



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P. No. 21 of 2016

Dated.13-07-2018

Present

Dr. P. Raghu, Member

Sri P. Rama Mohan, Member

Between:

Southern Power Distribution Company of Andhra Pradesh Limited

Eastern Power Distribution Company of Andhra Pradesh Limited

....Petitioner(s)

AND

Andhra Pradesh Power Development Company Limited

....Respondent

This petition has come up for Public Hearing finally on 20-06-2017 in the presence of Sri P. Shivarao, learned Standing Counsel for the Petitioner(s) and Sri K. Gopal Choudary, learned Counsel for the Respondent. After carefully considering the material available on record and after hearing the arguments of all the parties, Commission passed the following:

ORDER

A petition dated 12th September, 2016 was filed under section 21 (1) (5) of the A.P. Electricity Reform Act, 1998, praying the Commission to convey consent to the amended and restated PPA dated 24-08-2016 in respect of 2x800 MW Sri Damodaram Sajeevaiah Thermal Power Station (SDSTPS) Stage-I.

2. The important facts of the case according to the petitioner(s) are as hereunder:
 - a. The POWER PURCHASE AGREEMENT dated 22nd November 2010 entered between APSPDCL, APEPDCL, APNPDCL and APCPDCL, four DISCOMs of erstwhile unified

Andhra Pradesh as parties of the first part and ANDHRA PRADESH POWER DEVELOPMENT COMPANY LIMITED as party of the second part.

- b. In due course of time the unified Andhra Pradesh has been bifurcated into two States viz. Telangana and Andhra Pradesh w.e.f. 2nd June 2014 as per the Reorganization Act, 2014.
- c. APERC of unified Andhra Pradesh has returned the PPA dated 22nd November 2010 of 2x800 MW SDSTPS Stage-I for want of jurisdiction vide its letter dated 23.08.2014.
- d. The Chairman and Managing Director/TSTRANSCO vide letter dt.18.04.2015 addressing the Executive Director/SRLDC has requested not to schedule power from SDSTPS to TS DISCOMs as power is not required. The Power Systems Operation Corporation Ltd., vide their letter dt.27.04.2015 addressed the Chief Engineer/ SLDC, APTRANSCO informing that, in view of the request made by CMD/TSTRANSCO, the power from SDSTPS, Krishnapatnam will be scheduled as per requirement of APSLDC. Accordingly, APPDCL has to sell its power to DISCOMs located in AP. Accordingly, this Agreement is realigned in line with the Regulations of APERC in force.
- e. Approval has been obtained from Chairman/APPDCL for issuing amendment to the existing PPA with the following salient points: (i) APPDCL & the two DISCOMs of Residual Andhra Pradesh are only considered as parties to the agreement. (ii) To revise the Project cost to Rs.12,630 Crores. (iii) APERC guidelines will be adopted for tariff calculations and (iv) PPA will be considered with retrospective effect from CoD of unit-1 of SDSTPS i.e. 05.02.2015.
- f. Based on the proposal of APPDCL, APPCC in its meeting dated 22.06.2016 took a decision that APPCC agreed to the proposal of APPDCL to sign the PPA with two DISCOMs i.e. APSPDCL & APEPDCL for 90% of the project capacity since SDSTPS being situated in SPS Nellore District falls geographically in the State of Andhra Pradesh.
- g. Sri Damodaram Sanjeevaiah Thermal Power Station (SDSTPS), Krishnapatnam has got the Mega Power Project Status as approved by Gol. As per this policy, power generated from the project (i.e. at least 10% of the installed capacity of the project) shall be supplied to more than one State.
- h. As per Section 86(1) (b) of Electricity Act 2003, the PPA of the said project need to be approved and consented by APERC.

- i. As per AP Electricity Reforms Act, 1998 under section 21(1) (5) the Power Purchase Agreement becomes void without the consent of APERC, which Act was repealed and saved as per section 153 of Electricity Act, 2003 to the extent of not having inconsistency.
- j. The Amended and Restated PPA for 2x800 MW Sri Damodaram Sanjeevaiah Thermal Power Station (SDSTPS)-Stage-I is prepared as per APERC Regulations 1 of 2008.

3. The said petition was taken on record with O.P.No.21 of 2016 on the file of this Commission and a Public Notice was issued on 28-09-2016 inviting views / suggestions / objections of interested persons / stakeholders in respect of the subject matter, to be sent to the Secretary / APERC on or before 5.00 PM on 18-10-2016 and it was also informed that the subject matter will be taken up for Public Hearing by the Commission on 28-10-2016 at 3.00 PM in its Court Hall at Hyderabad. In response to the above Public Notice, certain objections have been received in the Commission on various dates and the parties to the petition have also furnished replies. The names of the objectors and the summary of objections and replies are as detailed in subsequent paragraphs:

4. **Sri M. Venugopala Rao, Senior Journalist and Convenor, Centre for Power Studies; Sri A. Punna Rao; Sri M. Thimma Reddy, Convenor Peoples Monitoring Group on Electricity Regulation and Sri P. Madhu, State Secretary, Communist Party of India (Marxist):**

- a. **Objection:** A Power Purchase Agreement entered into between APPDCL and the four Discoms in the undivided Andhra Pradesh on 22.11.2010 was returned on 23.8.2014 by the erstwhile APERC in the undivided AP for want of jurisdiction. When was the PPA submitted to the then APERC?

Reply of APPCC: Erstwhile four (4) Distribution companies have entered the PPA with APPDCL on 22.11.2010 for purchase of power from SDSTPS, Krishnapatnam. The PPA was filed before APERC on 05.01.2011 for approval.

Reply of APPDCL: Same as above

- b. **Objection:** If the original PPA was submitted to the erstwhile APERC before bifurcation of the State, why did the latter return the same for want of jurisdiction? Was the Question of jurisdiction considered before or after bifurcation of the undivided Andhra Pradesh? What are the reasons given by the then APERC for returning the PPA?

Reply of APPCC: The original PPA was submitted to the erstwhile APERC before bifurcation by four (4) APDISCOMs in united AP. The reason for returning the PPA by APERC is as under:

The PPAs in respect of Sri Damodaram Sanjeeviah Thermal Power Project Stage-I expressly state that on all matters relating to these PPAs, the Central Electricity Regulatory Commission (CERC) will have jurisdiction and only regulations issued by CERC shall apply. APERC has even not been included in the definition clause of these PPAs. As per Clause 3.1.1 the tariff will be determined by the CERC. As per Clause 3.4, the Capital Cost of the Project is determinable by the CERC. As per Clauses 3.6, 3.7 and 3.8, CERC Regulations will be followed for the determination of fixed charges prior to COD, renovation and modernisation costs and secondary fuel oil consumption respectively. As per Article 8, extension of the agreement will be subject to CERC's consent. As per Article 9, dispute resolution will be undertaken by CERC. Some of these clauses militate against the present APERC regulations. Evidently these projects are envisaged to be inter-state projects where power will be supplied to more than one State and the PPA has been framed accordingly keeping the requirements of Section 79(1)(b) of the Electricity Act in mind. Accordingly, these PPAs were returned to APPCC as the State Commission has no jurisdiction.

Reply of APPDCL: APPDCL has entered into PPA with DISCOMs for 90% capacity i.e. 1440 MW and with PTC for 10%. As per Draft PPA the tariff determining authority is Hon'ble CERC. The then APERC returned PPA on the issue of jurisdiction.

- c. **Objection:** If the reason for returning the original PPA by the then APERC was that SDSTPS being a mega power project with the obligation to supply its power to more than one State i.e. at least 10% of the installed capacity of the project has to be supplied accordingly, will not the same position apply even now after bifurcation of the State?

Reply of APPCC: As per the old PPA, APPDCL is entitled to sell power upto 15% to trader and balance to Discoms. Now as per amended PPA the installed capacity is 1440 MW (i.e. 90% of 1600 MW). The said entire power is being sold to APDISCOMS which are under the purview of APERC. In the amended PPA, the procurers are only APDISCOMs, there are no multiple procurers. As such, in the amended PPA the tariff determining authority was amended to APERC from CERC.

Reply of APPDCL: APPDCL is having a PPA with M/s PTC for sale of 10% power generated from SDSTPS. APPDCL is entitled to sell 90% of power to APDISCOMS which are under the purview of APERC. Hence in the amended PPA, the tariff determining authority was amended to APERC from CERC.

- d. **Objection:** Having signed the original PPA, are the DISCOMS (of AP and Telangana), being parties to the PPA, entitled not to take power from the project on the ground that they do not require the same, without the relevant terms and conditions in the PPA for such action not binding on the DISCOMS concerned? Can parties to the PPA withdraw themselves from the obligations there under unilaterally on the ground that consent to the same was not obtained from the appropriate Commission and that the PPA did not come into force? Having signed a PPA with a developer of a power project, and when implementation of the project was progressing or even completed, are the DISCOMS entitled to withdraw from the agreement unilaterally, because consent of the appropriate Commission to the PPA was not sought or given till then?

Reply of APPCC: The issue on continuation of Power Purchase Agreements even after bifurcation of State is pending with Government of India. Pending decision of Government of India, Power purchase Agreement for existing projects for which the erstwhile APERC has given its consent vide its order dt.11.08.2014 are being shared between AP and TS. For the projects completed subsequent to bifurcation of the State for which no consent of APERC is available, both the States are utilizing power on geographical location basis and there is no sharing between AP and TS. However, APPDCL will follow the decision of Government of India. Till that time, the power will be availed on geographical location basis.

Reply of APPDCL: As per AP Reorganisation Act, 2014 the existing PPA will continue even after bifurcation. The rest is as above.

- e. **Objection:** Can the letters of the CMD of TS Transco to SRLDC that TS DISCOMS, who are parties to the original PPA do not require power and that power should not be scheduled to them and the letter of Power Systems Operation Corporation Limited to APSLDC that power from SDSTPS will be scheduled as per requirement of APSLDC, confer legal sanctity to TS DISCOMS not to take power from the project without subjecting themselves to the obligations under PPA or to withdraw themselves unilaterally from the PPA? If the TS DISCOMS refused to take their share of power from SDSTPS as per original PPA, is it binding on AP DISCOMS to take their share of power also? Simply because TS DISCOMS refuse to take power from SDSTPS, does it automatically increase the demand on AP DISCOMS to

take the share of power of TS DISCOMS also from SDSTPS and justify such a decision?

Reply of APPCC: In the combined State 4 distribution companies have signed PPAs for the following projects which are under construction as on the date of bifurcation.

Sl. No.	Name of the project	Capacity in MW	AP share	TS share
1	SDSTPS	1600	737.76	862.24
2	Singareni Jaipur	1200	553.32	646.68
3	KTPP-II	600	276.66	323.34
	Total	3400	1567.74	1832.26
	Geographical location basis		1600	1800

The power from the said projects being utilized by respective States based on the Geographical location basis. Further, there is no much variation in capacity either on geographical basis or on sharing basis for the projects completed subsequent to bifurcation. Hence there is no burden on DISCOMs by availing of power from SDSTPS (1440 MW). However, the decision of Government of India will be followed on power allocation.

Reply of APPDCL: For the projects completed subsequent to bifurcation of the State for which no consent of APERC is available, both the States are utilizing power on geographical location basis and no sharing between AP and TS. However, APPDCL will follow the decision of Government of India. Till that time, the power will be availed on geographical location basis. The rest is as above.

- f. **Objection:** It is to remind that the erstwhile APERC held that as far as its regulatory process and jurisdiction were concerned, AP Power Coordination Committee had no legal sanctity and cannot represent the power utilities of the Government before it. Did APPCC examine all relevant factors, especially requirement of power by AP Discoms, revised capital cost of the project, competitiveness of tariff to be paid to SDSTPS for purchasing its power, allotment of fuel to the project and considering the PPA with retrospective effect from CoD of its first unit on 5.2.2015, before agreeing to the proposals of APPDCL to make AP Discoms sign a PPA with it for 90% of installed capacity (1440 MW) of the project? If so, what are its findings and justification for the same?

Reply of APPCC: The terms & conditions for declaring CoD is as per regulations and the capital cost is subject to approval of Regulatory Commission. The Fuel

allocation is from M/s MCL for 70% and the balance 30% imported coal. APTRANSCO has made necessary arrangements for power evacuation.

Further, this PPA Capacity has been considered in APTRANSCO supply, demand, load forecast studies.

Reply of APPDCL: APDISCOMs purview.

- g. **Objection:** Though APPDCL is claimed to be a subsidiary of AP Genco, who are the share holders in the Company? Since APPDCL has claimed that it will own and operate the project, what have AP Transco and AP Genco to do with the project and its PPA?

Reply of APPCC: APGENCO is 51% shareholder in APPDCL and the balance 49% is with GoAP and four (4) Distribution Companies. AP GENCO is providing man power to APPDCL on deputation basis towards O&M of the power project and APTRANSCO is evacuating the power generated from the project on par with other projects.

Reply of APPDCL: Same as above.

- h. **Objection:** What are the terms and conditions in the original PPA dated 22.11.2010 between APPDCL and the four Discoms in the undivided AP, especially relating to COD of stage-1 of SDSTPS, its proposed capital cost, penalty for delay in implementation of the project, declaration of COD, allocation of fuel to the project, arrangement for evacuation of power from the project etc.?

Reply of APPCC: (a) As per the old PPA, COD means in relation to unit or block of the thermal generating station, the date declared by the generating company after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) through a successful trial run after notice to the beneficiaries, from 00:00 hour of which scheduling process as per the Indian Electricity Grid Code (IEGC) is fully implemented, and in relation to the generating station as a whole, the date of commercial operation of the last unit or block of the generating station. (b) The Capital Cost as per the PPA is Rs. 8654.14 Crs. (c) There is no specific clause with regard to penalties. However, in case any such eventualities arise, both the Parties will settle the matter as per Clause 10.3. (d) The terms & conditions for declaring CoD are as per regulations and the capital cost is subject to approval of Regulatory Commission. (e) The Fuel allocation is from M/s MCL for 70% and the balance 30% imported coal. APTRANSCO has made necessary arrangements for power evacuation.

Reply of APPDCL: The terms & conditions for declaring COD is as per APERC regulations and the capital cost is Rs. 8654.15 Crores. The Fuel allocation is from M/s MCL for 70% and the balance 30% Imported Coal. APTRANSCO has made necessary arrangements for power evacuation.

- i. **Objection:** If APPDCL has to sell 90% of power from its SDSTPS to the Discoms located in AP, as claimed by it, does realignment of the PPA in line with the Regulations of APERC in force mean changing the original terms and conditions one-sidedly and much to the detriment of the consumers of AP Discoms as is the case with the amended and restated PPA? What are the terms and conditions in the original PPA and changed in the amended and restated PPA? The Discoms have to explain justification, if any, for agreeing to the amended and restated PPA in its present form and content.

Reply of APPCC: Consequent to State bifurcation, the Amended and Restated PPA has been realigned with only two AP DISCOMs instead of four DISCOMS. The changes from original PPA to amended PPA are as hereunder:

- (i) The Amended and Restated PPA for procurement of the power from 2x800 MW Sri Damodaram Sanjeevaiah Thermal Power station(SDSTPS) shall be entered between APPDCL and only two APDISCOMs viz. APSPDCL & APEPDCL instead of 4 DISCOMs signed the PPA Dt. 22.11.2010.
- (ii) **1.13 - CoD of the Project:** Means the Commercial operation date of the last unit of the project. The COD for Unit-1 of SDSTPS has been declared from 00:00 Hrs. of 05-02-2015 and COD of Unit-2 of SDSTPS has been declared from 00:00 Hrs. of 24-08-2015.
- (iii) **1.28 - Date of Effectiveness of Agreement:** Date of Effectiveness of Agreement shall be CoD of the first unit i.e. 05.02.2015.
- (iv) **New Insertion, 1.34.1- Contracted Capacity:** 1440 MW i.e. 90% of the Project installed capacity (90% of 1600 MW =1440 MW).
- (v) **1.36 - Billing Date:** The Billing Date shall be five (5) days after the meter reading date in each calendar month.
- (vi) **1.42 - Cut-off date :** means the date of First Financial year closing after three hundred and sixty five (365) days of the date of commissioning of a generating station.
- (vii) **1.48 - Main and Check Meter:** Meter for measurement and checking of import / export of energy at Interconnection point for Energy Accounting.

(viii) **New insertion, 1.49 - Metering Date:** Metering Date for the first calendar month will be date of commercial operation of respective Unit. Subsequent Metering Date will mean midday (12:00 hours) of the last day of each calendar month.

(ix) **New insertion, 1.50:** Project completion Schedule: As per the Regulations as applicable.

(x) **3.4 - Capital Cost:** The capital cost as per the PPA dated 22.11.2010 is Rs. 8,654.15 Crores. But, APPDCL revised the capital cost to the tune of Rs.12,630 Crores from Rs. 8654.15 Crores, which will be filed by APPDCL before APERC as part of the determination of tariff. After fixation of the tariff by APERC, the same shall be incorporated in the PPA.

(xi) **3.13 - Sale of Infirm Power:** Supply of infirm power shall be reimbursed to the generating company at the actual cost of all coal and secondary fuel consumed for such generation. Any revenue earned by the generating company from sale of infirm power after accounting for the fuel expenses shall be applied for reduction in capital cost.

(xii) **New insertion, 3.16 - Incentive:**

a) Target Plant Load Factor for incentive shall be 80%.

b) Incentive shall be payable at a flat rate of 25.0 paise/kWh for ex-bus scheduled energy corresponding to scheduled generation in excess of ex-bus energy corresponding to target Plant Load Factor.

c) The above Thermal incentive shall be applicable as per clause (15) of APERC Regulations 1 of 2008, dt. 01.09.2008.

(xiii) **4.2 - Metering:**

4.2.1: A set of Main, Check and Standby Energy Meters of 0.2S class of accuracy, as per CEA Regulations, 2006 (Installation & Operation of Meters)/IEGC, as applicable and as amended from time to time, shall be installed on all outgoing feeders of the Station. The Main and Standby Energy Meters shall be installed and maintained by APPDCL and Check Energy Meter by APDISCOMs. Cost of the Main and Standby Energy Meters and charge for all types of testing and calibration will be borne by APPDCL and those of Check Energy Meter by APDISCOMs.

4.2.3: Monthly meter readings shall be jointly taken (and a joint acknowledgement thereof signed) by the authorized representatives of both

parties at an agreed time on each metering date from both Main and Check Energy meters.

4.2.4: Regular cross checking and analysis of meter readings and meter failure or discrepancies shall be reckoned as per CEA (Installation & Operation of meters) Regulations, 2006. If the main meter or check meter is found to be not working at the time of metering date or at any other time, APPDCL shall inform APDISCOMs/APSLDC of the same.

4.2.5: In case of failure of main meter, readings of check meter for the corresponding period shall be considered for Energy / UI Accounting. If both main and check meter(s) fail to record or if any of PT fuses is blown out, energy shall be computed based on standby meters. In case of dispute, the adjudication by APERC in accordance with the Act would be final and binding.

(xiv) 4.3 - Energy Accounting : Intentionally Left Blank.

(xv) 5.1.1: On or before each billing date, APPDCL shall submit to APDISCOMs a monthly bill based on (a) meter reading that has either been signed by Authorized representatives of both Parties or Certified by APPDCL with respect to APDISCOMs refusal to sign within five (5) days of the metering date and (b) the Tariff, which will set out the monthly Fixed charges and the monthly Variable charges with respect to the Station covered under this agreement. Each monthly bill for a billing month shall be payable by APDISCOMs in accordance with this agreement on or before the due date of payment, which will be the date sixty (60) days from the date of receipt of an Invoice by the designated officer of APDISCOMs.

(xvi) 5.3 - Rebate on payment through LC:

a) For payment of bills of the generating company through letter of credit on presentation, a rebate of 2% shall be allowed.

b) Where payments are made other than through letter of credit within a period of one week of presentation of bills by the generating company a rebate of 1.25% shall be allowed.

Reply of APPDCL: The original PPA is with Four Distribution Companies and the amended Agreement is with Two Distribution Companies of AP. The tariff determination authority is CERC as per original PPA and the same was amended as APERC. The project estimated cost as per DPR was incorporated in the

original PPA which is Rs.8,654 Crores and the actual capital cost of Rs.12,630 Crores was incorporated in the amended PPA and the same is subject to approval of APERC.

- j. **Objection:** In the amended and restated PPA, it is incorporated that the capital cost of the project as per the PPA dated 22.11.2010 is Rs. 8,654.15 Crore, but APPDCL has revised it to the tune of Rs.12,630 Crore which means the capital cost is increased by 45.94%. The revised capital cost of the project works out to Rs.7.89375 Crore per MW!

Reply of APPCC: The APPDCL is yet to file Tariff application before APERC. However, the capital cost of the project will be examined by APDISCOMs after filing the required application for determining tariff of the project before APERC by APPDCL.

Reply of APPDCL: The delay in project execution has resulted in increase in project cost due to increase in IDC and foreign exchange variation. The main reasons for the delay are:

- SDSTPS being the first project to implement Super Critical technology has to face all the difficulties in transferring the technologies from foreign manufacturers which resulted in delay in commissioning of the Project.
- Even though, all statutory clearances were obtained in time & all major contracts were finalized well in advance, certain delays occurred mainly in supply and commissioning of major equipment and finalising designs of Boiler and related equipment by BHEL i.e. delay in transfer of supercritical technology by SG contractor.
- Since all the agencies including APPDCL/APGENCO are new to the super critical technology which is implemented in SDSTPS for the first time in a public sector utility in India, number of engineering issues have cropped up during the execution of project and the same have been resolved effectively by involving engineers from Alstom/USA, Mitsubishi Heavy Industries /Japan, Mitsubishi Electric Company/Japan, Emerson/Singapore & USA, HTC/China, Clyde Union/UK etc. apart from Engineers of BHEL, L&T, TPL and Project Consultants M/s Desein.
- Poor soil conditions specific to the site, procedural delays in getting MoEF clearances for revised location of ash pond and delay in exchange of inputs among main contractors have contributed to the Delay.

- Apart from the above delays in project completion, declaration of COD has delayed due to State bifurcation issues, power evacuation issues and environmental issues. In spite of the above, APPDCL is able to complete the project first time with super critical technology in Public Sector.
- The capital cost is subject to approval of APERC. APPDCL will provide all the required information along with Tariff Application.

k. **Objection:** It is incorporated in the amended and restated PPA that any revenue earned by the generating company from sale of infirm power after accounting for the fuel expenses shall be applied for reduction in capital cost. How much revenue was earned by SDSTPS on sale of infirm power after accounting for the fuel expenses? Was it reduced from the projected capital cost of the project?

Reply of APPCC: As per the Clause in the amended PPA, Capital cost will be revised accordingly.

Reply of APPDCL: APPDCL has claimed only Fuel Cost during Infirm Power period.

l. **Objection:** When CoDs of the two units were already declared, for unit-1 on 5.2.2015 and for unit-2 on 24.8.2015, there does not seem to be any justification for not submitting PPA and seeking consent of appropriate Commission to the same in time, i.e. much before the scheduled CoD as agreed in the original PPA, and now in agreeing in the amended and restated PPA to the date of effectiveness of the agreement from the CoD of the first unit, i.e. 5.2.2015. What are the quantum of power generated and supplied by SDSTPS from the date of CoD of its first unit to the DISCOMS and the interim tariffs being paid for the same? Whether backing down of the units has taken place since then and, if so, whether fixed costs have been paid to SDSTPS for such backing down by the DISCOMS should be made public.

Reply of APPCC: APDISCOMS have paid only interim tariff Rs.3.63/kWh from the date of COD to till now. The details of Energy Generated and Bills paid to APPDCL are enclosed in the statement.

Reply of APPDCL: In view of bifurcation of the State, uncertainty prevailed with regard to sharing of power and jurisdiction of Regulatory Commission there was certain delay in finalisation of PPA and tariff filing. APPDCL will make tariff filing soon on receipt of consent from APERC for PPA.

APDISCOMS have paid only interim tariff from the date of COD till now. The details of Energy Generated and Bills paid are as per the statement enclosed.

- m. **Objection:** What is the source of allocation of coal to SDSTPS and for which period? The stipulations as at Annexure-III (adjustment of rate of energy charge (REC) on account of variation in price or heat value of fuels) are too arbitrary, one sided and detrimental to the interests of consumers of DISCOMs as they leave the option of fuels of different varieties, irrespective of their price, to be used for generation of power by SDSTPS. While the consumers of DISCOMs have to bear the entire burden. This provision should be deleted and primary fuel to be used for generation of power and its source of allocation, its price and specific mode of transportation (not any other means) also should be specifically incorporated in the PPA.

Reply of APPCC: As reported by APPDCL that the coal linkage for the project is from M/s MCL and the linkage quantity is 5 MT per annum. The project is envisaged with 70:30 of Domestic Coal & imported coal. The imported coal will be procured through ICB route on requirement basis. The Fixed charges will be paid as per prevailing regulations of APERC.

Reply of APPDCL: Same as above.

- n. **Objection:** In case the Discoms do not require power and SDSTPS is asked to back down, there should be no deemed generation and payment of fixed costs for such non-generation of power. APPDCL should be free to generate and supply power to any others in such an eventuality and fixed costs earned thereon shall be adjusted for depreciation charges and other applicable items as per applicable regulations. The PPA should be amended by incorporating appropriate provisions to this effect.

Reply of APPCC: The suggestion of the objector is well taken. This proposal will be discussed with APPDCL. Based on the discussions, this Clause will be modified accordingly.

Reply of APPDCL: The Power Purchase Agreement is a long term agreement and the regulations of APERC will be followed for the purpose of tariff.

- o. **Objection:** It is incorporated in the amended and restated PPA that “the generator is entitled to claim only fixed charges and cannot claim any consequent losses during Force Majeure.” When no party to the PPA is responsible for conditions of force majeure, there is no justification for claiming fixed charges by the generator from the Discoms during the period of force majeure. Therefore, the above stipulation to claim fixed charges during the period of force majeure should be deleted from the PPA.

Reply of APPCC: The suggestion will be examined.

Reply of APPDCL: The generator has to honour the commitments to lenders, employees' salaries in all circumstances. Hence, Generator is entitled for Fixed Cost. This is a standard clause in all Power Purchase Agreements.

- p. **Objection:** In the amended and restated PPA, depreciation is explained as “the sum of the amounts of depreciation on buildings, equipment and other capital facilities of the Project on the date hereof, and in respect of any asset, shall be allowed up to 90% of the approved Capital Cost and shall cease so soon as its net book value equals the residual value i.e. 10 per cent of its original cost as included in the Capital Cost.”..... Therefore, in all fairness, the Article should be amended appropriately by incorporating that after completion of the term of the PPA for 25 years, the project shall be handed over to the two AP Discoms by APPDCL without any liabilities and with all rights.

Reply of APPCC: After expiry of the Term of PPA, as per Article 7, both the Parties may decide to continue the further extension of Agreement with consent of APERC. Further, it is a fair practice to reduce the capital cost to the extent of 90% on approved Capital cost. Since, the installed Capacity of the DISCOM is the 90% of the Project capacity.

Reply of APPDCL: APPDCL will have 10% share in the project after expiry of the agreement and Power Purchase Agreement will be extended on mutual agreement basis after approval of APERC.

- q. **Objection:** Direct them to submit the following documents, among others, examine the same and make copies of the same available to us to study the same and make further detailed submissions: (a) Copy of original PPA dated 22.11.2010 signed between APPDCL and the four Discoms in the undivided AP, along with a copy of original application before the erstwhile APERC seeking its consent to the original PPA; (b) Copy of letter of APERC dated 23.8.2014 returning the original PPA for want of jurisdiction; (c) Copy of letter of CMD of TS Transco dated 18.4.2015 to ED of SRLDC; (d) Copy of letter dated 27.4.2015 of Power Systems Operation Corporation Limited to APSLDC; (e) Copy of minutes of the meeting of APPCC dated 22.6.2016 agreeing to proposals of APPDCL to sign amended and restated PPA with AP DISCOMS; (f) Details of concessions or any other benefits APPDCL got for SDSTPS under mega thermal project status granted by the Gol; (g) Copies of agreements APPDCL had with contractors selected for implementation

of SDSTPS and details of bidding process adopted for their selection and (h) Details of reasons for increase in capital cost periodically.

Reply of APPCC: Copies of a, b, c, d & e are enclosed.

Reply of APPDCL: APPDCL has no objection in providing the information sought by the objectors.

5. **Sri M. Thimma Reddy, Convenor, People's Monitoring Group on Electricity Regulation, Hyderabad:**

- a. **Objection:** At Rs. 7.89 Crore per MW capital cost it can be said that the SDSTPS is the costliest coal based thermal power in the country. It is important to closely scrutinize the capital cost of the plant claimed by the developers and accepted by the APDISCOMs.

Initially capital cost of the 2X800 MW thermal power plant was pegged at Rs. 8,432Crore. By the time of 2010 PPA, the capital cost climbed to Rs. 8,654.5 Crore. That is within no time capital cost increased by Rs.200Crore. By 24th August 2016, when the present PPA was submitted, the capital cost shot up to Rs. 12,630Crore. That is, the capital cost of the plant increased by whopping 50%. Such an increase in capital cost raises doubts.

Reply of APPCC: Now APERC conducting Public hearing for consent of PPA only not for Tariff petition. As such, the remarks of APDISCOMs are now confined to the PPA only.

However, APPDCL is yet to file Tariff application before APERC. Therefore APDISCOMs will submit the comprehensive remarks on the Capital Cost after filing the same by APPDCL.

Reply of APPDCL: The present petition is for the consent of Power Purchase Agreement by APERC. APPDCL will file a petition for tariff determination and provide the information related to the capital cost and other details. The capital cost is subject to review and approval by APERC. However, the information sought by the objector is provided.

The project cost is site specific and depends on the availability of resources like water, coal etc. SDSTPS Stage-I project is the first supercritical project in the public sector in India and had to face many hurdles related to transfer of supercritical technology, equipment etc., as the technology and equipment was new and latest. Hence, the project got delayed and there is increase in the project cost.

There are certain works which were not originally envisaged in the DPR and had to be taken up based on the site requirements. Further, the Seawater Intake and Outfall system, town ship, transmission lines etc. were included in the project as per requirement. The exchange rate variation, price variation also contributed to the increase in project cost.

As per DPR project cost envisaged as : Rs.8,432Cr.

The total Project completed cost is : Rs.12,630Cr.

Additional amount incurred is : Rs.4198Cr.

The details are as follows:

Sl. No.	Description	Amount in Rs. Cr.
1	Exchange rate variation in the EPC equipment	239
2	Ext. coal conveying system	111
3	Supervision	87
4	Land & Development charges	138
5	IDC & Finance Charges	1,914
6	Sea water system	308
7	Township	133
8	Price variation	338
9	Exchange rate variation in KFW loan	350
10	Fish barrier	45
11	Taxes & Duties	407
12	Misc.	128
	Total	4,198

- b. **Objection:** IDC and related charges have gone up to Rs.2,957Crore forming 23.41% of the total projected cost. This is a result of the delay in execution of the project which is an indication of inefficiency of the developers in executing the project in time. Electricity consumers in the State shall not be made to suffer due to inefficiency of the project developers.

The foundation stone for this power project was laid on July 17, 2008. Initially CoD of Unit-I was scheduled for May 2011 to January 2013.

According to report in The Hindu dated 10th February 2012, CoD of Unit-1 will be March 2013 and that of unit-2 will be September 2013. Total capital cost of the project was reported to be Rs.8,432Crore.

Tata Projects Ltd. was awarded BoP package for this project with 27-02-2009 as the zero date. All works related to the Unit-1 were scheduled to be completed in

36 months and Unit-2 in 39 months. According to this time line, plant should have been ready by the year 2012. But the commissioning of the plant was delayed by three years.

Turbine and generator works were awarded to L&T. L&T had achieved assembling and successful testing of 800 MW Turbine Generators for the 2X800 MW SDSTPS in June 2011. It was considered a record achievement in India. Despite such a record achievement the developers in agreement with the APDISCOMs declared CoD of the first unit on 5th February, 2015. CoD of the second unit declared on 24th August, 2015. The present PPA was filed one year after declaration of CoD of the second unit.

Unit-1 of SDSTPS was synchronized on 31st March, 2014. But the CoD of Unit-I was declared on 5th February, 2015. There is 10 months gap between synchronization of the plant and declaration of CoD which is unusual. The above sequence of events made us to demand that the delay in achieving CoD must be squarely be placed on the developers and higher IDC due to delay in launching the power generation shall not be shifted on to the consumers through power tariff.

Reply of APPCC: APDISCOMs will submit the remarks on claiming of IDC by APPDCL once the Tariff application is filed by them.

As per the Clause 1.50 of Amended and Restated PPA, the project completion schedule is as per the Regulations as applicable. As per the CERC norms dated 21.02.2014, the timelines for completion of Project is 58 months (52 Months i.e. 22.08.2012 + 6 Months for 2nd unit i.e. 22.02.2013). The COD for Unit-1 of SDSTPS has been declared from 00:00 Hrs of 05.02.2015 and COD of Unit-2 of SDSTPS has been declared from 00:00 Hrs of 24.08.2015.

This PPA was entered in November, 2010 in the combined State of Andhra Pradesh. The PPA was filed before APERC on 05.01.2011. The PPA was returned to APPCC as the Commission has no jurisdiction. After completion of the COD of the project, TSTRANSCO vide letter dated 18.04.2015 requested not to schedule power from SDSTPS to TS DISCOMs. Hence the Amended and Restated PPA has been realigned with only two APDISCOMs and signed the PPA on 24.08.2016 and the same was filed before APERC on 12.09.2016.

APPDCL has to submit the reasons for delay in declaration of CoD of Unit -1 from synchronization date. With regard to claiming of IDC, APDISCOMs will file appropriate comments after filing the Tariff petition by APPDCL.

Reply of APPDCL: Same as at Para 4 (j) supra.

- c. **Objection:** If the delay in achieving CoD of the Plants was because of contractors of BTG and BoP then liquidated damages have to be recovered from them as should have been provided in contracts with them. If the delay in execution of the project was due to the developer then the burden has to be borne by the developers and the same cannot be shifted on to the consumers.

Reply of APPCC: Since BTG and BoP contracts have entered by APPDCL with respective contractors, APPDCL has to submit appropriate reasons on the issue of levying liquidated damages.

Reply of APPDCL: The BTG and BOP contracts are under final stage of closure and APPDCL will act as per the provisions of the Contract. The Liquidated Damages deducted, if any, will be credited to the capital cost as being done in the projects of APGENCO.

- d. **Objection:** Interest during construction shall be calculated according to CoD as mentioned in 2010 PPA. As the project was executed under 2010 PPA, capital cost of the project has to be decided according to this PPA but not 2016 PPA which was filed before the Commission after CoD of the both the units was declared. Including only prudent costs demands disallowing IDC after CoD as mentioned in the 2010 PPA.

Reply of APPCC: APPDCL is still not filed Tariff application before APERC. Therefore, APDISCOMs will submit the comprehensive remarks on the Capital Cost & IDC after filing the same by APPDCL.

Reply of APPDCL: The revised capital cost is arrived as per the provisions of the PPA entered in 2010. The capital cost mentioned in 2010 PPA is only indicative cost and the same is subject to revision based on actuals. However, the capital cost is subject to approval of APERC and APPDCL is filing a separate petition for approval of capital cost and tariff determination on receipt of consent for PPA from APERC.

- e. **Objection:** In the present context it will not be out of place to compare SDSTPS with Thermal Power tech Corporation (TPCIL). The TPCIL plant is also located in the same geographical area, Krishnapatnam of Nellore District. The execution of TPCIL plant started quite some time after the work on SDSTPS started. TPCIL requested pre-ponement of scheduled delivery date from 1.4.2017 to 1.4.2015 due to early commissioning of units. While TPCIL advanced the CoD by two years SDSTPS delayed CoD by three years. For the year 2015-16 while unit cost of TPCIL was Rs.3.58 it was Rs.4.31 in the case of SDSTPS. Power procurement cost from

SDSTPS is higher by more than 20% compared to power procured from TPCIL. Financial burden due to delay in commissioning of the plant shall not be shifted on the consumers but it has to be borne by APPDCL, developer of this power plant, whose inefficiency in executing the project resulted in escalation of project cost.

Reply of APPCC: PPA was entered with M/s TPCIL on 01.04.2013 in united AP with Schedule date of delivery as four years from the signing of PPA i.e. 01.04.2017. Due to advanced progress of the project and as per the existing provisions of PPA Clauses 4.1.1 & 3.3 i.e. on mutual agreed terms both the parties have agreed for the revised Scheduled Delivery Date with a view to avail the cheaper power than costly power purchased under Short Term.

Reply of APPDCL: The cost of the project and the delays are site and project specific and cannot be compared. The reasons for delays are submitted in the above replies.

- f. **Objection:** Though the present PPA has no provision for liquidated damages for delay in declaring CoD, the Commission shall be within its powers to order inclusion of such a provision even in this late stage to protect consumer's interests.

Reply of APPCC: No Comments.

Reply of APPDCL: There is no provision for Liquidated Damages in the PPAs of central and State PSUs.

- g. **Objection:** According to clause 3.13 of the PPA, revenue from sale of infirm power after fuel expenses, shall be applied for reduction in capital cost. Following this revenue realized from sale of power between 31st March, 2014 and 5th February, 2015 shall be used to bring down capital cost of the power plant.

Reply of APPCC: As per the Clause in the amended PPA the Capital cost would get reduced proportionately to the extent of infirm power payments made to the APPDCL.

Reply of APPDCL: APPDCL has claimed only Fuel Cost during Infirm Power period.

- h. **Objection:** Compared to the 2010 PPA capital cost of the plant increased by Rs.3,976Crore. While IDC and related charges account for Rs.2,957Crore, the developers have to explain the reasons for additional cost of more than Rs.1,000Crore apart from IDC and related charges.

Reply of APPCC: The charges related to increased capital cost like IDC and related charges will be examined thoroughly and necessary remarks will be submitted after Tariff application filed by APPDCL.

Reply of APPDCL: The reasons for increase in the project cost are furnished in the above replies.

- i. **Objection:** In the project cost Rs.350Crore was allocated towards exchange rate variation for KFW loan. In the PPA there is no mention about risks related to foreign exchange rate variations. As such the same shall not be allowed under the project cost.

Reply of APPCC: As per 1 of 2008 Regulation of APERC under Clause 10.10 stipulates that foreign exchange variation risk shall not be allowed as a pass through.

Reply of APPDCL: The KFW loan is at a lower rate of interest and including foreign exchange variation, it is cheaper than the domestic loans.

- j. **Objection:** According to the present PPA, in the project cost, Rs.4Crore were allocated towards balance CSR (Corporate Social Responsibility) works. Works related to CSR are expected to be taken up with funds out of revenue generated by the entities and it cannot be made part of capital cost of the plant. As such the same shall not be allowed under the project cost. More over CSR expenditure over and above this Rs.4Crore shall also not be allowed as a part of capital expenditure.

Reply of APPCC: Comments regarding Tariff will be submitted by APDISCOMs after filing the Tariff application by APPDCL.

Reply of APODCL: As per the TOR issued by the MoEF & CC CSR works are to be carried out during Project Implementation stage itself to meet the Regulations. Hence, CSR is included in the project cost.

- k. **Objection:** The Petition filed by APDISCOMs for approval of this PPA mentioned that SDSTPS had got the Mega Power Status approved by Gol. As the SDSTPS comes under mega power policy, concessions availed under this facility shall be used to bring down total capital cost of the plant.

Reply of APPCC: The Capital Cost of the Project would get reduced to the extent of Mega Power Policy status. The exact details will be furnished after filing the Tariff application by APPDCL.

Reply of APPDCL: APPDCL has availed Customs Duty exemption for all the imported items and Excise Duty exemption for all the indigenous items except steel & cement, under Mega power policy of Govt. of India which is already reflected in the project cost. The capital cost is subject to approval of APERC. APPDCL will provide all the required information along with Tariff Application

- l. **Objection:** Clause 5.2 of the PPA provides both Letter of Credit (LC) in favour of APPDCL to cover one month receivables and Escrow account for one month receivables. As APDISCOMs have to bear the charges of maintaining these accounts the payment mechanism shall be limited to LC and provision related to escrow shall be removed.

Reply of APPCC: Though the provision was envisaged in the PPA, however APDISCOMs have not implemented this Clause for APGENCO Projects. After approval by Commission, APDISCOMs will take steps appropriately either for any or both.

Reply of APPDCL: The provisions are incorporated as per lender's requirement and no LC or escrow was opened for APPDCL. The provisions cannot be amended at this stage.

- m. **Objection:** According to clause 3.2.1 of the PPA, annual fixed charges include income tax. According to clause 3.14 of the PPA billing and recovery of income tax shall be as per regulations of APERC. According to section 9.1 (i) of Regulation 1 of 2008 of APERC, income tax is part of the fixed charges to be claimed by generator. Here it is to be stated that income tax need to be paid by the entities which earn income. Income tax has to be paid out of the income earned. If this tax is paid by someone else other than the person who earned income it defeats the very purpose of levying the tax and it is regressive. It is to request the Commission to revise the Regulation.

Reply of APPCC: No comments. APDISCOMs would act upon as may be approved by Commission.

Reply of APPDCL: The income-tax claim is as per APERC regulations and it is uniform for all the generators under cost plus mechanism PPAs.

- n. **Objection:** According to clause 3.16 of the PPA, target PLF for incentive shall be 80%. This is based on clause 15 of APERC Regulation 1 of 2008. In the meantime CERC revised target PLF of incentive to 85%. During this period technological changes enabled higher efficiency of power plants. Sub-critical power plant

technology is being replaced by super critical technology. SDSTPS is based on super critical technology. As PPA is going to be in vogue for the next 25 years it is to be seen that consumers in the State also benefit from the new technology. While requesting the Commission to revise the Regulation in question we request the Commission also to include target PLF of 85 % in the present PPA itself. We are of the opinion that the Commission is within its powers to include such a provision of PPA. According to clause 20 of Regulations 1 of 2008 “The Commission may, at any time add, vary, alter, modify or amend any provision of this Regulation.” According to clause 21 of this Regulation “Nothing in this Regulation shall be deemed to limit or otherwise affect the powers of the Commission to make such orders as may be necessary to meet the ends of justice as to prevent abuse of the process of the Commission.” Allowing the present target PLF (80%) will be doing grave injustice to electricity consumers in the State.

Reply of APPCC: No comments. APDISCOMs would act upon as may be approved by Commission.

Reply of APPDCL: The provisions are as per APERC Regulations.

6. **Sri. M. Venugopala Rao, Senior Journalist and Convenor, Centre for Power Studies:**

- a. **Objection:** Even now, as admitted by the DISCOMS and APPDCL, the issue of sharing power from SDSTPS between the DISCOMS of AP and Telangana State is to be settled as per the decision to be taken by the Government of India, as the issue on continuation of power purchase agreements even after bifurcation of the State is pending with the Gol. Till the issue is settled, the power from the projects completed subsequent to bifurcation of the State for the PPAs of which no consent was given by APERC is being and will be utilised by both the States on the basis of the locations of the projects concerned, as per the replies given. In other words, the issue of sharing of power from SDSTPS between the Discoms of AP and TS continues to be pending, as long as the Gol continues to fail to resolve the issue, as a part and parcel of issues and disputes that have arisen between the two States after bifurcation, and needs to be settled. Whatever be the decision the Commission takes on the subject issue, it may not attain finality in view of the issue still continuing to be unresolved and as APPDCL has admitted that it “will follow the decision of Government of India,” obviously, as and when it is taken.

Reply of APPCC: Though the decision of Gol is final with regard to allocation of power between Andhra Pradesh & Telangana States, as per the stand of GoAP, all unapproved PPAs by APERC allotted to concerned State DISCOMs. That apart, during the course of time Telangana State has retained entire power of 1200 MW of Singareni Project & 600 MW of Kakatiya Project Stage -II to them. As such, it is justified to retain entire power of SDSTPS Project to AP State DISCOMs.

Reply of APPDCL: Though the decision of Gol is final with regard to allocation of power between Andhra Pradesh & Telangana States, SDSTPS plant is geographically located in the State of Andhra Pradesh and the jurisdiction of the project is with APERC.

- b. **Objection:** In both the original PPAs signed between the four (4) Discoms of erstwhile AP and APPDCL and the amended and restated PPA signed between the two AP Discoms and APPDCL, contrary to applicable regulations and standard practice, COD of the units of the subject project to be achieved from the date of investment approval/financial closure are not specifically stated, obviously, with a view to absolving APPDCL of its responsibility to commit and declare COD of the units of the subject project within stipulated periods as per applicable regulations. Though the Discoms have replied that “the terms & conditions for declaring CoD is as per regulations and the capital cost is subject to approval of Regulatory Commission,” they have failed to get the dates of CoD of the units incorporated in the PPA, both the original and amended and restated, as per applicable regulations, and also the terms and conditions for imposition of penalty or liquidated damages on APPDCL for delay in declaring CoD in time. It is explained in the PPA that CoD of the project means the Commercial Operation Date of last Unit of the project. On the contrary, the Discoms have signed the amended and restated PPA incorporating the capital cost of the project as revised from the originally estimated Rs.8,654.15Crore to Rs.12,630Crore, and stating that the revised capital cost will be filed by APPDCL before APERC as part of determination of tariff and that after fixation of the tariff by APERC, the same shall be implemented. In other words, the Discoms are forced to sign the PPA leaving a lot of ambiguity and scope for divergent interpretations on CoD and capital cost of the project. In their replies, the Discoms have further maintained that “APPDCL is yet to file tariff application before APERC. However, the capital cost of the project will be examined by APDISCOMs after filing the required application for determining tariff of the project before APERC by APPDCL.” Even without getting approval of the Commission on determination of the capital cost,

the revised capital cost of the project is incorporated in the PPA. Unless the Commission determines capital cost of the project, it is not desirable to give its consent to the PPA for the reasons stated in the subsequent paras:

- c. **Objection:** CoDs of the two units of the subject project need to be incorporated in the PPA as per applicable regulations.

Reply of APPCC: As per the APPDCL information the contract agreement the CoD of Unit-1 is on 22-08-2012 and COD of Unit-2 is on 22-02-2013.

Reply of APPDCL: As per the contract agreement the CoD of Unit-1 is on 22-08-2012 and CoD of Unit-2 is on 22-02-2013.

- d. **Objection:** Terms and conditions for payment of penalty or liquidated damages by APPDCL to AP Discoms for delay in declaring CoD in time, need to be incorporated in the PPA.

Reply of APPCC: There is no provision for Liquidated Damages in any of the PPAs of central and State PSUs. However, APDISCOMs would follow the direction if any issued by APERC in this regard.

Reply of APPDCL: There is no provision for Liquidated Damages in any of the PPAs of central and State PSUs.

- e. **Objection:** For determination of permissible capital cost of the project and tariff, these conditions are inevitable.

There are several other issues that need to be examined for determination of permissible capital cost of the project and necessary amendments need to be incorporated in the PPA based on such examination and determination.

In their replies, APPDCL has informed that it has availed customs duty exemption for all the imported items and excise duty exemption for all the indigenous items, except steel and cement, under Mega Power policy of the Gol.

For purchase of equipment and execution of the subject project, orders were given to several companies and services of several companies were engaged for resolving various problems that had cropped up during execution of the project, as explained by APPDCL in its replies and documents provided to us. The reasons for delays, who is responsible for such delays, provisions for making insurance claims and seeking liquidated damages or penalties from the companies or contractors concerned who were responsible for such delays as per terms and conditions of contracts concerned need to be examined and determined.

Permissible IDC and other costs borne for execution of the project also need to be examined and determined.

For delays in execution of the project and declaring CoD and the consequent cost escalation, including IDC, consumers should not be penalised.

Since interim tariff is being paid by the Discoms for the power being supplied to them from SDSTPS, pending consent to the PPA till permissible capital cost and tariff are determined by the Commission would not make any difference.

Since the Discoms have maintained in their replies that the capital cost of the project will be examined by them after APPDCL files the required application for determination of tariff before the Commission, the Commission is requested to permit to file detailed submissions on the capital cost and tariff of the subject project after required application is filed by APPDCL.

Need for entering into long-term PPA with APPDCL for purchasing power from SDSTPS also should be examined in the light of projected requirement of power in A.P. based on a realistic long-term load forecast, resources plan and procurement plan.

The Commission is requested to consider issuing its orders on PPA, capital cost and tariff of the subject project simultaneously.

- f. **Reply of APPCC:** Now APERC conducting Public hearing for consent of PPA only, not for Tariff petition. As such, the remarks of APDISCOMs now confined to the PPA only.

However, APPDCL is yet to file its Tariff application before APERC. Therefore APDISCOMs will submit the comprehensive remarks on the Capital Cost after filing the same by APPDCL (*Tariff Application has since been filed by APPDCL*).

Requirement of Power from SDSTPS was considered based on the long term studies.

No Comments.

Reply of APPDCL: The capital cost is subject to approval of APERC. The APERC will approve the capital cost duly examining the issues referred after prudent check.

The present petition is for the consent of Power Purchase Agreement by APERC. APPDCL will file a petition for tariff determination and provide the information related to the capital cost and other details.

g. **Objection:** On the suggestions on non-payment of fixed charges for backing down and on third party sales by APPDCL in such an eventuality, the Discoms have replied that the same will be examined and based on discussions with APPDCL relevant clauses in the PPA will be modified. It is requested to direct the Discoms to file such modifications after holding discussions with APPDCL.

Reply of APPCC: APPDCL stated that the proposal is not as per the regulation.

Reply of APPDCL: The proposal is not as per the regulation.

h. **Objection:** It is to request the Commission to examine the suggestions on the terms and conditions of buy-out and give necessary directions to the Discoms and APPDCL to amend the same, as both the parties have not responded to suggestions positively in their replies.

Reply of APPCC: There is no such provision in regulation in Central / State PSU.

Reply of APPDCL: There is no such provision in regulation in Central / State PSU.

i. **Objection:** As the Hon'ble Commission is aware, AP Genco has stopped supply of power to the TS Discoms to the tune of their share of 53.89% from its thermal projects and inter-State Hydel Power projects, i.e., 1577MW on the ground that the TS Discoms have not been clearing dues to the tune of Rs.3803 crore for the last three years after bifurcation of the State of AP for the power supplied by it to them. In turn, TS Genco has stopped supply of power to AP Discoms to the tune of their share of 46.11% from its thermal projects i.e., 1043 MW, on grounds unrelated to terms and conditions in the PPAs. As a result, an additional surplus capacity of 534 MW (1577-1043) is available with APGenco.

Reply of APPCC & APPDCL : No reply was filed.

7. Based on the objections/suggestions of various parties mentioned supra and with due regard to the replies of APPCC & APPDCL, the important issues that have been raised relate to a) Jurisdiction of the Commission in dealing with this PPA in as much as the project is a Mega Power Project supplying power to more than one State; b) The issue on continuation of Power Purchase Agreements even after bifurcation of the State being pending with Gol and its impact if the present PPA is consented; c) Whether there is any requirement of power, to AP DISCOMs from this project; d) The exorbitant increase of capital cost from Rs.8,654.15 Cr. to Rs.12,630 Cr. due to increase in IDC, foreign exchange variation etc.; e) Accepting certain parameters such as target PLF, adjustment of rate of energy charge (REC) on account of variation in price or heat value of fuels etc., transcending Regulation 1 of 2008; f)

Whether tariff is to be fixed either ahead of granting consent to PPA or simultaneous with the same and g) Need for changing certain provisions of the PPA in relation to introducing liquidated damages for delay in declaring CoD, paying mechanism being limited to LC and provision related to escrow account being removed, non-payment of fixed charges for backing down and on third party sales by APPDCL in such an eventuality, buyout provisions etc.

8. Having identified the important issues that have been raised by various parties, it is apt at this stage to make it clear that the issues relating to Capital cost and the consequent tariff on which several objections have been brought before us, as extracted supra, will not be dealt with in this order for the reason that APPDCL, as part of their replies, stated that the complete information relating to capital cost, IDC, delay in execution of the project etc. will be submitted as part of their tariff application and further even APPCC informed in their replies that they will make their detailed submissions upon filing of the tariff application by APPDCL. However, this order is subject to the outcome of the orders to be passed by the Commission in the tariff petition since filed by APPDCL, following due process.
9. Coming to the issue of suggestions on accepting certain parameters such as adjustment of rate of energy charge (REC) on account of variation in price or heat value of fuels etc., transcending Regulation 1 of 2008, it has to be made clear that as long as Regulation 1 of 2008 remains unaltered, the same has to be followed and any suggestion which transcends Regulation 1 of 2008 cannot be cognized except for valid reasons to achieve the objective and purpose of the Electricity Act as envisaged in Clause 21 of Regulation 1 of 2008. Hence such issues are not addressed in this order in detail.
10. All the other relevant issues are examined here under:

a. Jurisdiction of the Commission in dealing with this PPA in as much as the project is a Mega Power Project supplying power to more than one State.

The objector(s) stated that if the reason for returning the original PPA by the then APERC was that the project is a Mega Power Project with obligation to supply power to more than one State, how does that position change now with regard to whose jurisdiction the PPA falls under?

In response to the above, APPCC has stated that in the amended PPA the procurers are only APDICOMS and there are no multiple procurers. As such in the amended PPA, the tariff determining authority was amended to APERC from CERC.

Whereas APPDCL stated that it is having a PPA with PTC for sale of 10% power generated from SDSTPS and APPDCL is entitled to sell 90% of the power to AP DISCOMs which are under the purview of APERC. Hence in the amended PPA the tariff determining authority was amended to APERC from CERC.

Since the present PPA is with AP DISCOMs only which are being regulated by this Commission, this Commission alone has the jurisdiction in either granting or denying the consent. The issue is addressed accordingly.

b. The issue on continuation of Power Purchase Agreements even after bifurcation of the State being pending with Gol and its impact if the present PPA is consented to :

The objector(s) stated that, having signed a PPA with a developer of a power project and when implementation of the project was progressing or even completed, are the Telangana DISCOMs entitled to withdraw from the agreement unilaterally, because consent of the appropriate Commission to the PPA was not sought or given till then?

Both APPCC and APPDCL have stated to the effect that the issue of continuation of Power Purchase Agreements even after bifurcation of State is pending with Government of India. Pending its decision, Power Purchase Agreement for existing projects for which the erstwhile APERC has given its consent vide its order dt.11.08.2014, Power is being shared between AP and TS. For the projects completed subsequent to bifurcation of the State for which no consent of APERC is available, both the States are utilizing power on geographical location basis and there is no sharing between AP and TS. However, APPDCL will follow the decision of Government of India in this matter. Till that time, the power will be availed on geographical location basis. Additionally, APPDCL also stated that as per AP Reorganisation Act, 2014, the existing PPAs will continue even after bifurcation.

Commission notes that the Govt. of India is seized of the matter and as such, till a decision is taken on the matter, Commission cannot interfere with the same except for subjecting the issue of granting either consent or otherwise to the outcome of decision of Govt. of India.

c. Whether there is requirement of power by AP DISCOMs from this project.

The objector(s) stated that, if the TS DISCOMs refused to take their share of power from SDSTPS as per original PPA, then is it binding on AP DISCOMs to take their share of power also? Simply because TS DISCOMs refuse to take power from

SDSTPS, does it automatically increase the demand of AP DISCOMS to take the share of power of TS DISCOMS also from SDSTPS and justify such a decision? Did APPCC examine all relevant factors, especially requirement of power by AP DISCOMS?

Both APPCC and APPDCL have stated to the effect that there is no much variation in capacity either on geographical basis or on sharing basis for the projects completed subsequent to bifurcation. APPCC in unequivocal terms stated that there is no burden on DISCOMs by availing of power from SDSTPS (1440 MW) and further stated that this PPA capacity has been considered in AP TRANSCO supply, demand, load forecast studies. Additionally and most importantly it is brought to our notice as part of the responses to the objections extracted supra that the Government of Andhra Pradesh and the four (4) Distribution Companies are having 49% share in this project, which is substantial. Further, even Electricity Act, 2003 provides that the Distribution Licensee would be free to undertake generation. That being the case, the power from this project should be given pre-eminence over others in terms of its off-take since the project, inter-alia, is established by DISCOMs which are conferred with the universal service obligation. In passing it is also to be noted that power is being received by AP Discoms, since May, 2015.

In view of the above and for all the reasons given by the parties to the agreement extracted supra, the issue of requirement of power by APDISCOMs from this project is not a matter of concern and answered accordingly.

d. The exorbitant increase of capital cost from Rs. 8,654.15 Cr. to Rs. 12,630 Cr. due to increase in IDC, foreign exchange variation etc.

These form part of capital cost for determination of tariff and will be considered while determining the same on the application filed by the generator u/s 62 (1) of the Electricity Act, 2003.

Accepting certain parameters such as target PLF transcending Regulation 1 of 2008 is also an issue to be addressed.

The objectors suggested that target PLF of 80% for incentive mentioned in clause 3.16 be amended to 85% as the PPA is for a long period of 25 years. It is also suggested to provide for payment of fixed charges on the normative availability of power at 85% of the capacity instead of 80% mentioned in the APERC Regulation No.1 of 2008. It is suggested to invoke clause 21 of the APERC Regulation 1 of 2008 to increase the target PLF to 85% while approving the

present PPA as allowing the present target PLF of 80% will be doing grave injustice to electricity consumers in the State.

This suggestion is based on CERC's Regulation No. L-1/144/2013/CERC Dated 21-02-2014 (Terms & Conditions of Tariff Regulation 2014). Considering the technological changes which have taken place since 2008 when the APERC Regulation was issued, and the higher efficiency of the latest power plants, involving super-critical technology, replacing the sub-critical power plant technology it was suggested to revise the target PLF for payment of fixed charges and the incentive to 85%.

The above suggestion appears to be generally in line with the advances in the technology of Thermal Power Plants and CERC's Regulation and in the interest of the DISCOMs and consumers in the State of Andhra Pradesh. Regulation 1 of 2008 clearly has not captured the super-critical technology. Hence, there is force in the suggestion that the payment of fixed charges being on the normative availability of 85% of the capacity instead of 80% and the incentive shall be for above 85%.

Further, the Commission's (CERC) View in the Statement of Reasons on the Regulation on Terms and Conditions of Tariff is extracted below:

“37.13 Most of the generators have suggested to reduce Normative Annual Plant Availability Factor (NAPAF) norms for thermal generating stations citing fuel availability issues. Further, some of the stakeholders suggested that the NAPAF should be increased to 90% from the proposed norm of 85%. The Commission, in the Explanatory Memorandum has stated based on actual data, that almost all generating stations have achieved the NAPAF norms of 85% during FY2008-09 to FY2012-13 with most of the stations even achieving 90% during the said period. The Commission, in view of the actual performance of these plants proposed to approve the NAPAF norms of 85% in the draft Regulations. The Commission, in the Explanatory Memorandum also stated that the arrangement of fuel is the generator's responsibility and it can declare its capacity on the basis of fuel other than the linked / domestic fuel sources. CEA, in its recommendations, has also suggested NAPAF of 85% for generating stations. The Commission accordingly specifies NAPAF of 85% however, with an intent to mitigate the risk of recovery of fixed charges by the generators, the Commission has decided that in case there is shortage of coal and uncertainty of assured coal supply on sustained basis, the fixed charges will be recovered at availability of 83% till the

time the same is reviewed by the Commission. To this extent, the norm proposed in the draft Regulations has been modified.”

Invoking the powers of the Commission vested with it under clause 21 of APERC Regulation 1 of 2008 read with CERC Regulation (terms and conditions of tariff) dated 21-02-2014 and the statement of reasons referred above, the Commission directs the parties to this PPA to make suitable modifications to the PPA within 60 days from the date of this order providing for payment of fixed charges, only if the normative availability is 85% corresponding to that of the capacity of the plant and the incentive to commence from above 85% actual PLF.

e. Whether tariff is to be fixed either ahead of granting consent to PPA or simultaneous with the same:

The objector(s) stated that unless the Commission determines capital cost of the project, it is not desirable to give its consent to the PPA cited various reasons as already extracted supra

In response to the above, APPCC has stated that now APERC is conducting public hearing for consent of PPA only, not for Tariff petition. As such, the remarks of APDISCOMs now confined to the PPA only.

APPDCL has recently filed the Tariff application before APERC. Therefore APDISCOMs will submit the comprehensive remarks on the Capital Cost, during the course of public hearing on the application filed by Generator.

Whereas APPDCL stated that the capital cost is subject to approval of APERC, the Commission will approve the capital cost duly examining the issues referred after prudent check. The present petition is for the consent of Power Purchase Agreement by APERC. APPDCL has filed a petition for tariff determination including the capital cost and the same is under examination and consideration by the Commission as per law.

In view of the above position explained by parties to the petition, the Commission is of the view that in as much as it is only the amended PPA that stands submitted before the Commission seeking consent; the present intervention can be limited to only that issue matter. However, after duly noting that the final determination of capital cost and other ancillary and incidental issues have a bearing on the PPA, it is decided to subject this order to the outcome of final orders to be issued by this Commission on the tariff application filed by APPDCL. This addresses the concerns of the objector(s).

- f. **Need for changing certain provisions of the PPA in relation to i) introducing liquidated damages for delay in declaring CoD; ii) paying mechanism being limited to LC and provision related to escrow account being removed; iii) non-payment of fixed charges for backing down and on third party sales by APPDCL in such an eventuality; iv) buyout provisions and v) deletion of stipulation to claim fixed charges during force majeure etc.**

i) Introducing liquidated damages for delay in declaring CoD:

The objector(s) stated that, though the present PPA has no provision for liquidated damages for delay in declaring CoD, the Commission shall be within its powers to order inclusion of such a provision even in this late stage to protect consumer interest.

In response APPCC stated that they have no comments to offer, whereas APPDCL stated that there is no provision for Liquidated Damages in the PPAs of central and State PSUs.

It is to be noted that the present petition before the Commission is for conveying consent to the amended and restated Power Purchase Agreement to the original PPA dated 22.11.2010. It is a matter of fact that neither in the original PPA dated 22.11.2010 nor in the present amendment dated 24.08.2016, there is any provision on liquidated damages. Moreover it is further to be noted that the actual CODs of the first unit which is 05.02.2015 and COD of unit-II which is 24.08.2015, are mentioned in the amendment dated 24.08.2016 under the COD of the project. That being the case, the suggestion for inclusion of a provision on liquidated damages now on the ground that the present PPA has no provision for liquidated damages for delay in declaring COD cannot be accepted at this stage as the same is not fair and proper.

ii) Paying mechanism being limited to LC and provision related to escrow account being removed:

The objector(s) stated that, Clause 5.2 of the PPA provides both Letter of Credit (LC) in favour of APPDCL to cover one month receivables and Escrow account for one month receivables. As AP DISCOMs have to bear the charges of maintaining these accounts, the payment mechanism shall be limited to LC and provision related to escrow shall be removed.

In response APPCC stated that though the provision was envisaged in the PPA, APDISCOMs have not implemented this Clause for APGENCO Projects. After approval by Commission, AP DISCOMs will take steps appropriately.

Though APPDCL stated that the provisions are incorporated as per lender's requirement and no LC or escrow was opened for APPDCL, the provisions cannot be amended at this stage.

The payment security mechanism as incorporated in the present PPA, inter-alia, is towards instilling confidence in the minds of the lenders prior to financial closure. That being the case, the said provisions cannot be altered now as also pointed out by APPDCL.

iii) Non-payment of fixed charges for backing down and third party sales by APPDCL in such an eventuality:

The objector(s) stated that in case the DISCOMS do not require power and SDSTPS is asked to back down, there should be no deemed generation and payment of fixed costs for such non-generation of power. APPDCL should be free to generate and supply power to any others in such an eventuality and fixed costs earned thereon shall be adjusted for depreciation charges and other applicable items as per applicable regulations. The PPA should be amended by incorporating appropriate provisions to this effect.

In response APPCC stated that suggestion of the objector is well taken. This proposal will be discussed with APPDCL. Based on the discussions, this Clause will be modified accordingly.

Whereas APPDCL stated that the Power Purchase Agreement is a long term agreement and the regulations of APERC will be followed for the purpose of tariff, on this issue APPCC has stated that they will discuss with APPDCL and the clause will be modified accordingly. On the contrary, APPDCL stated that the regulation of APERC will be followed. However, it is to be noted here that this particular issue is beyond the Regulation 1 of 2008 and as such the parties are directed to discuss with each other and arrive at a proper mechanism to incorporate the above suggestion within 60 days from the date of issue of this order.

iv) Buyout provisions:

The objector(s) stated that in the amended and restated PPA, depreciation is explained as "the sum of the amounts of depreciation on buildings,

equipment and other capital facilities of the project on the date hereof, and in respect of any asset shall be allowed up to 90% of the approved Capital Cost and shall cease as soon as its net book value equals the residual value i.e. 10% of its original cost as included in the Capital Cost.”.....Therefore, in all fairness, the Article should be amended appropriately by incorporating that after completion of the term of the PPA for 25 years, the project shall be handed over to the two AP DISCOMS by APPDCL, without any liabilities and with all rights.

In response APPCC stated that after expiry of the Term of PPA, as per Article 7, both the parties may decide to continue further extension of Agreement with consent of APERC. Further, it is a fair practice to reduce the capital cost to the extent of 90% on approved Capital cost, since the installed Capacity of the DISCOM is 90% of the Project capacity.

Whereas APPDCL stated that they will have 10% share in the project after expiry of the agreement and Power Purchase Agreement will be extended on mutual agreement basis with the approval of APERC. As on date both the AP DISCOMs and APPDCL are companies owned by GoAP and as such the issue under consideration is not significant and accordingly can be left unaddressed and the PPA remain unaltered on this issue. The issue of Buyout of the plant after completion of 25 years can be left to be decided by mutual negotiation and agreement on commercial principles between APDISCOMs and APPDCL, as both are government owned companies.

v) Deletion of stipulation to claim fixed charges during force majeure:

The objector(s) stated that it is incorporated in the amended and restated PPA that “the generator is entitled to claim only fixed charges and cannot claim any consequent losses during Force Majeure.” When no party to the PPA is responsible for conditions of force majeure, there is no justification for claiming fixed charges by the generator from the DISCOMS during the period of force majeure. Therefore, the stipulation to claim fixed charges during the period of force majeure should be deleted from the PPA.

In response thereto, APPCC stated that this suggestion will be examined, whereas APPDCL stated that the generator has to honour the commitments to lenders, employees’ salaries in all circumstances. Hence, Generator is entitled for Fixed Cost. This is a standard clause in all Power Purchase Agreements.

Accordingly, the parties are directed to discuss the matter and come up with an equitable proposal in respect of fixed charge payment during force majeure, within 60 days from the date of issue of this order.

11. To sum up, the Commission hereby grants in principle approval to the amended and restated Power Purchase Agreement dated 24.08.2016 between Andhra Pradesh Power Development Company Limited, and Southern Power Distribution Company of Andhra Pradesh Limited & Eastern Power Distribution Company of Andhra Pradesh Limited in respect of 2 X 800 MW Sri Damodaram Sanjeevaiah Thermal Power Station, subject to the following (conditions/directions):
 - (i) The decision of Government of India on the issue of continuation of PPAs after bifurcation of the State as dealt under para 10 (b) supra;
 - (ii) The Capital cost and all other ancillary & incidental issues including but not limited to the consequential tariff etc., to be determined by this Commission pursuant to the application filed by APPDCL upon following due process;
12. The decision of the Commission on the following issues needs to be given effect to by way of discussion by the parties and submitting suitable amendments duly executed to the amended PPA and submitted in the Commission for consent within 60 days from the date of this order:
 - a. At paras 10 (d) relating to payment of fixed charges on normative availability of power of 85% of the capacity and the incentive also to commence from above 85%.
 - b. At paras 10 (f) (iii) relating to non-payment of fixed charges for backing down & third party sales by APPDCL in such an eventuality and
 - c. At paras 10 (f) (v) relating to deletion of stipulation to claim fixed charges during force majeure.
13. With the above directions the petition is disposed of. No Costs.

This order is corrected and signed on this 13th day of July 2018.

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member