this order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act, 2003 within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person.

(Sd.....)
(G.Rajagopal)
Member

(Sd.....)
(S.Akshayakumar)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission