DATE OF DISPATCH TO THE PARTIES: JULY 12, 2001

BEFORE THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID Case No. ARB/98/8

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED

Claimant

-and-

INDEPENDENT POWER TANZANIA LIMITED

Respondent

FINAL AWARD

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1. The Claimant, Tanzania Electric Supply Company Limited ("TANESCO"), is a Tanzanian corporation, being a public utility wholly owned by the United Republic of Tanzania, and charged with responsibility for the generation, supply and transmission of electric power throughout the country.

2. The Respondent, Independent Power Tanzania Limited ("IPTL"), is similarly a corporation incorporated in Tanzania. It was formed as a "joint venture" company between VIP Engineering & Marketing Limited, a Tanzanian engineering company, and Mechmar Corporation (Malaysia) Berhard, a Malaysian corporation.

3. This arbitration arises out of a Power Purchase Agreement ("PPA") dated "as of" 26 May 1995 between TANESCO and IPTL, whereby IPTL agreed to design, construct, own, operate and maintain an electricity generating facility with a nominal net capacity of 100 megawatts, to be located in Tegeta, Tanzania (approximately 25 kilometres north of Dar es Salaam) (the "Facility"), and to operate the Facility and deliver electricity generated thereby to TANESCO for an initial period of 20 years, subject to extension for further periods as therein provided. We refer to the project as "the Project".

4. Under Article V of the PPA, the price to be paid after the Initial Operations Date of the first unit comprised three basic elements, namely:

(1) A "Capacity Payment";

(2) An "Energy Payment";

(3) A "Test Energy Payment", to be applied before the applicable Commercial Operations Date.

5. Under Appendix B, a "Reference Tariff" was to be established, comprising a "Capacity Purchase Price" (which in turn consisted of two elements, namely a "Capital Component" and a "Debt Component"), and an "Energy Purchase Price" (also consisting of two elements, namely a "Fuel Cost Component", and a "Variable Operations and Maintenance Costs Component"), which was subject to escalation/variation in accordance with the detailed provisions of Appendix B so as to arrive at the actual price or tariff to be payable.

6. Under Article IV it was a condition precedent to the obligation of TANESCO to purchase

electrical energy and capacity from IPTL that IPTL should have fulfilled certain conditions, including in particular under Article 4.1(b) the submission, not less than 30 days prior to the Commencement Date of a certificate from the Independent Engineer stating that the Facility, when constructed in accordance with the general layout drawings submitted therewith would (inter alia) conform with the Description of the Facility; and under Article 4.1(c) the provision, as soon as available but in any event prior to the Initial Operations Date of each unit, of a certificate from the Independent Engineer stating that the Facility has been designed and constructed (inter alia) in all material respects in accordance with the terms of the Agreement and the general layout drawings.

7. Addendum No. 1 to the PPA, dated 9 June 1995, provided (inter alia):

> "Before commencement of commercial operations the Reference Tariff mentioned in Table I of Appendix B will be adjusted upwards or downwards depending on the effect of changes that will have taken place on any or all the underlying assumptions stated in the Power Purchase Agreement".

8. On 8 June 1995, an Implementation Agreement and a Guarantee Agreement were entered into between the Government of the United Republic of Tanzania and IPT.

9. The above contractual relationship was entered into against the background of a severe shortage of electric power within Tanzania, which was apparently due in part to developments in the economy which stimulated significant growth in the demand for electricity, coupled with problems experienced within Tanzania's existing hydro-generated power system. A firm of international consultants, Acres International Limited ("Acres"), had been involved in advising the Government of Tanzania and TANESCO on

a continuing basis since the late 1970's. By 1995, the need for further generating capacity was regarded as urgent.

10. Article XVIII of the PPA provided (inter alia) agreed machinery for the resolution of disputes. By Article 18.3, it was agreed that any dispute arising out of or in connection with the PPA should be settled by arbitration in accordance with the Rules of Procedure for Arbitration Proceedings of the International Centre for the Settlement of Investment Disputes (the "ICSID Arbitration Rules") established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "ICSID Convention"), and that for the purposes of consenting to the jurisdiction of the Centre it was agreed that IPTL was a foreign-controlled entity, unless the amount of the voting stock in IPTL held by non-Tanzanian investors should decrease to less than fifty per cent of its voting stock. Such arbitration was to be conducted in London, England and, unless otherwise agreed by the parties, before a tribunal of three arbitrators - one to be nominated by TANESCO, one to be nominated by IPTL, and the third to be nominated by the party - nominated arbitrators or failing their agreement by the High Court of England and Wales.

11. Disputes did arise between the parties, as hereinafter more particularly defined, which were duly referred to arbitration pursuant to the aforesaid contractual provision - the Request for Arbitration being lodged with ICSID on 25 November 1998, and formally registered by the Secretary-General on 7 December 1998.

12. TANESCO and IPTL nominated the Honorable Charles N Brower of Messrs White &

Case LLP, 601 Thirteenth Street, NW, Suite 600 South, Washington, DC, United States of America, and the Honourable Andrew Rogers QC of 233 Macquarie Street, Level 7, Sydney NSW 2000, Australia respectively as arbitrators, and the two arbitrators so nominated agreed to the appointment of Kenneth Rokison QC of 20 Essex Street, London WC2R 3AL, United Kingdom to be third arbitrator and President of the Tribunal. The Tribunal was fully constituted on 24 March 1999.

13. The arbitral proceedings have been conducted throughout in accordance with the ICSID Convention and the ICSID Arbitration Rules, under the auspices and administration of the Centre in Washington, DC. Jurisdiction in this case has at no time been contested by either party. TANESCO was designated by Tanzania as an agency of that state pursuant to Article 25(1) of the Convention on 24 September 1998, and TANESCO's consent to arbitrate disputes with IPTL in accordance with the ICSID Arbitration Rules as provided by Article XVIII of the PPA was expressly approved by the Government of Tanzania by Article 21.2 of the Implementation Agreement. IPTL, although a Tanzanian corporation, has at all material times been owned and controlled to the extent of at least 70% by nationals of Malaysia. Both Tanzania and Malaysia are parties to the ICSID Convention.

14. In due course, on 4 February 1997, an Engineering, Procurement and Construction Contract (the "EPC Contract") was concluded between IPTL and Stork-Wartsila Diesel B.V. ("Stork-Wartsila"), a company established in The Netherlands, for the purpose of constructing the generation plant required to perform the PPA. In addition, on 21 May 1997, IPTL entered into a Fuel Supply Agreement (the "FSA") with Galana Petroleum Limited ("Galana") and Total International Limited ("Total") for an initial term of 5 years

to supply the fuel necessary to operation of the Facility.

15. As the Facility was being constructed and the prospect of commencing commercial operations came nearer, the disagreements between the parties which ultimately led to this arbitration developed. In particular, TANESCO took issue with the fact that the EPC Contract with Stork-Wartsila called for the provision of ten 10 MW medium speed diesel engines, instead of the five 20 MW slow speed diesels originally envisioned under the terms of the PPA. Further, it was becoming necessary for the parties to discuss adjustment of the Reference Tariff as foreseen in Addendum No. 1 to the PPA.

16. These events took place against the background of apparent controversy within Tanzania regarding a competing project, known as the SONGO-SONGO Gas-to-Electricity or "SONGAS" Project, in respect of which agreements had been initialed on 23 March 1997 between (inter alia) the Government of Tanzania, TANESCO, and two Canadian companies, Ocelot Energy Inc. ("Ocelot") and TransCanada Pipelines Limited. This rival project was to be built by Canadian interests and financed by the International Bank for Reconstruction and Development. There was evidence in the arbitration that, notwithstanding the urgency with which the PPA had been concluded in 1995, pressures were thereafter exerted both on and within the Government of Tanzania and TANESCO to defer it, if not eliminate it, in favour of the SONGAS Project.

17. On 9 April 1998, on the eve of scheduled discussions between TANESCO and IPTL on the adjustment of the Reference Tariff TANESCO served on IPTL a Notice of Default asserting that IPTL was "in default on its obligation to supply and install slow speed

diesel generating sets in accordance with Section 1.1 of Appendix A to the PPA" and calling upon IPTL to cure such default within 90 days as required under Article 16.3 of the PPA

18. Negotiations proceeded somewhat sporadically during the course of the summer and early autumn of 1998 with the participation of the Tanzanian Government, TANESCO, and its legal and technical advisers, Hunton & Williams and Acres respectively, together with IPTL. However the parties remained at loggerheads regarding both adjustment of the Reference Tariff and the substitution of medium speed diesels for slow speed diesels.

19. On 25 November 1998 the Request for Arbitration was lodged on behalf of TANESCO, asserting two claims:

    (1) That medium speed diesel engines had been substituted for the required slow speed diesels without obtaining the prior written consent of TANESCO, thus entitling TANESCO to terminate the PPA; alternatively

    (2) That, pursuant to Addendum No. 1 the Capacity Purchase Price was to be "cost based", but IPTL was refusing to share relevant information with TANESCO and the cost seemed excessive, so that in the event that the PPA could not be terminated the tariff should be adjusted.

20. On 14 December 1998, TANESCO gave to IPTL Notice of Intent to Terminate pursuant

to Article 16.3(a) of the PPA, which was copied to IPTL's lenders, stating that, barring consensual resolution of the matter, TANESCO reserved its right to terminate the PPA pursuant to Article 16.3(c).

21. Meanwhile on 30 November 1998, five days after lodging of the Request for Arbitration with the Centre, IPTL filed a petition in the High Court of Tanzania in Dar es Salaam, directed against TANESCO and three officials of the Government of Tanzania, seeking both a declaration that commercial operations of IPTL's facility should be deemed as having commenced 15 September 1998 and an order for payment to IPTL by TANESCO of a "Capacity Payment" in the amount of $3,623,000 monthly beginning on that date.

22. On 7 December 1998, being the same day the Request for Arbitration was registered by the Secretary-General, TANESCO petitioned the Tanzanian High Court to stay the proceedings recently commenced against it.

23. On the following day, 8 December 1998, IPTL submitted to the same Court a "Notice of Objection on a Preliminary Point of Law" asserting in effect that TANESCO had waived its right to pursue this arbitration.

24. On 5 March 1999 the High Court of Tanzania sustained the preliminary objections of IPTL and proceeded immediately to grant the relief requested by IPTL in its original petition. Leave was given to TANESCO to appeal and it sought a stay of execution pending such appeal.

25. In response, on 7 April 1999, IPTL applied for an order of execution in the amount of $23,670,266.67, that being the accumulated sum of the monthly "Capacity Payments" due pursuant to the High Court's Order up to 1 April 1999. Thereafter IPTL agreed that it would not execute for a limited period of time.

26. When the Tribunal convened its initial session with the parties on 14 June 1999, TANESCO had already issued a request for an order of provisional measures from the Tribunal directed at a cessation of all the above proceedings in the Courts of Tanzania.

27. In the course of that session, it was clarified that IPTL was willing further to stay its hand in relation to the proceedings in Tanzania, but that it would itself seek provisional measures from this Tribunal substantially to the same effect as it had obtained from the High Court of Tanzania.

28. Thereafter, on 28 June 1999, IPTL filed with the Tribunal a request for the following provisional measures:

(1) Permitting commercial operations of the Facility to commence;

(2) Requiring TANESCO to make monthly Capacity Payments in the amount of $3,623,000, or, in the alternative, in the amount of $3,400,000 (an interim monthly payment which TANESCO previously had agreed with IPTL, subject however to approval of the Government of Tanzania, which had not been forthcoming); and

(3) Requiring Tanzania to pay forthwith a lump sum of $32,607,000, being the accumulated monthly Capacity Payments due from 15 September 1998 to May 1999 in accordance with the order of the High Court of Tanzania.

29. On 18 October 1999 the Tribunal convened to hear both parties' applications for provisional measures. In the meantime, on 8 July 1999, the order of the High Court of Tanzania had been stayed by a single Justice of the Court of Appeal of Tanzania, pending determination of the appeal thereof, and the parties then requested the Tribunal to defer consideration of TANESCO's request for provisional measures directed at the Tanzanian court proceedings.

30. At this hearing IPTL revised its request by (1) withdrawing its demand for a lump sum payment of the alleged "arrears" accumulated in respect of the order of the High Court of Tanzania, and (2) requesting that the requested order permitting commercial operations also enjoin TANESCO to co-operate with IPTL, including conducting operational tests and connecting the Facility to the Tanzanian power grid. The demand for a monthly Capacity Payment remained.

31. On 20 December 1999 the Tribunal issued its Decision On The Respondent's Request For Provisional Measures, a copy of which is attached hereto as Appendix A and which is incorporated herein by reference. The relief that had been requested by IPTL was denied by the Tribunal on the ground that it would change rather than maintain the status quo by ordering performance of the PPA, and thus was outside the scope of Arbitration Rule 39,

and that there was insufficient demonstration of urgency in that IPTL, should it prevail on the merits, would in any event receive tariff payments over 20 years as foreseen by the PPA and would lose only the interim use of funds, for which an award of damages would on the face of it be an adequate remedy.

32. The conclusions of the Tribunal in relation to the Request for Provisional Measures, in common with the conclusions of the Tribunal in relation to other matters which were submitted to the Tribunal for its decision in the course of the proceedings, were published in the form of "Decisions", to be incorporated into our Final Award by reference in due course. The Tribunal adopted this course because the ICSID Arbitration Rules contain no provisions which permit or even contemplate "Partial" or "Interim" awards, and, indeed, it seemed to the Tribunal that the Rules contemplated only one, Final Award. The course which the Tribunal adopted was not challenged or objected to by either party.

33. By the time of the hearing resulting in the Tribunal's Decision On The Respondent's Request For Provisional Measures, it had become clear that it would be appropriate to determine as a preliminary matter certain issues of construction of the PPA and law. It was ordered, therefore, that the parties should make written submissions with respect to the following preliminary issues:

1. Was or is TANESCO entitled to terminate the PPA?

2. If not, what are the effects (if any) on the parties' respective rights and obligations under the PPA of:

    (1) the change from low speed to medium speed diesel engines; and/or

(2) any other alleged differences between the Facility as built and that provided for in the PPA and/or any other agreements between the parties?

3. How is the final Reference Tariff to be calculated, in the light of the said change and any other differences which may be established?

4. What was the effect on the parties' respective rights and obligations of Addendum No. 1 dated 9 June 1995, and, in particular, did Addendum No. 1 on its true construction have the effect that the final Reference Tariff was to be calculated by reference to the reasonable and prudently incurred cost of the Facility as built; and what were "the underlying assumptions stated in the PPA"?

34. A hearing was held 13, 14, 15 and 16 March 2000 on these preliminary issues, and on 22 May 2000 the Tribunal issued its Decision On Preliminary Issues of Construction/Law, a copy of which is attached hereto as Appendix B and which is incorporated herein by reference. As set forth in paragraph 19 of that Decision, the "Conclusions" of the Tribunal on the Preliminary Issues were as follows:

(1) That the PPA was not subject to an unsatisfied condition precedent as alleged or at all, and was not void for uncertainty; and accordingly was a valid and effective contract between the parties;

(2) That TANESCO was not entitled to serve Notice of Default and was and is not entitled to give notice of termination pursuant thereto;

(3) That the Reference Tariff should be adjusted in accordance with Addendum No. 1 by reference to changes that had taken place, before commercial operations would have commenced but for TANESCO's purported Notice of Default, in any of the assumptions listed in Mr Rugemalira's letter to the Principal Secretary of the Ministry of Water, Energy and Minerals dated 31 May 1995, with the following qualifications, namely:-

(1) that the figure of 23% for "IRR" should be amended to read "22.31%";

(2) that it is open to TANESCO to prove that any costs incurred by IPTL relating to any of the listed assumptions were not reasonably and prudently so incurred.

The Tribunal went on to answer the Preliminary Issues listed in paragraph 33 above as follows:

(1) Not on any grounds argued and dealt with in this decision.

(2) None, save that there may be consequences on the cost of the Facility and therefore on the adjustment to the Reference Tariff to be carried out pursuant to Addendum No. 1 to the PPA.

(3) & (4) The "underlying assumptions stated in the PPA" were those listed in Mr Rugemalira's letter to the Principal Secretary of the Ministry of Water, Energy and Minerals dated 31 May 1995, and the effect of Addendum No. 1 dated 9 June 1995 was as summarised in sub-paragraph (3) above."

35. At the time of the hearing on Preliminary Issues, and at the date of our Decision on those issues, a date had already been fixed for what was hoped would be the final hearing in this matter, to consider remaining issues in relation to the fixing of the tariff, to take place during the last week in July 2000.

36. Between the date of the hearing on Preliminary Issues and the date of our Decision, on 20 April 2000 TANESCO submitted a request to the Tribunal for an order for discovery concerning alleged payments and/or gifts made or given, offered or promised by agents of IPTL to officials of the Government of the Republic of Tanzania or TANESCO, including the provision of Answers to Interrogatories and a Request for Admissions in relation to such payments or gifts.

37. Reference to allegations of bribery or attempted bribery had been made earlier in the course of the proceedings, but TANESCO had never formally pleaded such allegations or

sought to raise them by way of claim or defence.

38. The request was supported by the unsworn statements of Mr. Patrick Rutabanzibwa, the Permanent Secretary of the Ministry of Energy and Minerals of the Republic of Tanzania and formerly the Commissioner for Energy and Petroleum Affairs in that Ministry; Mr. Prosper A.M. Victus, the Assistant Commissioner for Energy (Petroleum and Gas); and Mrs. Esther Masunzu, the Assistant Commissioner for Energy (Electricity).

39. The Tribunal declined to make any of the orders requested, on the ground that no allegation of bribery had been pleaded, and that it would in any event not be right to order the answering of questions on oath when the only basis for the allegations upon which the questions were based was unsworn statements.

40. The request was renewed on 26 May 2000, when TANESCO submitted its Reply on the Merits, in which it pleaded for the first time a claim to be entitled to rescind the PPA on the basis of its allegations of bribery, which it purported to raise as an "Ancillary Claim" pursuant to Rule 40 of the ICSID Arbitration Rules (which by its paragraph (2) must be presented not later than in the Reply). The renewed application was supported by the Statutory Declaration of Mr Victus, and sworn statements of Mrs Masunzu and Mr Rutabanzibwa.

41. On 6 June 2000 IPTL raised objection to the assertion of the bribery claim and the renewed request for discovery, on the grounds (inter alia):

(1) That it was not an "ancillary" claim, but was a claim which should have been asserted, if at all, in TANESCO's Memorial on the Merits in January 2000;

(2) That, even assuming the truth of the facts alleged in the witness statements, TANESCO had failed to make out a prima facie case for rescission of the PPA; and

(3) That if the plea were to be allowed, it would jeopardise the July hearing date.

Alternatively, in the event that the Tribunal was minded to permit TANESCO to proceed with its plea of bribery, IPTL sought an order for immediate production by TANESCO of all documents relevant to the plea.

42. On 12 June 2000 the Tribunal informed the parties of its decision that it would permit TANESCO to raise the bribery issue pursuant to Rule 40 of the ICSID Arbitration Rules, and ordered both parties to produce any documents in their possession, custody or power relating to that issue. It declined to order the wide-ranging Interrogatories or the Request for Admissions proposed, which sought the answers to questions concerning possible bribery and attempts at bribery by employees and agents of IPTL generally, on the ground that no allegations of bribery or attempted bribery had been made against any representatives of IPTL except Mr. Rugemalira. The Tribunal made it clear that the addition of the bribery allegations would not be permitted to delay the July hearing, which had been scheduled for some time.

43. On 27 June 2000 the Tribunal ruled that TANESCO should produce relevant documents in the files of its counsel emanating from the Government of Tanzania, even though the original documents had never been in the possession, custody or power of TANESCO itself.

44. These documents were produced by TANESCO's Counsel, Hunton & Williams, under cover of a letter dated 5 July 2000, on the basis of an express agreement as to their confidentiality (which in the view of the Tribunal would have applied in any event). In the penultimate paragraph of its letter, Hunton & Williams stated:

> The investigation in Tanzania is not complete. In the light of this fact, we have been instructed to advise that TANESCO will not proceed further at this time with respect to its bribery allegations but will make oral application at the hearing later this month for an extension of time to present its case with respect to the bribery claims.

TANESCO further purported to "reserve all rights regarding its bribery claim" under the ICSID Convention and Arbitration Rules and under Tanzanian law.

45. Meanwhile, on 29 June 2000 IPTL served its Reply Counter Memorial (or "Rejoinder") on the Merits and on 10 July 2000 served its Memorial on the Calculation of the Tariff. On 11 July 2000 TANESCO served its Memorial on the Calculation of the Tariff.

46. An oral hearing took place before the Tribunal at the International Dispute Resolution Centre, 8 Breams Buildings, London on 21, 21, 24, 25 and 26 July 2000.

47. After the close of the oral hearing, and pursuant to the invitation of the Tribunal, IPTL filed a written submission dated 18 August 2000 on its claim for Damages for Breach of Contract, and each party filed a Post-Hearing Memorial dated 12 September 2000. Thereafter, on 2 October 2000, each party filed a written submission on the Award of Arbitration Costs.

48. At the start of the July hearing and upon the application of TANESCO, the Tribunal received "information" from Mr. Rutabanzibwa (although he was not formally called as a witness) as to the progress of the investigation in Tanzania of the allegations of bribery, which had apparently started in late 1997, had thereafter proceeded somewhat sporadically, but which was said to be continuing. On the basis of this information, Counsel for TANESCO asked for an extension of time of 3 months to make additional filings in relation to these issues.

49. Mr. Hawkins declined the invitation of the Tribunal to apply to withdraw the allegation, and, after considering the application, the Tribunal refused to grant the extension requested, and indicated that since the allegation remained on the record, it must be dealt with on its merits on the basis of the material put before it.

50. The issues which were canvassed before the Tribunal at the July hearing and which we were called upon to determine included the following:

(1) The issue of alleged bribery;

(2) Did IPTL and/or the parties fail to perform conditions precedent to Commercial Operations, including:

(1) Failing to provide a certificate from the Independent Engineer stating that the Facility when constructed would conform with the Description of the Facility, or that the Facility had been designed and constructed in all material respects within the terms of the PPA and the general layout drawings?

(2) Failing to agree the Reference Tariff?

(3) Was TANESCO in breach of its obligation to act in good faith in relation to the negotiations concerning the fixing of the tariff, and if so what are the consequences?

(4) Was IPTL in breach of its obligation to act in good faith in relation to the negotiations and in particular to the disclosure of relevant documents and information, and if so what are the consequences?

(5) Did IPTL and Stork-Wartsila conspire together falsely to inflate the EPC price?

(6) Was IPTL in breach of its obligation to act reasonably and prudently in relation to any costs and expenses which it would have input into the amount prima facie payable by TANESCO as the Capacity Payment element of the tariff, and in

particular in relation to the procurement of the EPC Contract?

(7) Was IPTL in breach of its implied obligation to act reasonably and prudently in relation to the procurement of the FSA, and if so what consequences flow?

(8) Were any breaches on the part of either party waived, or is any complaint or remedy barred by estoppel?

(9) What adjustment should be made to the Reference Tariff stated in the PPA?

(10) What if any further orders should be made?

(11) What if any order should be made in respect of the costs of the arbitration (including the fees and expenses of the Tribunal), and/or the legal and other costs of the parties?

51. In considering these issues and insofar as any issue depended on an application of principles of law, the Tribunal sought to apply the law of the Republic of Tanzania, as it has sought to do throughout this arbitration, that being the governing law of the contract expressly designated by the parties by Article 19.4 of the PPA.

52. By its Decision On Tariff And Other Remaining Issues dated 9 February 2001, a copy of which is attached hereto as Appendix C, and which is incorporated herein by reference, the Tribunal, for the reasons set out therein, concluded that:

(1) The allegation of bribery failed and should be dismissed; in this connection, the Tribunal repeated its conclusion to the effect that the PPA was an effective contract between the parties.

(2) IPTL did not fail to perform a condition precedent to commercial operations by failing to produce an Independent Engineer's Certificate in accordance with Article 4.1.(b) or (c) of the PPA.

(3) Although commercial operations could not commence until the Reference Tariff had been adjusted to take account of changes in the underlying assumptions stated in the PPA, in the absence of agreement between the parties, it was for the Tribunal to decide what, if any, adjustments were appropriate and for commercial operations then to commence in accordance with that decision.

(4) IPTL had not made out its allegation that TANESCO failed and refused to negotiate in good faith after April 1998, and that, at all events, any such failure or refusal was not the sole or effective cause of the failure of the parties to agree on the adjusted Reference Tariff so that commercial operations could commence, that IPTL's claim for damages for such alleged failure should be dismissed, and that TANESCO's parallel claim against IPTL was academic insofar as it claimed no damages for breach.

(5) IPTL and Stork-Wartsila did not conspire together falsely to inflate the EPC

Contract price.

(6) IPTL was in breach of its implied obligation to act reasonably and prudently in relation to a number of items of costs and expenses which would have an input into the amount prima facie payable by TANESCO as the Capacity Purchase Price element of the Reference Tariff, including the procurement of the EPC Contract (as more particularly set out in our Decision), and that accordingly a number of adjustments would have to be made for the purposes of arriving at the initial Reference Tariff.

(7) IPTL was not in breach of its implied obligation to act reasonably and prudently in relation to the procurement of the Fuel Supply Agreement.

(8) There was no relevant waiver or estoppel.

53. In its Decision of 9 February 2001, the Tribunal recorded its understanding that the parties were confident that, armed with that Decision, they would be able to agree on the "financial model" originally produced by Mr. Willy Lim, and which had already been subjected to agreed adjustments, and the Reference Tariff which should be derived as a consequence; but communicated separately that, if this were not the case, further application must be made to the Tribunal. It was not the intention of the Tribunal to invite further submissions on matters which had already been dealt with in its Decision.

54. The Tribunal further indicated that it considered it appropriate to order that the parties

should co-operate in taking whatever steps would be necessary to achieve the commencement of commercial operations as soon as possible after our Decision.

55. Finally, the Tribunal concluded that it would be fair to order that each party should bear its own legal and other costs and to share the costs of the arbitration, including the fees and expenses of the Tribunal and of ICSID, on a 50/50 basis.

56. Following the publication of our Decision On Tariff And Other Remaining Issues, TANESCO raised a number of further matters going to the calculation of the Reference Tariff; and IPTL invited the Tribunal to fix a date by which the commencement of commercial operations should be achieved.

57. After the exchange of written Memorials and Reply Memorials, and at the request of TANESCO, a further oral hearing took place before the Tribunal on 29 April 2001 at the offices of the World Bank in Washington DC, United States of America, when the following issues were referred to the Tribunal for decision:

(1) How the Construction Contingency Reserve should be dealt with.

(1) What, if any, adjustment should be made to the figure for Sovereign Risk and other insurances?

(2) What, if any, adjustment should be made to the Lenders' Participation Fee portion of "Financing and Agency" fees in consequence of the Tribunal's conclusions as to the deductions to be made from the claimed Project Costs.

(3) What, if any, adjustment should be made to the Reference Tariff by reason of the alleged reduction in IPTL's deemed equity in the project?

(4) What, if any, further orders should be made in relation to the Commencement of Commercial Operations?

58. At the hearing, the Tribunal was informed that the parties had reached agreement on issues (2) and (3); and subsequently, pursuant to the invitation of the Tribunal, the parties submitted the agreed terms of their agreement to be incorporated into the Tribunal's Decision, and, by reference, this Final Award.

59. The parties further invited the Tribunal to note and incorporate in its Decision and its Final Award the terms of the agreement between the parties concerning the Cost of Gas Conversion.

60. On 24 May 2001 the Tribunal published its Decision On All Further Remaining Issues, a copy of which is attached hereto as Appendix D, and which is incorporated herein by reference.

61. In addition to recording the agreements of the parties referred to in paragraphs 58 and 59 above, the Tribunal concluded that the financial model must be calculated on the basis that the Construction Contingency Reserve should be included as part of the Project Cost, but that it should be released at the date when commercial operations commenced, with a consequent adjustment to the Project Cost and the Reference Tariff, save to the extent to which any variation order would be made under the EPC Contract before the commencement of commercial operations, which IPTL contended should be funded out of the Construction Contingency Reserve. The Tribunal recorded in its Decision the agreement between the parties that any dispute as to whether and to what extent the Construction Contingency Reserve should be utilized in such a case should be referred to an ICSID Tribunal comprised of Messrs Charles N. Brower, Andrew Rogers, and Kenneth Rokison, with Mr. Rokison serving as President, for subsequent decision and award as necessary. A copy of the parties-agreed Stipulation, submitted on 23 May 2001, is attached hereto as Appendix E.

62. The Tribunal rejected TANESCO's submission that there should be a further adjustment to the Reference Tariff by reason of the alleged reduction in IPTL's equity contribution to the project.

63. Finally, in relation to the timing of the commencement of commercial operations, the Tribunal amended and refined the order which it had indicated it was minded to make in paragraph 168 of its Decision of 9 February 2001, and ordered the parties to comply with their respective obligations under the PPA, and to use their best endeavours and to co-operate together to achieve the commencement of commercial operations as soon as

practicable and with a view to commercial operations commencing within 90 days of the publication of our Final Award.

64. Following publication of our Decision On All Further Remaining Issues, the parties agreed on the adjustments to be made to the financial model to take account of the Tribunal's various decisions, and submitted to the Tribunal an agreed financial model in both hard copy and electronic form to be used for the calculation of the initial Reference Tariff. That financial model which forms part of this award, is appended hereto as Appendix F (both hard copy and electronic form) and incorporated herein by reference.

65. Finally, the Tribunal wishes to repeat its appreciation to the legal representatives on each side for their considerable industry and assistance, and to the ICSID Centre in Washington for its efficient and very helpful administration of the arbitration.

THEREFORE, THE TRIBUNAL AWARDS AS FOLLOWS:

1. The Tribunal decides as set forth above and in Appendices A, B, C, D, E and F hereto.

2. In particular:

A. The Power Purchase Agreement between the parties dated "as of" 26 May 1995 is and remains a valid and effective contract between them;

B. The Reference Tariff under the Power Purchase Agreement between the parties dated "as of" 26 May 1995 is as set forth in Appendix F hereto;

C. As agreed by the parties and submitted by them in accordance with ICSID Arbitration Rule 43(2):

Gas Conversion:

"Pursuant to Section 7.1 of the Power Purchase Agreement ("PPA") dated 26 May 1995, between Tanzania Electric Supply Company Limited ("TANESCO") and Independent Power Tanzania Limited ("IPTL"), IPTL is required to convert the Tegeta facility to operate on Natural Gas upon the occurrence of certain conditions precedent.

Accordingly, the Engineering Procurement and Construction Agreement (the "EPC Contract"), dated February 1997, between IPTL and Stork-Wartsila Diesel B.V. ("wartsila") contains provisions pursuant to which Wartsila shall convert the facility to Natural Gas operation for a fixed price of US$11,583,000.

TANESCO hereby agrees that upon fulfilment of the conditions precedent contained in Section 7.1 of the PPA, TANESCO will fully fund the costs of conversion at the fixed price and under the payment terms contained in the EPC Contract."

D. The parties shall comply with their respective obligations under the Power Purchase Agreement between them dated "as of" 26 May 1995 and shall use their best endeavours and co-operate together to achieve the commencement of commercial operations of the Facility under said Agreement as soon as practicable and with a view to commercial operations commencing with ninety (90) days of the publication to them by the Centre of this Final Award.

E. Each party shall bear its own legal and other costs, and the cost of the arbitration, including the fees and expenses of the Tribunal and of ICSID, shall be borne as to 50 per cent by each party.

Dated this 22 day of June 2001

The Honorable Charles N. Brower

[signature]

The Honourable Andrew Rogers QC

[signature]

Kenneth Rokison QC

[signature]