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TARIFF AUTHORITY FOR MAJOR PORTS

G No.50

New Delhi

16 February, 2010

NOTIFICATION

In exercise of the powers conferred under Sections 48 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of Jawaharlal Nehru Port Trust (JNPT) for revision of rates for operations at its Container Freight Station and Buffer Yards as in the Order appended hereto.

(**Rani Jadhav**)
Chairperson

Tariff Authority for Major Ports

Case No. TAMP/35/2009-SML(JNPT)

The Jawaharlal Nehru Port Trust

- - - Applicant

ORDER

(Passed on this 30th day of December 2009)

This case relates to the proposal received from Jawaharlal Nehru Port Trust (JNPT) for revision of rates for operations at its Container Freight Station (CFS) and Buffer Yards (BY).

2.1. With effect from 1 January 2006 JNPT awarded a license to Speedy Multimodes Limited (SML) for management, maintenance and operation of its CFS and BY for a period of 20 years. As per the Contract, SML is to levy charges as per the rates approved by TAMP vide notification No.TAMP/1/97-JNPT dated 28 June 1999 and TAMP/2/98-JNPT dated 28 May 1999 till the new rates are approved by TAMP. On 6 November 2006 SML submitted a proposal to this Authority with a request to increase in the tariff fixed in the year 1999 in the range of 88% to 151%. After adhering to the consultative procedure prescribed and carrying out the cost analysis this Authority decided vide its Order dated 28 June 2007 in Case No. TAMP/27/2006-JNPT an across the board reduction of 15% in the existing tariff to maintain the cost plus position as per the revised tariff guidelines notified by the Central Government. This Order was notified in the gazette on 23 July 2007. After expiry of 30 days, it was to come into operation from 22 August 2007. SML, however, filed a Writ Petition in the High Court of Bombay challenging the Order.

2.2. On 22 August 2007 the Writ Petition was heard and the Hon'ble High Court issued interim order to the effect that SML can continue to collect the tariff as per the old rate and the differential between the old rate and the new rate be deposited in a separate account which shall be subject to further orders in the petition. On 11 August 2008, the Petition was heard by a Division Bench which ordered as under.

“In our view, it will be appropriate on the part of the Petitioners to approach Respondent No. 1 which is a Statutory Authority in the matter for fixing the tariff in accordance with rules (BY JNPT).

Therefore, we direct the Petitioners to move the Respondents in the matter and on such application being made, the Respondent would take into consideration the material placed on record by the Petitioners and if required allow them to tender documentary evidence in support of their contention and review tariff rates fixed by them in accordance with rules.

The Petitioners state that they would apply to the Respondent No. 1 within a period of two weeks. On such application being made, the concerned authority will dispose off the same within a period of eight weeks.

In the meantime, the interim order passed by the Court on 22nd August, 2007 by the learned single Judge of this Court shall continue for a period of four weeks after the Respondent No. 1 takes a decision in the matter and the same is communicated to the Petitioners.

Needless to say that as this Court has directed the Petitioners to approach Respondent No. 1 in the matter, all issues and contentions raised in this Petition are kept open, as this Court has not adjudicated the matter on merits.

The Petition stands disposed off accordingly.”

2.3 By their letter dated 20 October 2008 SML requested this Authority to consider the following:-

- (a) SML does not render any services that fall under Section 42 of the MPT Act, 1963.
- (b) TAMP should Fix tariff as provided in Chapter 7.2 of the guidelines dated 31 March 2005.

SML also submitted a legal opinion tendered by Justice B. N. Srikrishna (Retd), which challenges the authority of TAMP to fix the rate u/s. 48 of the Major Port Trusts Act, 1963. SML was addressed vide letter dated 11 November 2000 to submit an application for review of the Authority's Order dated 28 June, 2007 pointing out the errors, if any, apparent on the face of records considered in the relevant proceedings and also to furnish all relevant and supporting documents and an income – cost statement in the prescribed formats to enable the Authority to reconsider afresh its decision dated 28 June 2007 in compliance with the Order dated 11 August 2008 of the Bombay High Court. SML in its request dated 1 December 2008 reiterated its stand that based on the legal advice of Justice Shri. B. N. Srikrishna (Retd.), the Authority should fix SML's tariff in terms of clause 7.2. of the revised tariff guidelines.

2.4 JNPT was informed under letter dated 1 December 2008 about the Writ Petition filed by SML. The Port was provided with copies of the two Court Orders, legal opinion and other relevant documents furnished by SML with a request to furnish its views on the legal opinion tendered by Justice Shri Krishna and the nature of license granted by JNPT to SML. The port by letter dated 17 February 2009 (received on 18 February 2009 when a joint hearing was held) confirmed that the license does not fall under BOT or BOOT. It also informed it has no comments to offer on the legal opinion furnished by SML.

2.5. The petition of SML alongwith the legal opinion furnished by it was referred to Shri. Gopal Subramanian, the (then) Additional Solicitor General for views. In his detailed opinion, the then Additional Solicitor General inter alia opined that the tariff guidelines dated 31st March 2005 apply to SML and this Authority can import the cost plus basis as a valid principle to fix the tariffs while exercising its powers under the statute.

3.1. A joint hearing was held on 18 February 2009, where the SML, JNPT and the users were present. The JNPT thereat clarified that the nature of license granted to SML is neither BOT nor BOOT. That being so, it was decided that tariff in this case has to be fixed based on a proposal from JNPT as provided in clause 7.2. of the revised tariff guidelines. At the hearing SML, supported by JNPT stated about the practice of paying a premium to the shipping lines by the CFS operators for getting the containers nominated to their container freight stations. It was explained that the Authority can recognize such expenditure, only if SML can prove the legitimate trade practice and produce accounts in this regard. The decisions taken at the joint hearing held on 18 February 2009 were communicated both to JNPT and SML under letter dated 27 February 2009. Both of them were also advised to adhere to the time limit set for submission of the proposals since the case has to be disposed of in a time bound manner as per the directives of the Hon'ble Bombay High Court.

3.2. SML in its letter dated 16 March 2009 informed that the proposal to fix tariff for the CFS operations should be taken up by JNPT. In the said letter, SML stated that by making application to TAMP, it has not expressed its opinion on whether it falls under the statutory jurisdiction of TAMP. It also stated that its application before TAMP should not be construed as its

confirmation to the understanding that TAMP derives its Authority to fix SML's tariff from the MPT Act.

3.3. As the contract has been awarded to SML by JNPT with the prior approval of the Central Government under Section 42 (3) of the MPT Act, the Government was apprised under our letter dated 11 November 2008 about the Writ Petition filed by SML challenging the Order passed by this Authority and a copy of the legal opinion tendered by Justice Shri B. N. Srikrishna was forwarded to the Ministry with a request to offer its views thereon. The Ministry did not furnish its views on the matter. However, by letter dated 26 October 2009 confirmed that it had accorded sanction u/s. 42 (3) of the MPT Act, 1963 to the proposal of JNPT for award of the license to SML.

3.4. The JNPT was requested to submit the requisite proposal under this office letter dated 3 April 2009, which was followed by four reminders. On this background on 14 September 2009, JNPT has submitted a proposal for tariff revision of the CFS and Buffer Yard operated by SML. The salient features of the proposal are as under:-

- (i) JNPT has stated that the proposal is in fact the one received by it from SML.
- (ii) The rate increase sought varies from 20% to 156.52%
- (iii) The traffic handled upto 2008 and estimated to be handled till 2012 at the existing rates are as under:

TEU's handled						
Location	2007 (Actual)	2008 (Actual)	2009 (Actual/ Estimate)	2010 (Estimate)	2011 (Estimate)	2012 (Estimate)
CFS	109772	230373	139762	92000	93400	99340
BY	61067	109185	58112	18000	14000	14000
Total	170839	339558	197874	110000	107400	113340

- (iv) The traffic handled upto 2008 and estimated to be handled till 2012 at the proposed tariff rates are as under:-

TEU's handled						
Location	2007 (Actual)	2008 (Actual)	2009 (Actual/ Estimate)	2010 (Estimate)	2011 (Estimate)	2012 (Estimate)
CFS	109772	230373	139762	178000	189250	190500
BY	61067	109185	58112	18000	14000	14000
Total	170839	339558	197874	196000	203250	204500

- (v) If the rate increase as proposed is approved, the throughput at the CFS would nearly double in all the next three years.
- (vi) Assessed capacity of the CFS has been indicated as 222000 TEUs per annum
- (vii) The consolidated cost statement as per the proposal is shown below:

Rs. in Lacs

Sr. No.	Particulars				At Existing Tariff			At Proposed Tariff		
		2007 (Actual)	2008 (Actual)	2009 (Actual/ Est)	2010 (Est)	2011 (Est)	2012 (Est)	2010 (Est)	2011 (Est)	2012 (Est)
I	Operating Income	2756.08	5943.69	3972.41	1651.91	1689.47	1798.70	7907.62	8463.42	8508.59
II	Operating Costs	2307.17	4102.57	3446.37	3212.16	3399.26	3637.71	5995.13	6533.37	6795.59
III	Depreciation	136.64	242.86	255.43	272.54	272.54	272.54	317.97	367.29	417.29
IV	Overheads	341.16	538.30	419.68	444.02	469.78	497.03	444.02	469.78	497.03
V	Operating Surplus / Deficit	-28.90	1059.95	-149.07	-2276.82	-2452.12	2608.59	1150.48	1082.97	798.77
VI	Less Adjustment of accumulated losses							-375.15	-243.15	-9.15
VII	Surplus after adjusting accumulated losses	- 28.90	1059.95	- 149.07	- 2276.82	- 2452.12	-2608.59	775.32	839.82	789.52
VIII	Capital Employed	4072.64	4699.92	4583.09	4765.19	5038.32	5284.27	4765.19	5038.32	5284.27
IX	ROCE	537.01	832.37	769.41	526.60	565.26	630.55	1018.86	1145.34	1209.19
X	Net Surplus/Deficit	-680.52	307.96	-882.37	-3039.25	-3258.26	-3454.07	12.89	33.68	-55.96
XI	Net Surplus / Deficit as a % of operating income	-24.69	5.18	-22.21	-183.98	-192.86	-192.03	0.16	0.40	0.66

- (viii) To justify the rate increase ranging between 20% and 156.52%, adjustment of accumulated losses has been resorted to in the cost statement, though no such provision for such adjustment is available in the tariff guidelines of 2005.
- (ix) Additions to the Gross Block (plant and machinery and buildings, sheds and other structures) to the extent of Rs. 738 lacs, 667 lacs and 650 lacs is envisaged during 2010, 2011 and 2012 respectively, if the rate increase is approved.
- (x) A comparative statement showing the Scale of Rates prevalent in nine other CFS functioning in the JNPT area has been furnished.
- (xi) JNPT has stated that the nomination premium has been considered as a pass through subject to SML filing documentary evidence. This expenditure has been shown as other expenses at Rs. 2100 lacs, Rs. 2328 lacs and Rs. 2347 lacs respectively for 2010, 2011 and 2012.

4.1 The tariff proceedings based on the JNPT's proposal was commenced on 5 October 2009. Since it was expected that it would take minimum three months to finalize the case an extension of time for a period of three months from the date of commencement of tariff proceedings i.e. from 5 October 2009 was obtained from the High Court of Bombay vide its Order dated 12 November 2009.

4.2. In accordance with the consultative procedure prescribed, the concerned user organizations and SML were requested vide letters dated 7 October 2009 and 15.10.2009 to offer their comments on the JNPT's proposal by 13 November 2009. Speedy Multimodes Limited, Indian Merchants Chamber (IMC) and the Bombay Custom House Agents' Association (BCHAA) have furnished their comments. The comments were forwarded to JNPT for remarks. JNPT offered its remarks on the comments of IMC and BCHAA but did not offer its remarks on the comments of SML.

5. Based on the preliminary scrutiny of the proposal, JNPT was requested to furnish under our letter dated 30 October 2009 the following additional information / clarification by 15 November 2009. The Port furnished its reply vide letter dated 20 November 2009. Some of the relevant information sought and the details received are summarized below:-

Sr.No.	Queries raised by TAMP	Reply furnished by JNPT
1	<u>GENERAL</u> 1. As per clause 7.2 of the revised tariff guidelines, where authorization arrangement u/s. 42 (3) of the MPT Act, 1963 is other than by way of a BOT concession agreement, ceiling rates will be prescribed for such services to be applied commonly at the concerned ports without reference to individual service provider. For this purpose proposals for regulating these charges should be initiated by the concerned Major Port Trust after identifying such authorized services coming under the ambit of tariff regulation. In view of this stipulation, although JNPT has forwarded the proposal received from Speedy Multimodes Limited (SML), it is presumed that JNPT fully endorse such position and, therefore, the proposal received under JNPT's letter dated 14 September 2009 will be considered as that of JNPT.	Not addressed by JNPT
	2. JNPT is requested to indicate benchmark levels of productivity and also propose incentive for better performance at the CFS and Buffer Yard and disincentives for performance below benchmark levels. The productivity benchmarks and parameters should be included in the Scale of Rates as conditionalities governing the tariff items.	2. The designed capacity for CFS and Buffer Yard areas are 10000 TEUs per month and 8500 per months at peak level of operations. The same capacity has been incorporated in the tender at clause no.7.2 as minimum guaranteed throughput (MGT). The total capacity of CFS including buffer yard is 18500 TEUs per month. In the tender document certain incentives for performance indicators have been specified. As regards disincentives for performance by indicating the minimum benchmark level in the tender it is clear that any handling below the benchmark level will entail the licensee to pay penalty to the extent of the minimum benchmark to the licensor.
	3. A consolidated statement showing the rates levied by nine CFS service providers in and around JNPT vis-a-vis the rates levied by SML has been received alongwith the proposal. JNPT is requested to confirm the details furnished in the consolidated statement are accurate.	3. We confirm that, the information provided alongwith proposal relating to nine service providers are the tariff rates prevailing in the nearby CFS.
	4. Kindly clarify whether the market response has been ascertained and the concerned trade taken into confidence about the rates proposed and submitted for the approval of this Authority.	4. We have not ascertained the market response of the trade users. However, it is again reiterated that the proposed scale of rates asked for are very competitive and comparable to the tariff rates for similar operations prevailing in the nearby CFS.
	<u>FINANCIAL/COST STATEMENTS</u>	
	Capacity (i) The capital employed figures furnished in Form 4A show that	(i) In the data submitted to TAMP the amounts of Rs.738 lakhs, Rs.667 lakhs and Rs.650 lakhs

	investments of Rs. 738 lacs, Rs. 667 lacs and Rs. 650 lacs will be made during the next three years. However, it is not clear why the capacity calculation does not reflect this position as the assessed capacity of the CFS and BY has been uniformly maintained at 222000 TEUs from the years 2006 to 2011-12, except in 2007 – 08 where it was considered as 2,77,500 TEUs.	refers to the Land and shed repairs and maintenance, required to be undertaken by M/s. SML in terms of the contractual obligations. Therefore, it is not relevant to compare the above capital expenditure to the additions to yard capacity. As regards the period January 2007 to March 2008 was consist of 15 months, hence designed capacity for 15 months 2,77,500 is considered. Whereas, capacity of 222000 is for 12 months.
	(ii) Capacity should be calculated with reference to the designed parameters of the facilities created/to be created in the relevant year and not based on the physical performance expected by the CFS operator. The capacity calculation may be reviewed and furnished justification for each of the parameters assumed while carrying out the capacity calculation.	(ii) The total capacity of the CFS and BY has already been indicated in point no. 2 above.
	(iii) Kindly provide detailed workings of the designed capacity computation.	(iii) The designed capacity for CFS and Buffer Yard areas are 10000 TEUs per month and 8500 per months at peak level of operations. The same capacity has been incorporated in the tender at clause no.7.2 as minimum guaranteed throughput (MGT). The total capacity of CFS including buffer yard is 18500 TEUs per month.
	(iv) At the existing tariff level, the capacity utilisation has been shown as 41.44%, 42.07% and 44.75 % for the years 2009 - 10, 2010-11 and 2011-12 respectively. Kindly elucidate why capacity utilization cannot be achieved at least to the level of 60% to be eligible for 100% return on capital employed.	(iv) As there are 20 CFS operators operating in the vicinity and who are resorting to passing on nomination premium as a trade practice it is not possible for M/s. SML at the prevailing tariff rates to compete with the other CFS operators and optimize its capacity
	(v) As per Form 4 –A, the investment made in 2006, 2007-08 and 2008 - 09 are at Rs. 16.26 crores, Rs. 3.48 crores and Rs. 10.03 crores respectively. Kindly confirm that the investments so made are reasonable.	(v) It is hereby confirmed that investment made in 2006, 2007-08 and 2008-09 are reasonable as per Tender requirement.
	(vi) Clause 2.9.6 of the revised tariff guidelines stipulates that project/feasibility report relied upon by financial institutions etc will be relied upon for assessment of reasonableness of investments made/proposed for creation of capacity. Please furnish a copy of such project/feasibility report.	(vi) The investments made by the licensee are strictly as per the tender requirements specified and as per agreement.
	Traffic (i) At the existing tariff level, the traffic handled in 2006, 2007 – 08 and 2008 – 09 were 109772 TEUs, 230373 TEUs and 139762 TEUs respectively. The projections for 2009-10, 2010-11 and 2011 – 12 are however kept at 92000	(i) There are 20 CFS owned by both – public and private sector companies. The rates charged by them are substantially higher than the tariff rates currently applicable to M/s. SML. These CFS operators compete in the open market for cargo and containers in a free and fair manner. It

	TEUs, 93400 TEUs and 99340 TEUs respectively. Kindly clarify why the throughput has been kept at a lower level for the three years commencing from 2009 – 10.	appears that the fierce competition between the various CFS operators is being exploited by the shipping lines. M/s. SML which has been a victim of the industry practice of paying a premium to attract business, is now just not able to persuade the large shipping lines to send their containers to our CFS. Besides, the sharp fall in international trade, especially exports has resulted in further erosion in business outlook and prospects. Hence M/s. SML projections for 2010, 2011 and 2012 are therefore are realistic based on the traffic achieved in FY 2009. This matter has been acknowledged in the TAMPs letter no. TAMP/44/2007-SML/558 dated 27 th Feb 2009.
	(ii) The aggregate container traffic at the existing tariff level is estimated at 92000 TEUs, 93400 TEUs and 99340 TEUs for 2009 – 10, 2010-11 and 2011 – 12 respectively. The traffic estimated for the corresponding periods at the proposed tariff level is 1,78,000 TEUs, 189250 TEUs and 190500 TEUs respectively. Kindly explain how the throughput is estimated to go up especially when the tariff is proposed to - be increased in the range of 20% and 156 %.	(ii) The tariff proposal has asked for a realistic and reasonable increase in the tariff rates. Even after the proposed increase in rates the rates will much lower than the existing rates in the 20 CFS operating in the vicinity. Also the nomination premium is proposed to be passed on to the users. Hence the assumption made relating to traffic is reasonable.
	(iii) Kindly clarify why empty containers, transshipment containers and coastal containers are not expected to be handled at the Container Freight Station and Buffer Yard as the throughput on such containers has not been estimated for the years under consideration.	(iii) A CFS is very different from the Port and Terminal Operations. This was explained to TAMP by M/s. SML. The fact that the formats are appropriate to assess CFS operations was also brought out before TAMP. It is confirmed that M/s. SML do not handle empty containers, transshipment containers and coastal containers. Hence the relevant cells in the Forms have been marked NA, meaning not applicable.
	(iv) Kindly furnish the basis of traffic projections with detailed computation of traffic analysis.	(iv) M/s. SML in their proposal have relied upon their experience of declining traffic at JNPT CFS during FY 2009 to project traffic for succeeding years.
	(v) It may be noted that the present exercise in hand is to fix tariff as per clause 7.2 of the guidelines without reference to individual operator. That being so, it may be clarified why the traffic projection of a single operator is to be relied upon. It may be appropriate to fix tariff considering traffic volumes equivalent to optimal assessed capacity of the facility. Consequently income & expenditure estimates may also have to be recast accordingly.	(v) It is clarified that M/s. SML have been entrusted with the Management, maintenance and operation of CFS and BY of JNPT initially for a period of 20 years w.e.f. 01.01.2006. The License period may be extended by another period of 10 years subject to review of performance of the Licensee after the expiry of initial period of 20 years. The capacity of the CFS has been assessed based on the area made available to operator and the minimum guaranteed throughput (MGT) has been fixed for the first five years without reference to any single operator.
	Operating Income (i) At Sr.No.IV of Form-2B, the container/cargo handling income for the years 2006, 2007 -08 and 2008 – 09 has been shown. The break up of income from	(i) Unlike the port terminals, as a CFS M/s. SML would not be handling empty containers, transshipment containers and coastal containers. Hence the relevant cells in the Forms have been

	20 ft/20-40 ft. /above 40 ft. containers under foreign, TP, coastal, loaded, empty, reefer etc. as specified in the format may be furnished.	marked NA, meaning not applicable.																
	(ii) In Form 2 A at Sr. No. II D, the details of ODC and Hazardous containers handled and proposed to be handled have been furnished. However, no corresponding income therefor is shown vide Sr. No. IV d of Form – 2 B.	(ii) Historically, ODC and Hazardous containers form a very small part of the containers handled by the CFS. M/s. SML have not been able to make any precise projections of ODC and Hazardous containers. Therefore, Income for Handling ODC and Hazardous containers is only an estimate based on the past experience and therefore, same have not shown separately.																
	(iii) Kindly specify the nature of income shown at Sr.No. V of Form-2B (i.e. whether the income shown therein pertains to demurrage or cargo storage charges or dwell time charges or a combination of all of them as the case may be.).	(iii) The income consists of the following income Import Cargo Ground Rent Import Container Ground Rent Bonded Cargo Storage Charges Export cargo Storage Charges Buffer Yard Loaded Container Ground Rent																
	(iv) The basis of arriving at the income, both under current Scale of Rates and proposed Scale of Rates may please be furnished in detail.	(iv) The required information is furnished.																
	(v) The existing Scale of Rates sanctioned by TAMP in 1999 does not provide for reefer plugging, monitoring and Pressure Temperature Inspection. In the proposed SOR, the rates for these services have been proposed on a per TEU per shift basis. Kindly justify the rates proposed with cost details. Kindly note that as per clause 5.7.1 of the revised tariff guidelines, charges for power supply and monitoring of reefer units should be levied on a 4-hourly unit. Kindly comply with this guideline.	(v) Though while developing the CFS, JNPT had provided for Reefer Points, Central Warehousing Corporation (CWC), the erstwhile managers of the CFS, did not offer Reefer services. Hence, the existing SOR does not provide for reefer plugging, monitoring and pressure temperature monitoring. While an attempt has been made as far as possible to adhere to the prescribed Cost Sheet Formats and TAMP Guidelines, it is respectfully submitted that the TAMP format have been formulated with a focus on Port Terminals. CFS activities are vastly different from that of the Terminals. JNPT supplies electricity to M/s. SML at a fixed rate. The CFS in the area quote their charges pertaining to Reefer Points, Plugging, Inspection and Monitoring charges on shift basis. Accordingly the tariff has been fixed.																
	(vi) Please furnish detailed working with cost elements considered to arrive at the charges proposed for Normal, Reefer, Transshipment, Hazardous and Over Dimensional Cargo containers.	(vi) SML does not handle transshipment containers. Normal containers, Reefer Containers, Over Dimension cargo containers and Hazardous cargo containers account for 97%, 1%,1%,and 1% respectively.. The work sheets accompanying the cost sheets give detailed assumptions and workings of the various cost elements.																
	(vii) Kindly state how much additional revenue per year the proposed rate revision is estimated to generate in the next 3 years. Also please furnish a break up of the estimated additional revenue under different activities/sub activities.	(vii) The required data are furnished below. Rs.in crores <table><tr><td>Particulars</td><td>2010</td><td>2011</td><td>2012</td></tr><tr><td>Handling and Transportation</td><td>45.93</td><td>50.55</td><td>50.08</td></tr><tr><td>Other CFS Income</td><td>13.67</td><td>14.79</td><td>14.74</td></tr><tr><td>Buffer Yard</td><td>2.95</td><td>2.29</td><td>2.29</td></tr></table>	Particulars	2010	2011	2012	Handling and Transportation	45.93	50.55	50.08	Other CFS Income	13.67	14.79	14.74	Buffer Yard	2.95	2.29	2.29
Particulars	2010	2011	2012															
Handling and Transportation	45.93	50.55	50.08															
Other CFS Income	13.67	14.79	14.74															
Buffer Yard	2.95	2.29	2.29															

		Total	62.52	67.63	67.11	
	(viii) Please furnish a dwell time analysis and computation of estimated storage income at existing Scale of Rates and at the proposed Scale of Rates.	(viii) Dwell time of containers is dynamic and changes from time to time depending on trade conditions over which the CFS operator has no control. It is very difficult to make accurate assessment of dwell time on a prospective basis. M/s. SML assumptions have been arrived at as per past 3 years experience.				
	Operating cost Operating and direct labour The operating and direct labour cost for 2008 – 09 has been stated as Rs.6.34 crores and the operating and direct labour cost for the succeeding 3 years both at the existing and at the proposed tariff levels have been projected at 6.70 crores, 7.09 crores and Rs. 7.50 crores. The estimated labour cost may be justified with reference to the number of employees, total wage for different categories, labour deployment pattern, manning scale for operation, etc. Also indicate the per TEU employee cost of the CFS and BY.	The Operating and Direct labour cost for 2008-09 justification enclosed as Annexure – 4. For succeeding 3 years the operating and direct labour cost has been increased by 5.8% per TEU Operating and direct labour cost for the year 2008-09 is Rs. 453.68 and for succeeding 3 years will be Rs. 376.88, 375.04 & 394.19 respectively.				
	Maintenance Labour The maintenance labour cost for 2008 - 09 has been stated as 4.16 crores and for the next three years it has been estimated at the existing as well as at the proposed tariff level at Rs. 4.40 crores, Rs. 4.66 crores and Rs. 4.93 crores respectively. Since the number of employees remains the same, JNPT is requested to explain how the expenditure for 2009 – 10 onwards has been projected at a higher level.	The Maintenance labour cost for 2008–09 justification enclosed as Annexure – 5. For succeeding 3 years the Maintenance labour cost has been increased by 5.8% per TEU Maintenance labour cost for the year 2008-09 is Rs. 297.89 and for succeeding 3 years will be Rs. 247.16, 246.25 & 258.82 respectively.				
	Equipment Running Cost (ii) The equipment running cost for 2008 -09 has been shown as 8.59 crores. This cost has been projected for the next three years at Rs. 5.98 cores, Rs. 6.43 crores and Rs. 7.23 crores at the existing tariff level. At the proposed tariff level, the projected cost is Rs. 11.58 crores, Rs. 13.03 crores and Rs. 13.58 crores respectively. Kindly elucidate how the equipment cost has been estimated for the next 3 years at the existing tariff level and at the proposed tariff level.	(ii) The Equipment Running Cost for 2008-09 has been shown Rs. 8.59 Crores and at the existing tariff the cost has been projected for next three years at Rs. 5.98, Rs. 6.43 and Rs. 7.23 Crores and at the proposed tariff level the cost has been projected for next three years at Rs. 11.58, Rs. 13.03 and Rs. 13.58 crores. Equipment Running Cost has been calculated on pro-rata basis. Equipment running cost is treated as variable expenses and is dependent on the containers handled.				
	(ii) With reference to estimated power cost, please furnish the working indicating the electricity consumption per TEU and unit cost of electricity based on the actuals of the last three years. In Form 3 B where such details have to be furnished, only the consolidated cost as shown in Form 3-A has been furnished. Since the requisite	(ii) In CFS operations, Electricity cost is treated an overhead expense. Electricity is not a direct input in any operation of the CFS, except the plug points for Reefer containers. As explained the Reefer containers received by the CFS are less than 1% of all the containers handled by the CFS. Hence the electricity attributable to Reefer containers is not a materially significant cost.				

	details have not been furnished, JNPT is requested to comply.	
	(iii) With reference to the estimated fuel cost, please furnish the workings indicating fuel consumption per TEU and unit cost of fuel based on the actuals of the last three years. In Form 3 B where such details have to be furnished, only the consolidated cost shown in Form – 3 A has been furnished. JNPT is requested to furnish the requisite details.	(iii) Repositioning of empty containers after de-stuffing is cost upon the CFS operator. While, the CFS operator is under no obligation to do so, it has long been the market practice and as such M/s. SML has to fall in line with other CFS operators – both in the private and public sector – to attract the flow of import containers. The distance of empty yards from M/s. SML CFS ranges between 10-35 KMS. This involves a large consumption of fuel apart from other cost inputs, which cannot be recovered by M/s. SML. Hence, fuel cost per TEU does not give the true picture of the cost.
	(iv) The estimated equipment running cost at the existing tariff level works out to around 15.74 %, 14.16% and 13.89 % respectively of the gross block at the end of the respective years under consideration. Kindly justify the expenditure.	(iv) Equipment running costs have been classified under three groups. 1. Variable costs, 2. Semi-variable costs, and 3. Fixed costs. Variable costs pertain to fuels, consumables, parts and components that require to be replaced once or more in a 12 month period. Semi variable costs pertain to parts, assemblies and sub-assemblies that have a useful life above 12 months. Insurance premium and Road taxes have been classified under Fixed expenses. Other than fuels and fixed expenses like road taxes and insurance pertain to maintenance expenses. In calculating the various heads of running expenses replacement has been assumed to take place as per the norms. Accordingly, only preventive maintenance has been considered for the purposes of estimating running expenses. Warranties come in to play if a part has to be replaced either due to manufacturing defect or accident. In the case of the former the replacement expense would be to the account of the manufacturer or dealer and in the latter case the Insurance company will pick up the bills.
	(v) Please furnish the estimated repairs and maintenance cost for equipment and civil work separately for each of the year.	(v) The data required is very specific to the operations of our CFS. Since, the whole exercise of rate fixation is being undertaken under Chapter 7.2 of the Guidelines, we would presume that TAMP would undertake an industry wise survey before determining our rates. Equipment maintenance cost has been shown as separate expenses under Equipment Running Cost. Maintenance Expenses relating to Civil Work has been capitalized.
	Lease Rental Please confirm that the estimation of lease rentals is as per the rates approved by TAMP for the relevant zone.	The lease rentals have been framed based on the Scale of rates (SOR) prevailing at the time of entering into contract with M/s. SML
	Royalty/Revenue At Sr. No. II (v) of Form 3A, no royalty/revenue share has been shown as	The proposal given to TAMP is inadvertently containing the noting as stated above. The same

	an item of expenditure under any of the years since 2006. However, Note 3 below Form-3A, states that royalty/revenue share will be allowed as an item of cost for tariff fixation subject to the compliance of clause 2.8.1 of the revised guidelines notified by TAMP. The relevant clause is not applicable for fixation of tariff in terms of clause 7.2. of the guidelines which does not recognize individual operator.	needs to be ignored.
	Insurance No insurance cost has been shown in Form 3 A. Kindly confirm that no expenditure on this head is likely to be incurred by any operator who would be managing the JNPT CFS.	Insurance Cost has been shown in overhead expenses and hence not shown separately.
	Other expenses Rs.41.92 lacs have been shown as other expenses for 2008 - 09 and it has been increased to Rs. 2100 lacs, Rs. 2328 lacs and Rs. 2347 lacs for the next three years under the proposed tariff level. At the existing tariff level other expenses have not been estimated at all. Kindly explain the components of other expenses. Also kindly furnish the reasons for omission of such expenditure under existing tariff and provision for such an increased level of expenditure under proposed tariff during the ensuing three years. The expenditure projections should be in line with the traffic adjusted for price fluctuation with reference to the current movement of WPI as per clause 2.5.1 of the revised tariff guidelines. The rate applicable to 2009-10 is 5.8%. Kindly carry out the requisite amendments to the expenditure projections.	These expenses are proposed nomination premium payable to clients for import containers handling.
	Reconciliation Alongwith the proposal, the annual accounts of SML for the years 2006 and 2007-08 have been received. The figures appearing in the annual accounts and the figures furnished in the cost statements are at variance. Reconciliation statements in this respect for the two years may please be furnished	The required data is provided in Annexure - 6 & 6A
	Depreciation The depreciation provided for 2008 – 09 is Rs. 2.55 crores. The expenditure for the next three years has been estimated at a constant figure of Rs. 2.72 crores per annum under existing tariff. Under proposed tariff the depreciation has been estimated at Rs. 3.17 crores, Rs. 3.67 crores and Rs. 4.17 crores respectively for 2009 – 10, 2010 – 11 and 2011 – 12.	At existing tariff SML would not able to make Capital expenditure. At proposed tariff level M/s. SML would be able to invest in equipment and land and shed development which SML have shown in proposed cost statement and hence depreciation is bound to be different at existing and proposed tariff levels.

	Kindly elaborate why provision for depreciation differs drastically under the existing tariff and under the proposed tariff especially when the capital employed for all the three years remains the same both under existing tariff and under proposed tariff.	
	Overheads (i) The management and administration overheads for 2008- 09 are shown as Rs. 200 lacs. This has been estimated both existing tariff level and at the proposed tariff level at Rs. 211 lacs, Rs.224 lacs and Rs.237 lacs for the next three years. While furnishing the composition of the expenditure considered under this head, kindly elucidate how the management and general overheads has been estimated for the next three years.	(i) The Management and Administration overhead cost for 2008–09 justification enclosed as Annexure – 7. For succeeding 3 years the Management and Administration overhead cost have been increased by 5.8% per TEU Operating and direct labour cost for the year 2008-09 is Rs. 143.35 and for succeeding 3 years will be Rs. 119.08, 118.50 & 124.55 respectively. The management and administration overhead cost taken as percentage of turnover of CFS Business and Other Logistic business.
	(ii) The general overheads considered for 2008- 09 is Rs. 219 lacs. This has been estimated both existing tariff level and at the proposed tariff level at Rs. 232 lacs, Rs.245 lacs and Rs.259 lacs for the next three years. Kindly furnish the composition of the expenditure considered under this head.	(ii) The general overheads consist of following expenses : - (a) Insurance Charges (b) Office Expenses (c) Legal and Professional Charges (d) Business Promotion Expenses (e) Rates and Taxes (f) Auditors' Remuneration (g) Electricity charge (h) Water Charges (i) Repair and Maintenance, Fuel, etc for Motor cars & Others. The general overhead cost taken as percentage of turnover of CFS Business and Other Logistic business.
	Capital employed (i) The capital employed vide Sr. No. X of Form – 3A has been reckoned as Rs.40.72 crores, Rs.46.99 crores and RS.45.83 crores for the years 2006, 2007- 2008 and 2008 - 09 respectively. The return on capital employed thereon at 16% has been shown as at Rs.6.51 crores, Rs.7.51 crores and Rs.7.33 crores respectively. The capacity utilisation for 2006, 2007-08 and 2008-09 has been considered at 49.45%, 66.41%, and 62.96% respectively. Under Sr.No. XIII ibid, the ROCE adjusted for capacity utilisation has been shown as Rs. 5.37 crores, Rs.8.32 crores, and RS.7.69 crores respectively for the years 2006 to 2008 -09. The methodology adopted for arriving at the ROCE after adjustment of capacity utilisation may pleased be	(i) The ROCE has been calculated as per clause 2.9.10 of the revised guidelines for tariff fixation. Maximum permissible return has been considered for capacity utilisation of 60% & above. Pro rata reduction in ROCE has been made in case the utilisation factor is below 60%.

	explained. We are unable to comprehend how after adjustment for not reaching the full capacity utilisation, the return on capital employed would go up for the years 2007 -08 and 2008- 09.	
	(ii) For the years 2009 – 10, 2010 – 11 and 2011- 12, the capacity utilization has been considered at 41.44 %, 42.07% and 44.75% respectively under existing tariff. Under proposed tariff, this has been considered as 80.18 %, 85.20 % and 85.81 % for the corresponding three years. The methodology adopted in arriving at the ROCE is not understood. Under existing tariff, the adjusted ROCE for the three years have been shown at a lower level compared to the yearly maximum permissible ROCE. Under the proposed tariff calculations, however, the ROCE has been increased from Rs. 7.62 crores to Rs. 10.18 crores, from Rs. 8.06 crores to Rs. 11.45 crores and from 8.45 crores to Rs. 12.99 crores for the years 2009 – 10, 2010- 11 and 2011 -12 respectively. Kindly note that there is no provision in the revised tariff guidelines to arrive at the ROCE in this manner. Reference in this connection is invited to clause 2.9.10 of the revised tariff guidelines.	(ii) The ROCE has been calculated as per clause 2.9.10 of the revised guidelines for tariff fixation. Maximum permissible return has been considered for capacity utilisation of 60% & above. Pro rata reduction in ROCE has been made in case the utilisation factor is below 60%. Under the proposed tariff calculation alongwith maximum permissible ROCE the licensee also considered additions to fixed assets Rs. 7.38 Crs., Rs. 6.67 Crs. & Rs. 6.50 Crs. For the year ending March 2010,2011 & 2012 respectively. However under existing tariff calculation no additions to gross block have been considered besides adjusting the ROCE factor
	(iii) In Form 3 A under columns proposed tariff, Rs. 375 lacs, RS. 243 lacs and Rs. 9 lacs have been shown as adjustment of accumulated losses for the years 2009 – 10, 2010-11 and 2011 -12 respectively. In the existing cost plus return on capital employed approach, there is no provision for adjustment of accumulated losses while deriving the tariff to be approved.	(iii) The projections have been made keeping in mind the 2.13 of the revised tariff guidelines which mentions as follows : <i>"If performance variation of more than (+) or (-) 20% is observed as compared to the projections, tariff will be adjusted prospectively. While doing so 50% of the benefit/loss already accrued will be set off while revising the tariff."</i>
	(iv) Kindly confirm that only those assets which have been fully commissioned and in use have been included in the net block and work in progress and the assets which have been disposed off or decommissioned have been excluded from the net block.	(iv) In the data provided to TAMP, M/s. SML have included only those assets in Net Block, which have been fully commissioned and in use.
	(v) Kindly confirm that the depreciation of assets has been computed as specified in clause 2.7.1. of the revised tariff guidelines.	(v) In the data provided by M/s. SML to TAMP, Depreciation has been provided at rates prescribed in the Schedule XIV of the Companies Act 1956, as per clause no 2.7.1 of the revised tariff guidelines

	(vi) While arriving at the working capital, certain amounts have been shown as allowable sundry debtors, allowable inventory, allowable cash balance and current liabilities. How these amounts have been arrived at may please be detailed with documentary evidence. For arriving at the working capital, clause 2.9.9 of the revised tariff guidelines may be borne in mind.	(vi) The sundry debtors, inventory, cash balance have been projected based on previous trend for the year 2006, 2007-08 & 2008-09. The projection is well within the limit prescribed under clause no. 2.9.9 of the revised tariff guidelines.
	(vii) With reference to the estimated expenditure on fixed assets, please furnish documentary evidence in respect of the capital value of various assets already commissioned. Similarly, evidence of action taken to procure other assets to be added subsequently may be furnished.	(vii) The documentary evidence of the assets purchased will be provided as and when the same will be procured.
	(viii) Reduction in unit operating costs, if any, additional traffic projected or improvement in operational efficiency on account of proposed additions to the gross block of fixed assets may be indicated	(viii) The operating cost per TEU is showing decreasing trend.
	<u>SCALE OF RATES</u> 1. The Scale of Rates to be approved by this Authority will be a document implementable by the terminal operator. The draft Scale of Rates received alongwith the proposal does not contain the definitions for various terms used in the draft Scale of Rates. Kindly do the needful in this respect.	1. Revised Draft Scale of Rates provided
	2. Kindly incorporate in the proposed SOR under a chapter, titled General terms and conditions', the standard provisions contained in clauses, (i) 2.11.1, (ii) 2.15, (Hi) 2.16.1 to 2.16.3, (iv) 2.18.1 to 2.18.4, (v) 4.5 and (vi) 5.8.1 to 5.8.2 of the revised tariff guidelines.	2. Complied with
	3. In the proposed Scale of Rates an increase in the range of 20% to 156% over the existing tariff sanctioned by the Authority in 1999 has been considered. The additional services and facilities proposed to be provided to the users and the benefit of productivity improvements accruing to users justifying this hike may be listed out.	3. The cost of operations have risen manifold in the last 10 years. The proposed rates asked for are a realistic reflection of the cost increases in the last 10 years. Also as M/s. SML are service providers there is always scope for further improvement in the existing services provided based on the customer needs.
	4. The Scale of Rates presently in vogue, sanctioned by TAMP in 1999, does not provide for the services mentioned below: Survey charges	4. <u>Survey charges, Pre-repair damage survey, Post-repair damage survey :</u> i. Conducting survey of the container at the time of receipt/dispatch from/to terminals by appointing registered surveyors.

	Pre-repair damage survey Pos-repair damage survey Container scanning charges Container weight charges Bond Insurance charges Bonded cargo storage charges Kindly elucidate the nature of services being provided in lieu of the tariff items mentioned above and justify the rates proposed with cost details. In this regard, it may also be clarified whether such services are being provided under the present dispensation and if so, the tariff arrangement therefor.	ii. Conducting survey of the damaged containers before and after repair by registers surveyors. <u>Container scanning charges</u> Transportation of the container to the mobile scanner located at CWC Distripark (as per customs instructions) situated 8 KM from the CFS. <u>Container weight charges</u> Lift on the import container on the CFS trailer, transporting to the weigh bridge and Weighment of container. <u>Bond Insurance charges</u> Insurance premium for the cargo stored in the Public Bonded Warehouse for value and duty. <u>Bonded cargo storage charges</u> Storage charges for the storage of import cargo in the public bonded warehouse located in the CFS.
	5. A general conditionality should be incorporated in the SOR to specify that users shall not be required to pay for any delay caused by reasons directly attributable to SMPL.	Complied with

6.1. A joint hearing in this case was held on 27 November 2009 in the office of this Authority. The JNPT, SML and the concerned users organizations made their submissions thereat.

6.2. At the joint hearing, JNPT was requested to furnish a detailed note with facts and figures on the capacity of the CFS and Buffer Yard, the minimum guaranteed throughput requirements and the capacity utilization in the past and projections for the future. This additional information was seen to be required as the Port claimed the designed capacity of CFS and Buffer Yard at 18500 TEUs per month without furnishing any analysis to show how the capacity was determined. The Port was also requested to examine the capital expenditure incurred and proposed to be incurred at CFS / Buffer Yard and to certify the necessity and reasonableness of such expenditure. JNPT under letter dated 4 December 2009 reported the assessed capacity of the CFS as 222000 TEUs per annum (i.e. 18500 TEU per month) without furnishing any calculations. It further furnished the year wise minimum guaranteed throughput to be achieved by the operator and the containers handled during 2006 – 07 to 2008 – 09 and proposed to be handled during 2009 – 10 to 2011 – 12. JNPT also furnished a statement showing the equipment deployed by the operator at the CFS. JNPT again furnished estimated capital expenditure proposed to be incurred during the ensuing three years as originally reported in its proposal but has maintained silence on the necessity and reasonableness of proposed capital additions.

6.3. SML vide letter dated 3 December 2009 complained to this Authority that the representatives of BCHAA and COSIA who expressed their views at the joint hearing have other interests which places them in a position of conflict. SML alleged that these representatives are Promoters and Directors of one Container Freight Station at the JNP area. According to SML, these representatives were opposing increase in tariff just to kill competition of JNP-CFS. Both the BCHAA and COSIA were furnished with copies of SML's letter dated 3 December 2009 with a request to confirm whether the points made by their members represented the collective view of

BCHAA / COSIA. Both BCHAA and COSIA confirmed in writing that the views expressed by their representatives are the collective views of the respective Associations.

6.4. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details are also available at our website <http://tariffauthority.gov.in>

7. Analysis of the cost statements submitted by JNPT reveals the following:-

- (i).(a) The assessed capacity of the Container Freight Station (CFS) including the Buffer Yard (BY) is reported to be 2, 22,000 TEUs per year. SML has handled at the CFS 109772 TEUs, 230373 TEUs and 139762 TEUs respectively during 2006, during fifteen months ended 31 March 2008 and during 2008 - 09. For the years 2009 – 10, 2010 – 11 and 2011 – 12, JNPT has projected a throughput of 92000, 93400 and 99340 TEUs at the CFS at the existing tariff. At the proposed tariff, it has projected a throughput of 178000 TEUs, 189250 TEUs and 190500 TEUs. SML has guaranteed to JNPT a minimum throughput of 187500 TEUs, 189250 TEUs and 190500 TEUs for the ensuing three years. JNPT has justified the estimates on the ground that the rates charged at other CFSs are substantially higher than the tariff rates currently applicable to SML and the fierce competition between the various CFS operators is being exploited by the shipping lines. JNPT has further added that SML which has been a victim of the industry practice of paying a premium to attract business is now just not able to persuade the large shipping lines to send their containers to JNPT-CFS. Besides, the sharp fall in international trade, especially exports has resulted in further erosion in business outlook and prospects.
- (b) As SML has handled 139762 TEUs during 2008 – 09 at a monthly average of 11647 TEUs, the projection for 2009-10 could be a minimum of 139762 TEUs.. As against this figure, the traffic projected for 2008 – 09 is 92000 TEUs. When the operator could achieve during 2007-08 (15 months) and 2008-09 (12 months), 230373 TEUs and 139762 TEUs respectively without the payment of any nomination premium, JNPTs projections of the throughput for the next three years appear to be an underestimation. It also appears that JNPT has not done any independent traffic analysis but relied completely on the projections of SML.
- (ii).(a). The operating income for 2006 is reported to be Rs. 2756 lacs consisting of 1783 lacs from container handling and Rs. 973 lacs from storage charges. The fifteen months income for the year ended March 2008 has been 5943 lacs - 3354 lacs from container handling and 2589 lacs from storage. JNPT has projected the operating income of Rs.3974 lacs, Rs. 1651 lacs, Rs. 1689 lacs and 1798 lacs respectively for the years 2008 – 09, 2009 – 10, 2010 -11, 2011 – 12. Since the throughput appears to have been underestimated for the ensuing three years, the income estimates are also unrealistic.
- (b) The Port was requested to furnish in detail the basis of arriving at the estimated income, both under current Scale of Rates and proposed Scale of Rates. The Port has in response furnished only the break-up of the estimated revenue under major categories but did not explain with working how the revenue under each head was calculated i.e. with reference to the volume of traffic availing each service and the unit rate therefor.
- (c) Port was requested to furnish a dwell time analysis and computation of estimated storage income at existing Scale of Rates and at the proposed Scale of Rates. The Port has casually remarked that dwell time of containers is dynamic and changes from time to time depending on trade conditions over which the CFS operator has no control and hence it is difficult to make accurate assessment of dwell time on a prospective basis. In the absence of a dwell time analysis, the storage income estimated by JNPT is arbitrary and, therefore, cannot be relied

upon. It is to be noted that 43.56 % of the operating income for the year 2007 – 08 i.e. Rs. 25.89 crores was realized from storage income. The estimated storage income for the years 2009 – 10, 2010 – 11 and 2011 – 12 are Rs. 2.08 crores, Rs. 2.14 crores and Rs. 2.32 crores. Besides the possible underestimation of revenue on this account for the future period, it is also clear that a major portion of the revenue estimate on account of storage income for the future has been drawn up without any analysis.

- (iii). As the annual accounts for the year 2008 -09 is not made available, the expenditure considered under operating and direct labour, maintenance labour, management and general administration and general overheads could not be verified. In all these heads, the expenditure reported for 2008 – 09 is more than the permissible level of cost escalation of 5.8% over 2007 – 08. Further, the trend in traffic and expenditure for the future could not be assessed with any degree of certainty. Since the figures for 2008 – 09 appear to have been extrapolated for constructing future estimates, the chances of over estimation of these costs for the years 2009 – 10 to 2011 -12 cannot be ruled out and in any case the basis of the future estimate cannot be established. It has to be recognized that the year 2008 – 09 was abnormal due to the economic slowdown. Even if the position reported by JNPT, without supporting accounts, is presumed to be correct, it cannot form the basis for estimating future activities as it will tantamount to perpetuating the impact of the economic slowdown which happened in 2008-09.
- (iv).(a) The equipment running cost for 2006, 2007-08 (15 months) and 2008 - 09 is Rs. 441 lacs, Rs. 1033 lacs and Rs. 859 lacs respectively. This cost has been projected at Rs. 598 lacs, Rs.643 lacs and Rs. 723 lacs respectively for the years 2009-10, 2010-11 and 2011-12 probably due to projection of lower throughput.
- (b) The Port was requested to furnish the estimated repairs and maintenance cost for equipment and civil structures separately for each of the years. Instead of furnishing the details, the Port replied that since the data required is very specific to the operations of their CFS and the whole exercise of rate fixation is being undertaken under Chapter 7.2 of the Guidelines, TAMP should undertake an industry wise survey before determining their rates. When the entire cost statement has been submitted by JNPT with reference to operation of its CFS, the Port's reluctance to furnish the basis and calculations of repairs and maintenance cost for equipment and civil work at its CFS is not understood.
- (v) JNPT has forwarded the audited annual accounts of Speedy Multimodes for the year ended 31 December 2006 and for the 15 months period ended on 31 March 2008. The annual accounts and balance sheet for the year ended 31 March 2008 pertain to Speedy Multimodes Limited and one of its subsidiary company, Kajiva Construction Company Pvt. Ltd. In the Director's report, it has also been mentioned that SML has acquired 100% stake of three companies viz. Oceanglobe Container Services Pvt. Ltd (carrying out repair, refurbishment of dry van containers and cleaning, testing and repairing of ISO tank containers) (ii) Smithocean Reefer Containers Services Pvt. Ltd. (carrying out repairing and maintenance of refrigerator containers) and Total carriers Pvt. Ltd. (carrying out transportation of ODC and heavy lifts). As the figures appearing in the annual accounts and the figures furnished in the cost statements are at variance, JNPT was requested to furnish the requisite reconciliation statements. In the reconciliation statement furnished by JNPT, hire charges, lease rentals, water charges and management and administrative costs have been fully accounted for under JNPT's CFS operation. In all probability the land and other infrastructure facilities under the control of SML might also have been put to use for carrying out container repairs, cleaning etc by its subsidiary companies. If so, the lease rental, hire charges, water charges and management and administration costs may have to be apportioned amongst all the units making use of the facility to depict a true cost position. To sum up, the accuracy of the expenditure allocated to the running of the JNPT-CFS cannot be straight away relied upon for the rate analysis.

- (vi) For the years 2009-10, 2010-11 and 2011-12, JNPT has considered in the cost statement under the proposed tariff, adjustment of accumulated losses to the tune of 375 lakhs, 243 lakhs and 9 lakhs respectively. When it was pointed out to the Port that in the existing cost plus return on capital employed approach, there is no provision for such adjustments while deriving the tariff to be approved, the Port replied that the projections have been made keeping in mind clause 2.13 of the revised tariff guidelines which mentions that *"if performance variation of more than (+) or (-) 20% is observed as compared to the projections, tariff will be adjusted prospectively. While doing so 50% of the benefit/loss already accrued will be set off while revising the tariff."* It has to be pointed out that JNPT has quoted clause 2.13 *ibid* partially as the said clause reads as under:-
"The actual physical and financial performance will be reviewed at the end of the prescribed tariff validity period with reference to the projections relied upon at the time of fixing the prevailing tariff. If performance variation of more than (+) or (-) 20% is observed as compared to the projections, tariff will be adjusted prospectively. While doing so 50% of the benefit/loss already accrued will be set off while revising the tariff."

Clause 2.13 of the revised tariff guidelines are relevant where the tariff is fixed on a cost plus return on capital employed approach. Since the tariff fixed for the JNPT CFS in 1999 is not based on cost estimates and definitely not based on the cost of operations of SML, invoking Clause 2.13 of the revised tariff guidelines by JNPT in this case is not in order. As explained earlier, the account of SML are aggregation of some other business ventures carried on besides the JNPT CFS operation. Notwithstanding this position, a cursory look at the annual accounts of the company shows dividend of 10% for the year ended on 31 December 2006 and 50% for the 15 month period ended 31 March 2008 was declared by the company.

- (vii) JNPT has considered the capital employed at Rs. 4072 lacs, Rs. 4699 lacs and Rs. 4583 lacs respectively for the years 2006, 2007 -08 (15 months) and 2008 - 09. The capital employed includes the element of working capital referred to in para (ix) below which has to be excluded from the capital employed for the reasons elaborated therein. As per clause 2.9.3. of the revised tariff guidelines, the capital employed comprises net fixed assets (gross block minus depreciation minus works in progress) plus working capital. As per the details furnished by JNPT, the gross block minus depreciation as on 31 March 2009 is Rs. 3117 lakhs. This includes capital addition of Rs. 1003 lacs during 2008-09, the accuracy of which could not be verified in the absence of the audited annual accounts for that year. During 2009 – 10, 2010 -11 and 2011 – 12 towards procurement of plant and machinery and towards shed development, JNPT has stated that SML would expend Rs. 738 lakhs, Rs.667 lacs and Rs. 650 lacs respectively, provided the rate increase proposed is granted. JNPT was requested to show documentary proof on the progress of the work to enable us to consider the proposed capital expenditure. The Port has replied that documentary evidence will be produced as and when the assets will be purchased. Even for the current year of 2009 – 10, the Port could not produce any documentary evidence showing the progress of the estimated capital work amounting to Rs. 7.38 crores. Since no convincing proof has been submitted and the revised tariff guidelines stipulate that only those assets that are likely to be commissioned and the assets which are likely to be completed during the year only should be taken into account, justification for the proposed capital expenditure of Rs. 738 lacs, Rs.667 lakhs and Rs. 650 lakhs is not established.
- (viii) For arriving at the capital employed, JNPT has considered Rs.1465 lakhs, Rs. 1227 lakhs, Rs.1201 lakhs and RS. 1214 lakhs as working capital for the years 2008-09, 2009-10, 2010-11, 2011-12 respectively. Under current assets, JNPT has considered (i) Rs.306 lakhs, Rs.610 lakhs, Rs.652 lacs and 657 lacs as sundry debtors (ii) Rs.319 lakhs, 335 lakhs and 352 and 370 lakhs as inventory

and iii) Rs. 1461 lakhs, Rs.1520 lakhs, Rs. 1520 lakhs, and 1520 lakhs as allowable cash balances for the four years referred to above. As per clause 2.9.9. of the revised tariff guidelines, the limit on sundry debtors balance is 2 months estate income and railway terminal charges payable by Indian Railways. SML has neither estate income nor any terminal charges to be received from Indian Railways. The revised tariff guidelines permit cash balance as an admissible item of current assets with a limit of one month's expenses. This amount works out to Rs. 638 lakhs, Rs. 675 lakhs and Rs. 717 lakhs respectively for the years 2009 - 10, 2010-11 and 2011 -12. Considering the cash balances and the inventory components, the current assets for 2009-10, 2010-11 and 2011 -12 work out to Rs. 973 lakhs, 1027 lakhs and Rs. 1087 lakhs respectively. Still, the working capital for these years results in a negative figure as the cost statement for 2009-10, 2010-11 and 2011 -12 reveals the current liability at Rs. 1238 lakhs, RS.1324 lakhs and Rs. 1330 lakhs respectively. In short, JNPT has overestimated the capital employed for the next three years through wrong estimation of working capital.

8. With reference to the totality of information collected during the processing of the case, the following position emerges:-

- i) The opinion rendered by the then Additional Solicitor General clarifies beyond doubt the statutory jurisdiction of the Authority to fix the rate leviable by JNPT CFS/Buffer Yard. According to him, since the work being undertaken by SML in the CFS and BY areas falls within the Port area and the agreement between JNPT and SML is directly related to section 42 of the MPT Act, SML is governed by Section 48 of the Act and this Authority has the mandate to fix tariff under the provisions contained in Section 42 and Section 48 of the MPT Act, 1963. The tariff order of 2007 was passed based on the proposal of SML, due to mis-representation before the Authority about the status of SML and certain faulty clauses in the License Agreement signed between JNPT and SML, requiring SML to approach this Authority directly for fixing the rate, which gave an impression that the privatization arrangement adopted by the JNPT was BOT in nature. Based on the clarification furnished by the JNPT at the joint hearing held on 18 February 2009, it had already been decided to consider the tariff fixation case for the services rendered by the JNPT CFS/Buffer Yard in terms of clause 7.2 of the Guidelines, 2005 based on the proposal of the landlord Port Trust.
- ii) The initial tariff Order of 1999 was not cost based, but relied upon the rates prevailing at some of the neighboring CFSs, as that order was passed before any contract for management of CFS was awarded by JNPT. Since the rates prescribed did not correspond to the working of JNPT CFS, no cost breakup of the existing tariff was available for comparison.
- (iii) Clause 2.4.1 of the Guidelines prescribes cost plus return on capital approach. It also advocates for making attempts to evolve normative cost of each component of Port operation. No such norms are developed for CFS operation. Even the upfront tariff Guidelines of 2008, which in any case would not apply to the case in hand, also contains no specific standards for CFS operation. However, Clause 7.2 of the Tariff Guidelines does not specify any particular tariff fixing methodology but only talks about the procedural aspect of filing tariff proposal and fixing tariff irrespective of the operator. Since Clause 7.2 is only a part of the entire guidelines, there is no bar in applying the cost plus regime of tariff fixation for determining the tariff in those cases which are covered by clause 7.2 of the Guidelines. The legal opinion of the then ASG, relevant portion of which is reproduced below, so supports this approach.

“Tariff Guidelines dated 31 March 2005 will apply to the operations of Speedy. In my view, having regard to 31st March 2005 guidelines, there can be no doubt that the Authority can import cost plus basis as a valid principle to fix tariffs while exercising its powers under the statute. In view of the fact that CFS as well as Buffer Yard operations are integral operations performed by the Board under Section 48 of the Act, they must be viewed as primary services for which tariff can be fixed by the Authority under Section 48 read with Section 42 of the Act”

- (iv) The objection of SML to fixing tariff based on cost plus method, on the ground that Clause 7.2 of the Guidelines requires tariff to be set without reference to Operator is found to be misplaced. The guidelines envisage simultaneous operation of different authorised service providers in the same Port, offering similar services and therefore, require a common tariff to be fixed for the services without reference to any individual service provider. In the case of JNPT, no CFS operator other than SML is providing CFS services under a license granted by the Port Trust. In such a situation, it might not be reasonable to consider admissible cost of operating the only CFS under the JNPT. Fixing tariff by considering the unregulated tariff prevailing elsewhere, without subjecting them to the test of reasonableness and analysis of the cost of providing services thereat was not at all envisaged by the tariff guidelines, which are policy directions of the Government having binding effect on this Authority.
- (v) Though this Authority is inclined to follow the cost plus approach as required by the tariff guidelines for fixing the tariff as proposed by the JNPT, the soundness of the proposal was not established beyond doubt. The JNPT has not carried out any independent analysis or scrutiny; but has simply forwarded the financials and proposals of SML to this Authority. When asked to comment on the objection of SML to fix tariff with reference to its cost, the Port remained silent. When pointedly asked whether it endorsed the financials of SML forwarded with its proposal, the Port did not offer any comments.
- (vi) The JNPT had reportedly relied upon the books of SML. The annual accounts of SML is an aggregation of the effects and realisation results of many of its business operations, one of which is managing the JNPT CFS and buffer yard. Though the accounts were reportedly segregated, the question of allocation of common costs between different business ventures in a diligent and reasonable manner remains unanswered for reasons explained in para 7 (v) above.
- (vii) This Authority at the joint hearing held on 18 February 2009, suggested that the expenses on nomination premium could be recognised as an item of cost, only if SML proved the legitimate trade practice and produced accounts. In the subsequent joint hearing held on 27 November 2009, many user organizations, particularly BCHAA, had questioned this payment, terming it as a kick-back to the Shipping Lines. Nomination premium is purportedly a payment made by the CFS Operator to the Shipping Lines for promoting their business and not related to any specific services rendered to the Importer or Exporter, who in fact, pay the necessary CFS charges. The Shipping Lines benefit out of selectively providing specific business opportunity to CFS operators of their choice in return of the favour of nomination premium. The mandate of this Authority does not extend to regulate the charges levied by the Shipping Lines. Nevertheless, this Authority is not inclined at all to recognise the unfair trade practice adopted in the form of payment of nomination premium to CFS Operators. The Government should examine this issue closely and take necessary remedial measures to protect the interest of Indian Importers and Exporters. From the replies furnished by JNPT to our

queries, it appears that the prevalence of nomination premium is well within the knowledge of JNPT. JNPT has a responsible statutory body should also move the Government to put in place the required system and procedure which will stop the unfair and non transparent transactions like nomination premium on CFS.

Akin to nomination premium is the cost of transportation of empty containers after destuffing at the CFS. It appears that the Shipping Lines expect the favoured CFS to carry out the repositioning of containers at their cost, while the Lines recover charges therefor from the consignees under some other fees recoverable by them. If this cost is included as a part of the CFS charges, then the consignee would pay twice for the same services with an undue benefit accruing to the Shipping Lines. This Authority is therefore, not inclined to recognise such incidents of expenses arising from unfair trade practice.

- (viii) Defying common understanding and logic, the JNPT's proposal envisages a very high volume growth, if the existing rates are increased in the range of 20% to 156%. This only lends credence to the assumption of unfair trade practice in the form of nomination premium and cost of empty container transportation, the burden of which are sought to be shifted from the CFS Operator to the user, in lieu of the favour meted out to the CFS operator by the shipping lines, and in order to contribute to the undue financial gain reaped by the shipping lines.
- (ix) Associated with these issues was the allegation made by BCHAA about Shipping Lines charging more than the regulated tariff for regulated services. This Authority does not have the statutory mandate to regulate the package of charges levied under the THC or CDC nor is it empowered to enforce its own Order. Based on the complaints received in this proceedings, this Authority will refer the alleged unfair trade practices to the Government for taking necessary steps.
- (x) SML has pointed out to clause 2.8.1. of the Guidelines regulating the pass through of royalty and argued that it would be applicable in BOT cases; and, SML is not a BOT operator. Clause 2.8.1. of the tariff guidelines refers specifically to BOT cases finalized before 29 July 2003 for the purpose of allowing partial pass through and SML will not qualify for this benefit. The said clause completely negates pass through of royalty in other cases and the terminology used therein 'private operator; which is generic and covers all operators including those covered by clause 7.2.

9. In the result, and for the reasons given above, and based on a collective application of mind, this Authority rejects the request of SML to fix tariff for JNPT CFS solely based on the tariff prevailing at other CFS, as acceptance of such unregulated tariff besides contravening the tariff guidelines, could be seen as an incidental approval of this Authority to the alleged unfair trade practices widely prevalent in the CFS operation. At the same time, this Authority is also not in a position to proceed with the cost analysis furnished by the JNPT in view of the various gaps contained in the proposal, particularly highlighted in para 7 above, since the JNPT has not done any independent assessment of the cost of providing different services at its CFS; but has only endorsed the cost position reported by SML without any verification. Though the tariff of other CFSs may not be a benchmark, it would not be unreasonable to test the reasonableness of different operating and capital costs incurred at the JNPT CFS with reference to the legitimate expenses incurred at the other CFSs. The JNPT should conduct such an analysis and file a well analysed proposal which will be taken up for disposal by this Authority. In the result, this Authority has no other option at this juncture but to remit the proposal back to the JNPT with an advice to formulate a well analysed proposal with an independent assessment of the position for prescribing ceiling rates for the CFS/buffer yard services at JNPT for consideration of this Authority at the earliest.

10. This Authority notes that the Hon'ble High Court has kindly granted time till 5 January 2010 for disposal of the case. Though the case is decided within the stipulated time, notification of a formal order in the Gazette will require some more time in order to comply with certain inevitable procedural formalities. The Hon'ble High Court of Bombay will be requested to condone such delay, as it is not due to any casualness on part of this Authority to adhere to the direction given by the Hon'ble Court but due to certain procedural requirements.

(Rani Jadhav)
Chairperson

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.

No.TAMP/35/2009-SML(JNPT) - Proposal form JNPT for Tariff Revision of CFS/Buffer Yard operated by M/s. Speedy Multimodes Limited.

A Summary of the comments received from the user organizations and the comments of the JNPT on the comments of the user organisations are tabulated below:

Sr. No.	Comments by users/ user organizations	Reply of JNPT
1	Speedy Multimodes Limited	
	(i) Chapter 7.2 of the Guidelines for Regulation of Tariff at Major Ports, 2004 clearly states the Tariff of Other Authorized Service Providers should be fixed without reference to the individual Service Provider. (ii) We are under contractual obligation to provide all and any data pertained to the CFS required by JNPT. Using the information specific to our operations, JNPT has made an application and presented it under Format A to TAMP vide their letter dated 14th September 2009. (iii) We presume that JNPT has initiated our proposal in Format A as the port makes all its applications to TAMP in Format A. (iv) We are clearly an Other Authorized Service Provider. Hence, in our opinion, TAMP should fix our Tariff without reference to us. If TAMP were to assess our Tariff using data specific to Speedy Multimodes Limited as provided in the application presented by JNPT in Format A along with annexures, TAMP would be contravening the provisions of Chapter 7.2 of the Guidelines for Regulation of Tariff at Major Ports, 2004 which were notified in the Gazette of India vide Gazette No. 39 dated 31 March 2005. (v) In addition, TAMP having conceded to the procedural error in taking up Speedy Multimodes Limited's earlier application as a BOT/BOOT type of contract, and having consequently directed JNPT to initiate an application [as provided in Chapter 7.2 of the Guidelines] for tariff fixation for the CFS under the management of Speedy Multimodes Limited, it would be inappropriate for the Authority to now insist on looking at the specific data pertaining to the CFS operations of Speedy Multimodes Limited. (vi) Due to earlier procedural errors, Speedy Multimodes Limited has already suffered great	No remarks offered by JNPT.

	financial losses. Any further procedural errors would result in the bankruptcy of Speedy Multimodes Limited. (vii) If the procedural error had been avoided, the Authority would have treated our contract as 'Other Authorised Service Provider'. Consequently, the Authority could have - Avoided using a method where, to quote Chapter 2.9.1 of the Guidelines, 'Return will be allowed on Capital Employed (ROCE), both for Major Ports and Private Terminal Operators, at the same pre-tax rate, fixed in accordance with the Capital Asset Pricing Model (CAPM), as Speedy Multimodes Limited in neither a Port or Private Terminal Operator. - Treated our contract with JNPT, like 'Other Authorised Service Provider', and consequently applied Chapter 7.2 of the Guidelines to fix the tariff for the CFS under our management. - Avoided reliance on Chapter 2.6.2 to deny Royalty as a pass through. - Avoided reliance on Chapter 5.4 to deny any pricing criteria other than size. (viii) The additional transportation charges were levied by us with effect from 1st July 2006. The revised application of 27th October 2006 clearly set out the fact that we had commenced levying additional transportation charges of Rs. 1000 per TEU, in line with all the other CFS operators [including those in the public sector]. When there was no effort on the part of Speedy Multimodes Limited to either hide from the authority or delay in informing the authority of charging additional transportation charges of Rs. 1000/- per TEU, it is not correct to punish the service provider. In asking Speedy Multimodes Limited to cease and desist from charging additional Transportation charges of Rs.1000 per TEU, which was complied with immediately, the Authority has wrongly penalized us. It is a fact that even today the additional transportation charges of Rs. 1000 per TEU is being levied by all other CFS proves that the same is justifiable and genuine increase. We have suffered gravely since the date of your letter asking us to cease and desist from charging additional transportation charges. (ix) It would be a great travesty of justice, if under	
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	the vigil of the Government Regulator, a Service provider with impeccable service credentials and offering services at tariffs which are 60% lower than the average competitive rates, were to be rendered bankrupt by the unscrupulous practices of the competitors who are free from regulation.	
(x)	While JNPT has initiated the proposal for tariff fixation for the CFS under our management, in the prescribed formats for Major Ports, the Formats have been devised and prescribed for the Major Ports. These Formats were not devised and developed taking in to the special nature of the private Container Freight Station operations information sought in several fields in the Formats have no bearing and are not relevant to the CFS business. Besides, our contract is to Maintain, Manage and Operate the CFS which was already in existence. The BOT model envisaged in the Guidelines is not relevant to the assessment of a facility that has been licensed out for management. In the Tender for the JNP-CFS, JNPT required the bidders to quote the 'Royalty' they would offer along with the Minimum Guaranteed Throughput in terms of containers to be handled by the bidder at the CFS. The flows arising from the product of Minimum Guaranteed Throughput of containers and 'Royalty' would be discounted at 11.5% and the contract to be awarded to the bidder with the highest Net Present Value thus arrived at. 'Royalty' is payable for use of land belonging to JNPT. The amount payable as 'Royalty' is complete and binding on Speedy. The amount of 'Royalty' due from Speedy to JNPT is not dependent on the containers handled and income earned there from. There are 19 other CFS in the JNPT area who are not under price regulation of TAMP. These CFSs are owned both by private and public sector companies. Their combined capacity of the 19 CFS operating in JNPT area is more than the aggregate containers handled by the 3 terminals, excluding those meant for ICD and empties. Hence there is a severe competition for the containers and cargo. When Companies are awarded licenses for Terminal Operations they are charged 'Royalty' in return for an entry in to a business with temporary monopolistic and permanent oligopolistic characteristics. Whereas, when Speedy as a CFS manager on behalf of JNPT is charged a 'Royalty', the same does not grant any comparable privileges to Speedy. On the contrary, Speedy has to compete with	

	several CFS operators – both private and public in the JNPT area. Besides, there is no restriction on further entry of new CFS operators. Therefore, we believe that 'Royalty' that we pay to JNPT should be allowed as a pass through.	
2	Indian Merchants Chamber The biggest grievance of the Industry is, the total lack of the accountability by the Service Providers and exploitation faced by the industry by their CFS laborers and the mechanical equipment supervisors. If the Industry has to consider acceptance of their revised tariffs, the industry ask, what accountability and assurance would the Speedy Multimodes Limited, offer to the industry, so as to ensure that the transaction cost do not multiply and the industry made to pay huge expenses as speed-money and bribes, in lieu of which lorries get detained, and the industry forced to pay additional warehouse as well as container detention charges. We would like the Service Providers to be held accountable for the service rendered, which are paid by the industry, and would like to know, as to how they would address the grievances mentioned above. We are confident, that the Tariff Authority for Major Ports would accept our submissions	The observations made are of general nature relating to the services provided by CFS operators. SML will be advised to improve the performance in line with the terms and conditions of the agreement.
3	Bombay House Custom Agents' Association (i) Speedy Multimodes Ltd, (SML) were awarded the contract to operate the JNP-CFS in January 2006. After nearly a year of operating the said CFS, in October 2006, SML applied to TAMP for a revision of the scale of rates. This proposal for revision of rates was disposed of by TAMP vide order published in Gazette Notification no. G.148 dated 23rd July 2007 and the present approved scale of rates is as per this order. We fail to understand how a fresh proposal can be entertained in such a short period and that too for increases to the extent of 160%. Further, they are totally silent on the aforesaid order as if it did not exist, and in their application submitted in the requisite format under para 1. (a) and (b), under "reference details of previous tariff order" they have quoted, TAMP order no . TAMP/2/98-TAMP dt. 22/4/99 and order no. TAMP/1/97-JNPT dt. 25th June 1999. In light of TAMP disposing of the revision application of SML and notifying the scale of rates in July 2007, this is factually incorrect and may be an attempt to give the impression that the scale of rates have not been considered for any increase since 1999. For the same reason instead of SML taking 1999 as the base year to illustrate the	(i) This relates to observation Gazette notification G-148 dtd.23rd July, 2007. As the matter relates to TAMP, TAMP may give their views on the matter.

	variations, SML should provide variations with the base year as 2007.	
	(ii) There seem to be other factual inaccuracies in their proposal. Under para. 8 of their said proposal (deviation from tariff guidelines), they have declared that they have not made any deviation from the guidelines. In this regard we regret to inform you that in virtually every transaction with the customers / importers / exporters, they have violated the scale of rates fixed by TAMP. To bypass the scale of rates fixed by TAMP, SML has connived with the shipping companies. We have already filed one such complaint with TAMP vide our letter dtd. 10TH September 09 and TAMP has also issued a letter to JNPT to ensure that TAMP orders are not violated. It is our considered opinion that for habitually violating the scale of rates approved by TAMP, and habitually violating the contractual obligations as per agreement with the Port, severe action should be initiated by TAMP as well as JNPT against SML instead of entertaining further revision / escalation of rates. We are surprised that after totally violating and disregarding the scale of rates fixed by TAMP in 2007, SML has the temerity to stand before TAMP with another revision application in 2009.	(ii) The charges levied by Shipping Lines to CHAs are not directly related with M/s.SML's tariff revision proposal. Hence no comments are offered.
	(iii) Comparing the JNP-CFS scale of rates to the tariffs of the private CFSs at JNPT, operating in areas outside the jurisdiction of TAMP, is motivated by the intention of profiteering and exploiting the Trade to the same level as being done by these private CFSs. For example, GDL (Gateway Distriparks Ltd,) a public listed company and which is one of such private CFSs operating at JNPT, has declared a net pre-tax profit of Rs. 123 crores against a total turnover of Rs. 205 crores for the past financial year. Similar profits have been declared by other private CFSs attached to JNPT. This profiteering is at the cost of our country's international trade and is due to some very lopsided/peculiar practices prevalent at JNPT (which the Ministry of Shipping as well as the Commerce Ministry is presently trying to address). Profiteering by other CFSs at the cost of the trade, cannot be a justification to allow the same at a government owned facility under the control of TAMP	(iii) It may be inappropriate to compare JNP CFS Scale of Rates to the tariff rates of the private CFS operating in the vicinity, it is stated that there are 21 CFS operating in the vicinity of JNP CFS who are actively competing in the various services provided by JNPT CFS and whose rates for the same services are very much higher than the proposed tariff revision asked for by M/s.SML for their JNPT CFS operations. The tariff revision proposal of M/s.SML now asked for, will be very much lower than the other CFS notified tariff rates. Further, it is seen that there are no other CFS either in Mumbai or the rest of the country, which come under the purview of TAMP.
	(iv) Further, the costs incurred by these private CFS cannot in any way be compared to the costs of the JNPT-CFS which has a huge locational advantage. While the JNPT-CFS is	(iv) The proposal submitted to TAMP relating to JNP CFS now operated by.SML is strictly as per the TAMP guidelines – Format 'A'

	located right at the approach road to the entrance of the port at a distance of 6 km, all the other CFS are located at distances of at least three times more, and their container trucks have to climb / cross two steep flyovers plus ply over bad roads as well as through heavy traffic due to which apart from the extra cost, the number of trips made per truck per day is also substantially less, further pushing up the cost. It may be pertinent to note that the private CFS are generating such huge profits in spite of these disadvantages because of very high tariffs and hence their tariff should never be considered as a benchmark. It should also be considered that SML got a readymade facility to operate and generate revenue whereas all other CFS would have had to spend huge amounts of money as well as time to build and make ready their infrastructure. Further it may also be pointed out that a few CFSs located in Panvel more than 35 kms from the port are offering rates such as Rs.2500/- per 20' for H&T and for importers who have regular volumes, further discounts and facilities such as 10 free days etc. (v) Under traffic projections, there seems to be a mistake in "container traffic". FEUs have been counted as TEUs. (vi) Operating costs mentioned seem to be very high with required details such as number of employees, cost per employee etc left blank. SML should be asked to provide all this information. (vii) In the said proposal under "Rates Proposed for the Import Cycle", we are puzzled by the new terminology namely "nomination premium" which is proposed to be added as a "pass through cost". This term has also been mentioned by JNPT in their covering letter dt.14th September 09, enclosing the proposal while stating that the same is in line with TAMP's letter dt 27th Feb 09 regarding "pass through cost". We request that a copy of this TAMP letter be provided to us together with an explanation of this "nomination premium", to whom it is paid and on for what	Form No.1 – 9 with the tariff rates duly substantiated by the market rates charged by 9 CFS operators operating in JNP vicinity. The tariff rates of the 9 CFS operators operating in the vicinity have been submitted only to substantiate the prevailing market rates for the type of services rendered at JNP CFS. Further as SML is not BOT / BOOT operator the TAMP has already indicated that 7.2 of the guidelines will apply. For this, no specific format has been indicated by TAMP. TAMP's letter asking that the tariff revision proposal of M/s.SML to be submitted by JNPT has been adhered to. (v) There is no mistake in the container traffic considered in the proposal. The assumptions clearly indicate that out of the total TEUs 70% will be 20' and 30% will be 40'. (vi) The operating costs for the past three years namely 2006 (Jan to Dec.), 2007-08 (Jan 2007 to March, 2008) and 2008-09 (April, 2008 to March, 2009) have been culled out of the audited annual reports available for the said years by SML. Detailed reconciliation statement showing the expenses considered in the proposal and other expenses not relating to CFS business have also been submitted to TAMP. (vii) The reference to letter no. TAMP/44/2007-SML/558 dated 27th February 2009, TAMP may take a view. As regards the nomination premium the reply received from M/s. SML is forwarded. The JNPT proposal clearly indicates that nomination premium is considered as expenses for the proposed period 2009-10 to 2011-12 subject to the production of documentary evidence of such trade practice and proof of actual payment.
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	services, and also the meaning / definition of "pass through cost". We hope this is not the infamous and controversial "kickback" arrangement with the shipping lines. We would also like to have a confirmation from SML as to who their customers are, whether it is the Trade viz. the exporter / importer who pays for all the services at the CFS or the shipping lines.	
	(viii) At many of the private CFS there is a practice of CFSs paying heavy kickback to the shipping lines which is then padded on manifold to the charges recovered from the importer. This is nothing but exploitation of the Indian importer and is the main reason for the excessive profits of the private CFSs. TAMP is the authority for not only Tariff but also the Terms and Conditions therein. While TAMP may not be able to do anything with regard to CFSs located outside the jurisdiction of TAMP, at least in its area of jurisdiction, TAMP which has a declared role of "safeguarding the interests of shippers/consignees and other port users" should pass an order prohibiting the CFS from offering and paying kickbacks to shipping lines at the cost of the Indian importers. TAMP should also make it mandatory for SML not to move any containers to the JNP-CFS against the wishes of the Importer.	(viii) The matter is addressed to TAMP and TAMP may take a view.
	(ix) Under "scale of rates proposed and current rates with reasons for variations" under column 1 (a) and (b), the current rates have been wrongly quoted and is in variation with the scale of rates approved by TAMP in July 2007.	(ix) The present rates shown in the proposal are the rates being charged by M/s. SML as per the TAMP Order passed dated 13th April 1999. The TAMP Order No. 148 dated 23rd July 2007 it is learnt from M/s. SML and TAMP the same has been stayed by the Mumbai High Court.
	(x) There is great dissatisfaction amongst the Trade regarding the working of the JNP-CFS operated by SML. The quality of service is very poor. SML in connivance with the shipping lines have circumvented the TAMP scale of rates and have exploited the Trade.	(x) it is stated that the Tariff rates for services rendered at JNP-CFS are the lowest when compared to the Tariff rates prevailing in the 20 CFS operating in the vicinity. Since no specific complaints have been received from Importers / Exporters, no comments in this regard is offered. However, there is always scope for improvement of services rendered and SML will be informed accordingly.
	(xi) Among many of the contractual obligations of SML is to hold regular quarterly meetings with the trade in conjunction with JNPT. Very	(xi) The meetings are being held with SML to sort out the problems faced by Port Users availing the

	few meetings have been held. We would like to know from them as to how many meetings they have held with the Trade together with the minutes of the meeting. (xii) It may be noted that the subject CFS generated substantial profits in its second year (Y-1) of operations itself. It is this year (Y-1) which should be taken as base year while computing capacity utilization and not the year ending 30/3/09 which shows only 60% volume of the previous year. The number of containers handled by the port and other CFSs for the year ending 30/3/09 does not show such steep drop in volumes (inspite of the global recession). The drop in volumes of SML for this year is probably an aberration due to some internal management reason. (xiii) As per the existing tariff, there is no increment in volumes shown for Y+2 and Y+3 years whereas volumes as per proposed tariff for Y+2 and Y+3 are showing increments implying that volume growth will be achieved through increase in tariff. This defies logic. (xiv) As mentioned earlier, in its second year itself with only 66% utilization, a healthy profit of 10 crores was generated. With the GDP growth pegged at 6% for the coming years there should be no problem to generate volumes and profits at the present tariff. (xv) We request SML to provide us the audited balance sheet and P & L account for the last three years. We also request that SML provide a few copies of bills raised for transportation and handling of containers from port to CFS. In view of all the above reasons we strongly feel that there is no justification for any increase in the scale of rates for the JNP- CFS .	facilities at CFS and Buffer Yard. SML is being advised to comply with clause no.17 of the work order strictly. (xii to xiv) The tariff proposal has been submitted by M/s.SML to TAMP strictly as per TAMP guidelines. (xv)SML has stated that these are privy documents giving information to JNPT in terms of the contract. It is stated that the audited Balance Sheet and P&L A/c have been submitted to JNPT. If BCHAA members require copy of the audited P&L A/c and Balance Sheet they may obtain the information from the Registrar of Companies.
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2. A joint hearing in this case was held on 27 November 2009 in the office of this Authority. The JNPT, SML and the concerned users organizations have made their submissions. The gist of the joint hearing held is as under:

JNPT

1. The capacity of our CFS was 10000 TEU per month alongwith buffer yard. The capacity is 1.8 lakh TEU per annum
2. The contract awarded to speedy is of the nature of management contract.
3. SML has given the proposal to us which is examined by us and forwarded to TAMP.

4. Nomination premium is considered subject to SML establishing its validity with documents.

SML

5. Earlier TAMP had not considered many of our cost items. Excess charge of Rs. 1000/- was also adjusted and 1999 tariff was reduced by TAMP by 15%.

6. This CFS will not attract business unless a premium is paid to Shipping Lines for nominating containers to our facility. The premium is around Rs. 1500/- per TEU.

7. We have requested JNPT to formulate the proposal without reference to our accounts. But, JNPT insisted us to furnish accounts as per the Licence Agreement and formulated the proposal accordingly.

8. We request TAMP to provide level playing by prescribing our tariff with reference to market rates as per its guidelines.

9. Capex is more of repair & renovation which SML is bound to do under the contract.

10. The royalty payable should be a pass through in lieu of ROCE which is negligible in our case due to very low capital base.

11. We confirm that we have not charged anyone in excess of the TAMP prescribed rates.

BCHAA

12. Trade was not consulted when nomination premium related decision was taken in Feb. 09.

13. Nomination premium is nothing but kick back which cannot be legitimized.

14. Other CFSs operating outside JNPT area are not regulated. Therefore, their rates cannot be a bench mark.

15. The JNPT CFS operation is governed by TAMP Orders. The person who operates is immaterial. The shipping lines add so many rates and require the importers to pay a substantially higher rates.

16. The CFS wavers. Sometimes they bill shipping line and on other occasions, they charge importers, as per their convenience. If they don't provide services to importers then they can't charge importers.

17. For the lack of experience or inefficiency of SML, the trade should not suffer.

18. SML circumvents TAMP regulated rates by asking Shipping Lines to bill the customers.

COSIA

19. The other CFSs charge very heavily. Though we use speedy CFS, where regulated tariff is in force, we end up paying high charges to Shipping Lines and don't get the benefit of TAMP notified rates.

CSLA

20. Fair & competitive rates as prevailing at other CFSs may be levied at JNPT CFS also.

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