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TARIFF AUTHORITY FOR MAJOR PORTS

G No. 175

New Delhi

30 August, 2007

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of the Bharat Petroleum Corporation Limited for revision of rates for its operations of the Liquid Cargo Berth of JNPT as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/26/2006-BPCL (JNPT)

Bharat Petroleum Corporation Limited

Applicant

ORDER

(Passed on this 7th day of August 2007)

This case relates to a proposal received from the Bharat Petroleum Corporation Limited for revision of rates for operation of the Liquid Cargo Berth of JNPT.

2.1. The JNPT by letter dated 31 January 2006 addressed to Bharat Petroleum Corporation Limited (BPCL) and copy endorsed to this Authority requested BPCL to take up the matter of revision of the rates for operation of the Liquid Cargo Berth at JNPT. This Authority also vide its letter No.TAMP/48/2005-JNPT dated 13 April 2006 advised BPCL to submit a comprehensive tariff proposal in the prescribed formats along with a copy of the License Agreement executed between BPCL and JNPT and other relevant supporting documents.

2.2. BPCL under letter dated 6 May 2006 sought an extension of time upto 15 July 2006 for submission of its comprehensive tariff revision proposal. At the subsequent request of BPCL dated 14 July 2006, further extension was granted upto 30 July 2006.

2.3. BPCL by its letter dated 28 July 2006 submitted a tariff proposal. On a preliminary scrutiny, it was found that BPCL had not furnished many requisite information/documents like detailed workings of income, operating cost, capital employed, etc, proposed Draft Scale of Rates and Annual Accounts for the years ended 2005 and 2006.

2.4. BPCL was advised vide letter dated 17 August 2006 to file a comprehensive tariff proposal by 31 August 2006 supported by all documents/information.

2.5. BPCL under letter dated 31 August 2006 furnished a copy of the License Agreement signed with JNPT and sought further extension of time till end of September 2006 for furnishing the other documents/information. It was observed that the issue was lingering for more than 9 months and each time BPCL had come up with some excuse for not filing the proposal with complete documents. It was felt that the casual approach of BPCL may be perhaps due to the wrong belief that they could levy the tariff applicable to JNPT indefinitely without any authorisation by this Authority. Hence, while granting the extension of time upto 30 September 2006, BPCL was informed vide this office letter dated 7 September 2006 that if no comprehensive proposal with all required documents was filed within the extended time limit, this Authority may proceed to notify that the levy of JNPT tariff by BPCL did not have the authorisation required under section 48 of the MPT Act, 1963. Simultaneously, the JNPT was also informed of this decision.

2.6. Again, on 26 September 2006, BPCL sought extension in time upto 15 November 2006. The matter, per force, was taken up with the Chairman-cum-Managing Director of BPCL by our letter dated 10 October 2006. While pointing out the casual approach taken at lower levels, he was also informed that if BPCL failed to comply with our request within 15 days, the trade will be notified that the services provided at the liquid cargo jetty by BPCL did not have the approval of this Authority.

2.7. By letter dated 20 October 2006 BPCL assured that it would submit the required proposal by 30 November 2006.

3. In this backdrop, on 30 November 2006 the BPCL filed its tariff proposal. BPCL's proposal is summarized below:

- (i). BPCL and Indian Oil Corporation Limited (IOCL) operate a twin berth liquid cargo jetty at JNPT since 2002. Since the commissioning of the jetty in 2002, BPCL has been charging the users based on the JNPT's Scale of Rates
- (ii). The actual traffic, the traffic as estimated by BPCL upto 2009-10 and the MGT for those years are as follows:

Year	Traffic (in MT)	MGT (in MT)
2004-05	3509873	3500000
2005-06	3326222	3850000
2006-07	3006200	4000000
2007-08	4099700	4000000
2008-09	4791700	4000000
2009-10	5481700	4000000

- (iii). On account of change in discharge rates and cargo composition, the berth at present is over utilised.
- (iv). Cargo capacity of berth is not an appropriate capacity measure since it is a function of cargo composition, vessel types, discharge rates, pipelines, etc.
- (v). The accounting figures for 2004-05 and 2005-06 have been extracted from the overall books of accounts of BPCL as no separate annual report is prepared for the jetty.
- (vi). A Chartered Accountant has certified the income and expense statement and the statement of assets for the years ended 2004-05 and 2005-06 relating to the jetty.
- (vii). BPCL has proposed to introduce a new tariff of Rs.2.50 per MT applicable to all users of the terminal to defray facility management costs.
- (viii). The BPCL has made an initial payment of Rs.5 Crores to JNPT. Instead of amortising it over the license period of 30 years, the BPCL has amortised it in a period of 20 years.
- (ix). BPCL has sought an increase of about 34.54% to 66% in respect of various services (in few cases, the increase proposed is as high as 150%).
- (x). The estimated financial position at the existing and proposed level of tariff as depicted in the cost statement furnished by BPCL is as follows:

Year	Income (Rs. in lakhs)		Net Surplus/Deficit (Rs. in lakhs) (Before ROCE)		Net Surplus (+)/ Deficit as a % of operating income (before ROCE)	
	Existing	Proposed	Existing	Proposed	Existing	Proposed
2007-08	2031.32	2835.92	288.99	875.70	14%	31%
2008-09	2301.43	3195.01	548.52	1208.54	24%	38%
2009-10	2570.54	3552.60	746.81	1479.78	29%	42%

(Although for the years 2007-08 to 2009-10 BPCL has indicated ROCE at rates ranging from 2.72% to 8.10% at the existing tariff level and rates ranging from 8.24% to 16.06% at the proposed tariff level, it has not claimed any ROCE as per its cost statement. At

an ROCE of 15% BPCL would be in deficit at the existing level of tariff during 2007-08 to 2009-10 and at the proposed level of tariff it would be in deficit in 2007-08 and 2008-09.)

- (xi). According to BPCL, if the rate revision as proposed by it is approved, the additional operating income generation during the next three years would be as under:

2007-08	-	Rs.804.60 lakhs
2008-09	-	Rs.893.58 lakhs
2009-10	-	Rs.982.06 lakhs

4. The salient features of the License Agreement are as under:

- (i). License Agreement was signed with JNPT on 17 August 1999.
- (ii). The licence period is for 30 years.
- (iii). For the services provided by BPCL in respect of cargo and other facilities at the terminal JNPT shall fix tariffs as per GOI notification or as decided by Tariff Authority for Major Ports, whichever is applicable (Provided, however, that the charges to be collected by BPCL shall not exceed the rates fixed by JNPT in respect of similar services duly notified by GOI or to be fixed by the Tariff Authority for Major Ports, as applicable from time to time).
- (iv). The BPCL has guaranteed to handle the following minimum traffic at the berth as under:

Year from date of commencement of operations	Traffic (In Million Tonnes)
1 st	1.00
2 nd	2.00
3 rd	3.50
4 th	3.85
5 th year onwards	4.00

If BPCL fails to achieve the MGT for a particular year, it can approach JNPT for reduction of the MGT requirement. JNPT's decision to grant such consent or refusal to grant such consent shall be final and binding on BPCL.

- (v). Royalty payable by BPCL to JNPT is in the following manner:
- a). 20% of wharfage charges applicable to Oil Industry and Public Sector Undertakings; and,
- b). 50% of wharfage charges applicable to other users.
- (vi). BPCL to make an initial payment of Rs. 5 crores to JNPT.
- (vii). BPCL to pay to JNPT lease rental on 20 hectares of area for siting the tank farm and pipeline routing.
- (viii). BPCL to undertake the requisite initial capital dredging.
- (ix). BPCL to provide the minimum standard facilities as set out in Appendix 1 to the License Agreement.

- (x). The repairing of the terminal during the license period to be carried out by BPCL.
- (xi). BPCL to provide for insurance cover for various risks.
- (xii). BPCL to share the expenditure on CISF staff with JNPT at a pre-determined ratio.

5.1. The proposal was registered as a tariff case on 18 December 2006.

5.2. BPCL had requested not to circulate the working sheets amongst the user bodies. Clause 3.2.4. of the revised tariff guidelines stipulates that the tariff proposal will be circulated except such details and documents which are requested by the operator not to be circulated on the grounds of being commercially sensitive / confidential nature. Such request must adequately explain the reasons for classifying the documents as commercially sensitive and also explain how any irreparable damage will be caused to the operator if the request is not acceded to. Since BPCL did not furnish any reason to consider the workings as commercially sensitive in nature, it was decided to circulate the entire proposal of BPCL to JNPT and others user bodies.

5.3. A copy of the proposal was circulated among JNPT and other user organizations. The comments received from the JNPT Liquid Chemical Berth Users Association (JNPTLCBUA) and JNPT were forwarded to BPCL as feed back information. The BPCL has responded to the comments furnished both by JNPTLCBUA and JNPT.

6. Based on a preliminary scrutiny of the proposal, BPCL was requested to furnish additional information/ clarifications vide our letter dated 25 January 2007. BPCL furnished its replies on 16 March 2007. The queries raised by TAMP and the replies furnished thereto by BPCL are furnished below:

Queries raised by TAMP	Reply given by BPCL
General:	
(i) BPCL is requested to refer to clause 6.8 of the revised tariff guidelines and indicate benchmark levels of productivity and propose incentive for better performance at the liquid cargo berth 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.	<p>BPCL berth has the following facilities:</p> <ol style="list-style-type: none"> 1. berth-used by all cargo owners 2. loading arm-used by POL excluding crude oil and base oil 3. pipeline users-less than 5% of POL users (mostly BPCL and IOC). All other users have their own pipelines extending to the water front at berth. <p>BPCL does not influence the discharge rates for cargo which is dependent on ship pumping rates, pipeline diameter and storage capacity. BPCL also does not influence the loading rate for cargo since shore pumps are operated by the respective storage tank owners.</p> <p>Berth availability is governed by queuing and discharge rates at berth which are not under BPCL control. BPCL cannot guarantee berth availability since it does not have control over pricing for berth occupancy.</p> <p>Under the circumstances, output per working hour at Berth is the best measure of efficiency for the terminal. Output per working hour at Berth for all cargo has improved from 501 MT in 2004-05 to 573 MT in 2005-06 at a rate of 7% CAGR.</p>
(ii) The new tariff guidelines permit a	BPCL does not have discretionary pricing policies

<p>general flexibility to reduce the rates at the discretion of the operator mainly on commercial consideration. Such reduction if any effected by BPCL during its 5 year's operation and proposed to be effected in the future may be listed out and the consequential effect of such concession granted/to be granted on growth of traffic may be analysed item wise.</p>	<p>and adheres to the published tariff for all cargoes irrespective of ownership, subject to statutory guidelines where applicable.</p>
<p>(iii) Kindly state whether the concession agreement quantifies the minimum investment obligation and whether the actual investment considered in the cost statements is more than the minimum investment obligation. If the actual investment is more than the minimum investment obligation, please provide the reasons therefor.</p>	<p>No minimum investment obligations are specified in the concession agreement. However, the letter of award dated 11 May 1998 from JNPT addressed to BPCL requires BPCL to design the facility "not merely as a dedicated oil berth but as a general purpose berth so that it is amenable to be used as a container/general cargo berth."</p> <p>Accordingly design loads for the berth were modified impacting the capital costs for construction of the berth. The impact of this cannot be quantified.</p>
<p>(iv) The license agreement stipulates that BPCL has to employ project affected persons to the extent qualified project affected persons are available. The details of project affected persons if any, taken over by BPCL may be furnished.</p>	<p>Since the land has been taken from JNPT, this is not applicable.</p>
<p>(v). The liquid cargo berth has to be designed not merely as a dedicated oil berth, but as a general purpose berth, so that in future it is amenable to be used as a container/general cargo berth. Kindly state whether this stipulation made by JNPT prior to entering into the licence agreement has been accepted and adhered to by BPCL.</p>	<p>Yes the stipulation has been adhered to by BPCL.</p>
<p>(vi). BPCL has only submitted a certified statement of the Income & Expenditure and Fixed Assets of the liquid cargo jetty as on 31 March 2003 and 31 March 2004. Kindly elucidate why the usual annual Accounts cannot be submitted for this Authority's perusal.</p>	<p>No separate annual accounts are prepared for the liquid cargo jetty at BPCL. All revenue and capital transactions pertaining to the jetty are recorded in a separate cost centre in the accounting system. Hence all items pertaining to that cost centre have been extracted and the statements duly prepared. These statements have been certified by a practicing Chartered Accountant.</p>
<p>(vii). The Income/Expenditure and Fixed Assets details of the jetty have been furnished as on 31 March 2003 and 31 March 2004. All details such as traffic, design capacity, capacity utilization, operating income, operating expenditure, fixed assets, and capital employed and ROCE etc., since the commencement of the operations at the jetty may be furnished.</p>	<p>A certified statement of Fixed Assets and Income/expenditure in respect of JNPT Liquid cargo jetty for the years ended 31 March 2005 and 31 March 2006 have been furnished.</p>
<p>B. CAPACITY</p>	
<p>(i) In Annexure 2 to Form 2 A, the berth occupancy for 1999-2000, 2000-01 and 2006-07 has been furnished. Since the liquid cargo jetty came into operation only from 2002, the mention of 1999-2000 and 2000-01 appears to be an error. Please clarify. The details for 2002-03 to 2005-06 may also please be</p>	<p>Form 2A Annexure 2 provides two tables. Table 1 provides computation of designed capacity as per the feasibility study undertaken in 1998. Table 2 details actual performance for 2004-05 to 2005-06 and estimated performance for 2006-07 and projected for 2007-08 to 2009-10.</p>

furnished.																														
<p>(ii). Kindly confirm that only vessel upto 40000 DWT in the front side and vessels upto 25000 DWT in the rear side of the jetty can be berthed. The berth occupancy for 2006-07 in the front side and the rear side has been shown at 54% and 40.60% respectively. However, the berth occupancy for 2006-07 has been shown as 63.76% in the Actual Performance statement. It is not clear why different percentages have been arrived at in different statements. Kindly also elucidate how the cargo working hours, non-working hours and the berth occupancy have been arrived at vide Annexure-2 to Form-2A of the proposal.</p>	<p>The berth occupancy calculations for front and rear side for various vessel types are design calculations and do not indicate actual performance.</p> <p>The jetty can cater to the following tanker sizes Front Side: 50,000 DWT with provision for Post Panamax vessel of 85,000 DWT Rear Side: 25,000 DWT to 30,000 DWT</p> <p>Explanation for computation of berth occupancy Berth occupancy = Operating time + Non operating time (of vessel) Cargo Working hours= Total Operating time (time for discharge/loading) Non Working hours=Total available time-Total operating time.</p> <p>All times are logged by the terminal operator for every vessel from berthing time to sailing time and these records form the basis for this calculation.</p>																													
<p>(iii). Capacity should be calculated with reference to the designed parameters of the facility created/to be created in the relevant year and not based on the berth occupancy achieved/expected to be achieved. BPCL is, therefore, advised to review the capacity calculation and also furnish justification for each of the parameters assumed</p>	<p>Design capacity has been based on assumptions relating to tanker configuration for handling of FO, SKO, HSD and Naphtha in the following manner with full unloading and ullage availability</p> <ul style="list-style-type: none"> FO and SKO assumed to be handled in 25000 DWT tankers carrying 22,500 MT HSD and Naphtha assumed to be handled in 40000 DWT tankers carrying 36,000 MT <p>On completion of construction in 2001-02, the design throughput of the jetty as per the estimates of Engineers India Ltd is 3.069 M Tonnes, assuming service time per vessel of 34 hrs.</p> <table border="1" data-bbox="847 1368 1461 1525"> <thead> <tr> <th rowspan="2">Year</th> <th colspan="3">Throughput TMT</th> <th colspan="2">Tanker calls</th> </tr> <tr> <th>Proj Total</th> <th>In 40000 DWT tankers</th> <th>In 25000 DWT tankers</th> <th>40000 DWT</th> <th>25000 DWT</th> </tr> </thead> <tbody> <tr> <td>1999-00</td> <td>3469</td> <td>2306</td> <td>1163</td> <td>64</td> <td>51</td> </tr> <tr> <td>2001-02</td> <td>3069</td> <td>1895</td> <td>1174</td> <td>53</td> <td>52</td> </tr> <tr> <td>2006-07</td> <td>6582</td> <td>4349</td> <td>2233</td> <td>120</td> <td>99</td> </tr> </tbody> </table> <p>As can be seen the throughput calculations are influenced based on assumptions relating to traffic in terms of number of vessels. Changes in the actual vessel traffic characteristics, (which is the reality) vis-à-vis the assumptions impact the throughput of the facility.</p>	Year	Throughput TMT			Tanker calls		Proj Total	In 40000 DWT tankers	In 25000 DWT tankers	40000 DWT	25000 DWT	1999-00	3469	2306	1163	64	51	2001-02	3069	1895	1174	53	52	2006-07	6582	4349	2233	120	99
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<p>(iv).As per clause 2.9.11 of the revised guidelines, if the investment made is in accordance with the obligations under the concession agreement it will be considered for ROCE even if full capacity utilisation is not achieved. BPCL is therefore advised to review its compliance of obligations with reference to the concession agreement and confirm that it will be eligible for 100% return on capital</p>	<p>BPCL's investments are in compliance with the obligations under the concession agreement and are hence eligible for 100% return on capital employed.</p>																													

employed.											
C. TRAFFIC											
(i) The throughput of 2006-07 has been estimated at 3.006 M.T. as against the throughput of 3.326 M.T. of 2005-06. BPCL is requested to clarify why throughput in 2006-07 is lower by 9.62% as compared to the previous year. The throughput for 2007-08, 2008-09 and 2009-10 has been estimated at 4.099 M.T., 4.791 M.T. and 5.481 M.T. respectively. Although BPCL has furnished the basis with which item-wise traffic estimation has been carried out, it is requested to elaborate how the throughput is estimated to increase incrementally by 36.36%, 16.88% and 14.40% in the next three years especially when the tariff is proposed to be increased in the range of 35.4% to 150%.	<p><u>Reason for lower traffic in 2006-07</u></p> <p>Form 2A Annexure 1 provides explanation for the product wise changes in traffic in the column titled "Basis for projections".</p> <p><u>Traffic increase despite tariff increases</u></p> <p>Over 88%, 93% and 94% of the incremental traffic over previous year for the forecast years of 2007-08, 2008-09 and 2009-10 is contributed by Crude Oil, which is based on estimates of throughput for ONGC.</p> <p>In general, annual traffic growth for cargo other than crude oil for the forecast period has been estimated conservatively assuming impact of price increases at 4%, 1.3% and 1.4% higher over the respective years of 2006-07, 2007-08 and 2008-09.</p>										
(ii) In Form 3A, the traffic to be handled in 2006-07 and 2008-09 has not been indicated. Kindly confirm that the traffic estimated to be handled during 2006-07 and 2008-09 is 3,006,200 M.T and 4, 791,700 M.T. respectively.	<p>The total traffic estimated in MT is as follows:</p> <table border="1" data-bbox="847 898 1382 1061"> <thead> <tr> <th>Year</th> <th>Traffic</th> </tr> </thead> <tbody> <tr> <td>2006-07</td> <td>3,006,200</td> </tr> <tr> <td>2007-08</td> <td>4,099,700</td> </tr> <tr> <td>2008-09</td> <td>4,791,700</td> </tr> <tr> <td>2009-10</td> <td>5,481,700</td> </tr> </tbody> </table>	Year	Traffic	2006-07	3,006,200	2007-08	4,099,700	2008-09	4,791,700	2009-10	5,481,700
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2006-07	3,006,200										
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(iii) The estimated throughput to be handled at Liquid Terminal during 2006-07 has been furnished. Since the year is nearly coming to a close, kindly furnish the actual traffic till date handled during 2006-07 with the cargo break up.	Actual Traffic for 2006-07 is 2,96,0901MT.										
D. OPERATING INCOME											
(i). As per the license agreement entered into between BPCL and JNPT, BPCL has to follow the Scale of Rates of the JNPT till the rates are fixed by the TAMP. The current rates shown by BPCL do not tally with the rates shown in the SOR of JNPT vide Appendix VII to the License Agreement in respect of liquid cargo. JNPT had then provided for separate rates for imports and exports. It is seen that BPCL has shown the mean of import and export rates as the current rate for all the liquid cargoes. The relevant order under which a uniform rate for import and export has been introduced for the liquid cargoes may be indicated.	<p>At present the Scale of Rates at the BPCL facility is as per Appendix VII of the Licence Agreement. The "Current Rate" as shown in the proposed schedule of rates represents mean rates and is shown in this manner only for facilitation of comparison with proposed rates.</p> <p>BPCL proposes to charge a uniform rate for imports and exports and seeks approval of the tariff proposal to that effect</p>										
(ii). BPCL has also furnished the current and proposed rates for wharfage management, loading arm, pipeline charges, compressor, hard pigging, foam pigging, liquid nitrogen, BPC vaporizer, bunkering through pipeline and fresh water supply. It is not clear the order/orders under which the current rates for these services came into operation. BPCL is requested to	Not furnished.										

furnish the relevant Sections of the Schedule of Rates of JNPT under which the rates for these services have been prescribed.																																													
<p>(iii). A new rate towards facility management services has been proposed to be introduced. It is not clear whether the charges proposed are to be recovered from vessel owners or from importers/exporters. Full justification for introduction of this rate with cost details may be furnished.</p> <p>iv). BPCL has proposed increase in the current rates ranging from 34.54% to 66% in respect of the various services enumerated in Annexure 2. (In few cases, the increase proposed is as high as 150%). In respect of each of the services, BPCL is requested to justify the proposed increase with cost details.</p>	<p>The Facility Management charge is proposed to be levied per tonne of cargo handled at the facility. It would be levied on the providers of pipelines used to evacuate /transfer cargo at the berth. OR It would be levied on cargo owners viz importers/exporters. Rationale for the proposed facility management charge has been explained earlier.</p> <p>All cost details have been provided in the tariff proposal. All capital costs have been allocated across services based on specificity of facilities in respect of services provided. Only operating costs of a direct nature are attributed to respective services while all overheads of a general and administrative nature have been included under facility management. The proposed tariff increase is in line with the need to generate an adequate return on capital employed. In fact even after the proposed tariff increase the terminal facility will continue to have a substantial deficit in ROCE.</p>																																												
<p>(v). One of the reasons adduced by BPCL for increase in the rates is to attract high discharge cargoes through competitive rate offerings. The BPCL is to clarify how this objective can be achieved by increasing the rates by 35% to 150%.</p>	<p>The proposed tariff increases do not militate against the principle of attracting high discharge cargo. Tariff lines contributing over 90% revenues are expected to increase between 5% and 34% and even after such increases it remains competitive vis-a- vis other ports.</p>																																												
<p>(vi) 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.</p>	<p>The total additional revenue arising to the liquid cargo jetty on account of the proposed tariff increase is detailed as follows:</p> <p style="text-align: right;">Rs.in lakhs.</p> <table border="1" data-bbox="847 1391 1461 1720"> <thead> <tr> <th>Service</th> <th>2007-08</th> <th>2008-09</th> <th>2009-10</th> </tr> </thead> <tbody> <tr> <td>Wharfage</td> <td>574.92</td> <td>644.71</td> <td>714.21</td> </tr> <tr> <td>Facility management</td> <td>102.49</td> <td>119.79</td> <td>137.04</td> </tr> <tr> <td>Wharfage management & Loading arm charges</td> <td>119.57</td> <td>121.33</td> <td>122.98</td> </tr> <tr> <td>Pipeline</td> <td>3.50</td> <td>3.54</td> <td>3.59</td> </tr> <tr> <td>Compressor</td> <td>2.50</td> <td>2.53</td> <td>2.56</td> </tr> <tr> <td>Pigging</td> <td>0.58</td> <td>0.59</td> <td>0.60</td> </tr> <tr> <td>Vaporiser</td> <td>0.28</td> <td>0.30</td> <td>0.30</td> </tr> <tr> <td>Nitrogen Revenues</td> <td>0.70</td> <td>0.70</td> <td>0.70</td> </tr> <tr> <td>Bunkering</td> <td>0.08</td> <td>0.08</td> <td>0.08</td> </tr> <tr> <td>TOTAL</td> <td>804.62</td> <td>893.58</td> <td>982.06</td> </tr> </tbody> </table>	Service	2007-08	2008-09	2009-10	Wharfage	574.92	644.71	714.21	Facility management	102.49	119.79	137.04	Wharfage management & Loading arm charges	119.57	121.33	122.98	Pipeline	3.50	3.54	3.59	Compressor	2.50	2.53	2.56	Pigging	0.58	0.59	0.60	Vaporiser	0.28	0.30	0.30	Nitrogen Revenues	0.70	0.70	0.70	Bunkering	0.08	0.08	0.08	TOTAL	804.62	893.58	982.06
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<p>(vii). The licence agreement permits BPCL to offer preferential treatment in the matter of berthing of its own ships and that of the oil industry. Whether such preferential treatments are offered and whether any additional charges are levied therefor may please be furnished.</p>	<p>The proposed repairs and maintenance expenditure are as follows:</p> <p style="text-align: right;">Rs.in lakhs.</p> <table border="1" data-bbox="847 1816 1445 2018"> <thead> <tr> <th>Services</th> <th>2006-07</th> <th>2007-08</th> </tr> </thead> <tbody> <tr> <td>Preventive maintenance</td> <td>34.60</td> <td>36.35</td> </tr> <tr> <td>Spares</td> <td>112.35</td> <td>31.82</td> </tr> <tr> <td>Breakdown repair</td> <td>34.05</td> <td>20.56</td> </tr> <tr> <td>Consumables</td> <td>49.30</td> <td>24.32</td> </tr> <tr> <td>Civil Mechanical and</td> <td>28.00</td> <td>10.40</td> </tr> <tr> <td>TOTAL</td> <td>258.30</td> <td>123.45</td> </tr> </tbody> </table>	Services	2006-07	2007-08	Preventive maintenance	34.60	36.35	Spares	112.35	31.82	Breakdown repair	34.05	20.56	Consumables	49.30	24.32	Civil Mechanical and	28.00	10.40	TOTAL	258.30	123.45																							
Services	2006-07	2007-08																																											
Preventive maintenance	34.60	36.35																																											
Spares	112.35	31.82																																											
Breakdown repair	34.05	20.56																																											
Consumables	49.30	24.32																																											
Civil Mechanical and	28.00	10.40																																											
TOTAL	258.30	123.45																																											

	TOTAL	258.30	123.45												
(ii). In Form 3B, BPCL has shown the repairs and maintenance expenditure for 2005-06 as Rs.7.56 lakhs. This expenditure is estimated at Rs.258.30 lakhs, Rs.123.45 lakhs, Rs.129.62 lakhs and Rs.136.10 lakhs respectively for the years 2006-07 to 2009-10. The basis of estimating the repairs and maintenance expenditure may be explained. Further, why the expenditure subsequent to 2005-06 increases drastically may kindly be explained. 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 2006-07 is 4.5%. Kindly carry out the requisite amendments to the expenditure projections.	The repairs and maintenance expenditure upto 2005-06 is based on actual expenditure incurred by BPCL. Specific estimates of expenditure have been made and budgeted for 2006-07 which includes several one time expenses. For the forecast period from 2007-08 to 2009-10, the repairs and maintenance expenses have been normalised by excluding the one time expenses. The item wise break up of this expenditure is furnished.														
(iii). Perhaps the repairs and maintenance expenditure has been wrongly stated as maintenance dredging expenditure in Form 3A. BPCL is requested to recheck and clarify.	Yes. The expenses stated are repairs and maintenance and not maintenance dredging expenses.														
(iv). Apart from repairs and maintenance cost mentioned in (i) above, BPCL has estimated jetty operation and maintenance cost of Rs.51.57 lakhs, Rs.54.15 lakhs, Rs.56.86 lakhs and Rs.59.70 lakhs for 2006-07 to 2009-10 respectively. How the later cost differs from the former may please be explained.	The jetty operation and maintenance cost represents the amount payable to Indian Oil Tanking Limited (IOTL), in connection with an agreement entered into by them for the operations and maintenance of the jetty. As per the agreement entered on 11 March 2006 and valid till 10 March 2007, the total annual amount payable to IOTL is Rs 51,57,000. For the forecast years of 2007-08, 2008-09 and 2009-10, we have assumed an annual increase of 5% for each of the years														
(v). Rs.13.06 lakhs have been shown as pipeline way leave charges for 2006-07. For the next three years, this expenditure is estimated at Rs.6.53 lakhs per annum. Why the expenditure for 2006-07 has been kept at a higher level may be explained.	The pipeline way leave charges are proposed to be paid to JNPT as per a demand notice received from them. The expenses have been estimated on the basis of actual details received from JNPT.														
(vi). Details of the expenditure on environment management cost may be furnished. This expenditure for 2006-07 is kept at Rs.27.85 lakhs and for the next three years, estimated around Rs.5 lakhs per annum. The reasons for the higher expenditure in the current year may please be explained.	Environment management costs are payable to JNPT. However BPCL has not yet made any payments. It has been estimated that all prior period expenses plus current expenses i.e. upto 2006-07 will be paid in 2006-07. Accordingly the estimate for 2006-07 is higher at Rs 27,84,738 and this comprises payments for the following periods:														
	<table border="1"> <thead> <tr> <th>Year</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>2002-03</td> <td>Rs 505,248</td> </tr> <tr> <td>2003-04</td> <td>Rs 527,740</td> </tr> <tr> <td>2004-05</td> <td>Rs 550,584</td> </tr> <tr> <td>2005-06</td> <td>Rs 660,023</td> </tr> <tr> <td>TOTAL</td> <td>Rs 27,84,738</td> </tr> </tbody> </table>	Year	Amount	2002-03	Rs 505,248	2003-04	Rs 527,740	2004-05	Rs 550,584	2005-06	Rs 660,023	TOTAL	Rs 27,84,738		
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TOTAL	Rs 27,84,738														

<p>(vii). BPCL has shown the royalty payment made to JNPT of Rs.592.80 lakhs, Rs.677.71 lakhs, and Rs.587.45 lakhs as expenditure for the years 2004-05 to 2006-07. Royalty payment to be made to JNPT for the years 2007-08 to 2009 -10 has been estimated at Rs.691.13 lakhs, Rs.749.86 lakhs and Rs.808.23 lakhs under the existing tariff level. As per clause 2.8.1 of the revised tariff guidelines where the bidding process was finalized before 29 July 2003, the tariff computation will take into account royalty payment as cost for tariff fixation in such a manner as to avoid likely loss to the operator on account of the royalty payment not being taken into account, subject to maximum of the amount quoted by the next lowest bidder. This would however be allowed for the period upto which such likely loss will arise. BPCL to explain the loss that may be incurred if the royalty payment is not taken into account for tariff computation. Further, if BPCL would run into loss then, it is necessary to ascertain the period upto which such loss is likely to continue.</p>	<p>The concession agreement for the terminal has been signed prior to July 2003. BPCL as a terminal operator is not generating sufficient surpluses from operations of the terminal at the existing tariff levels. Even at the revised tariff levels the surpluses would be less than the allowed ROCE assuming that the revenue share is treated as a cost for tariff fixation purposes. If such revenue share were not to be allowed as a cost for tariff fixation purposes then the losses on account of such revenue share would be the equivalent amounts of royalty payable for such period that the revenue share is not allowed and will result in increase in the extent of deficit in relation to the allowed ROCE.</p>
<p>(viii). Rs.79.06 lakhs, Rs.84.58 lakhs, Rs.128.12 lakhs, Rs.191.43 lakhs, Rs.123.28 lakhs and Rs.127.34 lakhs have been shown as expenditure towards technical service fee for the years 2004-05 to 2009-10. As per clause 2.8.2 of the revised tariff guidelines, the technical service fee payable by the private terminals to their promoters or to their associated entity (as defined under section 92 (A) of the Income Tax Act), will not be considered as an admissible item of cost for tariff purposes if its reasonableness is not established applying the yardstick of 'arms length relationship'. The BPCL is therefore requested to furnish details of the payments made and estimated to be made under the head 'technical service fee' along with the copy of the income tax assessment order for establishing the reasonability of technical service fee payable based on 'arms length relationship.'</p>	<p>The amounts mentioned represent other expenses included within operating costs and not technical service fee payable. No technical service fee is payable by BPCL.</p>
<p>(ix) The break up of management and general overheads may please be furnished. The expenditure under this head has come down to Rs.42.77 lakhs in 2006-07 from Rs.47.48 lakhs of the previous year. For the years 2007-08 to 2009-10 the expenditure has been mentioned at Rs.44.23 lakhs, Rs.46.28 lakhs and Rs.48.44 lakhs respectively. The basis adopted for estimating the expenditure for the ensuing three years may be furnished.</p>	<p>Management and general overheads comprise of expenses such as employee costs, administrative expenses such as travel, rent, communication costs etc. These are incurred for the overall management of the jetty and hence have been included as general and administrative overheads. Projections for these expenses have been assumed @ 5% yearly. The historical changes in annual overhead costs are not material and relate to changes with respect to costs of specific employees of BPCL deputed to the facility from time to time.</p>

	The break up of management and general overheads along with method of estimation is furnished .
(x). Lease agreement states that BPCL has to pay the lease rental for 20 hectares of area required for siting tank farm area and pipeline routing. No expenditure however has been shown as incurred by BPCL towards lease rental. BPCL is requested to confirm that no lease rental charges are payable to JNPT under the concession agreement.	The possession of the said Land has not been taken so far.
(xi). The total preliminary expenses if any, with break up may be furnished and the treatment given to this element in the cost statement may be explained.	No preliminary expenses pertain to the jetty.
(xii). The BPCL at its own cost has to provide for insurance cover for various risks as per the license agreement. The expenditure incurred thereon has been indicated at around Rs.5 lakhs per annum. A copy of the agreement entered with the insurance company (ies) may be furnished.	A copy of the Insurance agreement will be furnished.
(xiii). The license agreement makes it obligatory on the part of BPCL to operate all associated facilities and cargo handling equipment at the terminal and also the facilities and equipment at the Tank Farm Area including handling and storage of Class A, Class B and Class C liquids. The expenditure, if any, incurred by BPCL in the infrastructure development of the Tank Farm Area and the recurring expenditure, if any, thereon may be furnished. The income received/receivable by BPCL from the services provided at the Tank Farm Area also may be furnished.	BPCL has not put up any Tank farm so far, and therefore no income has been received.
(xiv). For some of the services, BPCL might have entered into some outsourcing arrangements. If it has, kindly furnish those details along with the copies of the agreements entered into.	For operations and maintenance of the jetty an agreement has been entered into with Indian Oil Tanking Limited. A copy of the agreement is furnished.
(xv). The license agreement states that BPCL has to share the expenditure on deployment of CISF staff with JNPT at a predetermined ratio and additional security arrangements, if so required, can be made by BPCL at its cost. The deployment details of security personnel may be furnished. CISF expenditure upto 2006-07 has been shown as nil and it has been estimated at Rs.96 lakhs for 2007-08. The expenditure has been estimated	Annual CISF expenditure incurred by JNPT is approximately Rs 120 lakhs. This amount is to be shared in a certain proportion by BPCL however the basis for the allocation has not been finalised. Accordingly it has been estimated that 20% (i.e. Rs 24 lakhs) of the total CISF expenditure would be borne by BPCL. Since payments are to be made since 2004-05, the CISF expense for 2007-08 includes amounts payable for a period of 4 years starting from 2004-05. Hence the amount for 2007-

at Rs.24 lakhs each for 2008-09 and 2009-10. It is not clear why wide variation exists in this head of expenditure. Kindly clarify.	08 has been shown at Rs 96 lakhs.
F. CAPITAL EMPLOYED	
(i). The fixed assets have been shown under 4 categories, viz., (i) plant and machinery, (ii) buildings, sheds and other structures (iii) furniture and fixtures and (iv) others. Kindly furnish the full details such as category wise number of item procured, cost per item, date of commissioning etc. of the investments made till date.	The detailed list of fixed assets has been submitted.
(ii). As per the license agreement, the BPCL is expected to undertake the requisite initial capital dredging. BPCL is requested to state whether it undertook any initial capital dredging and if so, the cost thereof. If initial capital dredging has been undertaken, BPCL is requested to state under which category of the fixed assets referred to in para (i) above that expenditure has been grouped.	Initial Capital Dredging at the cost of Rs.28 crores has been undertaken by BPCL. It has been grouped under "Building" category, sub group "Jetty & Approach Trestle"
(iii). 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.	BPCL confirms that only those assets which have been fully commissioned and are in use have been included in the net block.
(iv). No working capital has been assumed by BPCL in the cost statements. BPCL is advised that clause 2.9.9 of the revised tariff guidelines specifies the limit upto which balances of sundry debtors, inventory and cash balances can be considered for computing working capital and return thereon. BPCL is advised to review its workings afresh.	A review of the operations of the jetty indicates that no working capital is required by the facility as all dealings are done without any credit period. Accordingly we have assumed nil working capital requirements for the facility.
(v). With reference to the 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.	Not submitted.
(vi). Please confirm whether the fixed assets as on 31.3.2006 and additions proposed during 2007-08 are in accordance with the License Agreement entered into between JNPT and BPCL. Also kindly confirm that the level of investment made is in line with the License Agreement.	The license agreement does not stipulate any levels of investment. The proposed investments are normal capital expenditure associated with such facilities.
(vii). The capital employed has been shown in form 4A as Rs.10, 815.39 lakhs, Rs.10, 623.30 lakhs, Rs.9919.44 lakhs and Rs.9215.82 lakhs for the years 2006-07 to 2009-10 respectively. The capital employed allocated to various activities like wharfage, wharfage management and loading arm charges, pipeline compressor pigging, vapourizer and nitrogen	The capital employed has been allocated to each activity.

<p>revenues aggregate respectively to Rs.10375.08 lakhs, Rs.10211.19, Rs.9535.42 lakhs and Rs.8859.65 for the years 2006-07 to 2009-10. BPCL is requested to clarify to which activities the difference in the capital employed amounting to Rs.440.31 lakhs, Rs.412.11 lakhs, Rs.384.02 lakhs and Rs.356.17 lakhs respectively have been allocated. BPCL is requested to furnish activity-wise statements, the totals of which tally with figures furnished in the main statement.</p>	
<p>(viii). The return at 15%/6.35% on capital employed has been shown at Sr.No.XI of Form 3A as -0.91% for 2006-07 and at the existing tariff level as 2.72%, 5.53% and 8.10% for 2007-08 to 2009-10. At the proposed tariff level, the ROCE is shown as 8.24%, 11.38% and 16.06% for the years 2007-08 to 2009-10. The methodology adopted for arriving at the ROCE after adjustment of capacity utilisation may please be explained.</p>	<p>No adjustments have been made for capacity utilisation as the facility is operating at a capacity higher than 60%.</p>
<p>(ix). BPCL has shown the ROCE as a percentage of surpluses before interest and taxes upon capital employed. The basis adopted by BPCL varies from the formula prescribed by this Authority. As per the revised tariff guidelines in the cost plus approach the terminal operator is entitled for a return of 15% per annum on business assets, 6.35% on the business related assets and nil % on social obligation assets. BPCL is advised to prepare the cost statements as per the prescribed format in this respect.</p>	<p>In calculation of ROCE, we have considered only business assets as business related assets and social obligation assets in case of BPCL are Nil. In accordance with the formula prescribed by the authority, a return of 15% is permitted on business assets; accordingly we have considered the same in our ROCE calculation.</p> <p>Form 5B (ii) for each of the services has been updated to reflect this position, Form 4A already reflects the position that the terminal has only business assets which are considered for ROCE.</p>
<p>(x). As per the Form 4-B, Oil spill response facilities are to be increased in 2007-08 by Rs.5 crores. Please state whether investment decision in this respect has already been taken and whether the work is in progress. Kindly confirm that this facility will be commissioned in 2007-08. Reduction in unit operating costs or improvement in operational efficiency, if any, on account of the proposed additions to the gross block may be indicated.</p>	<p>Investment Decision has been taken. However, approval has been given by BPCL Board by phasing these expenses over next 3 years.</p>
<p>(xi). Clause 2.9.6 of the revised tariff guidelines stipulates that project/feasibility report relied upon by Government, financial institutions and BPCL will be relied upon for assessment of reasonableness of fresh investments made/proposed for creation of capacity. Please furnish a copy of such project/feasibility report.</p>	<p>A copy of the Feasibility report has been submitted.</p>
<p>(xii). As per the license agreement, BPCL has to provide the minimum standard facilities as set out in Appendix 1 to the license agreement. The license agreement also permits BPCL to make improvements of the licensed premises as may be necessary for</p>	<p>Instead of furnishing the additional facilities provided, BPCL has submitted the details of investment made by it and IOCL for creating the jetty as under:</p>

efficient use and also to provide better associated facilities to improve upon the safety and integrity of the operations. The additional facilities, if any, provided by BPCL at the terminal may please be indicated with cost details.	Sr. No.	Assets created	Rs.in crore.
	1.	Jetty and approach trestle.	94.48
	2.	Furniture and fixtures	48.38
	3.	Others	0.44
	TOTAL		143.30
G. SCALE OF RATES			
(i). Concessional tariff for coastal cargoes, as per the policy directions of the Government specified under Clause 4.3 of the revised tariff guidelines may be prescribed for cargoes other than POL including crude oil.	Accepted.		
(ii). 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, (iii) 2.16.1 to 2.16.3, (iv) 2.18.1 to 2.18.4, (v) 4.5 and (vi) 5.8.1 of the revised tariff guidelines.	The clauses as suggested by TAMP will be incorporated in the scale of rates as considered relevant for terminal operations		
(iii). BPCL has formulated the proposed Scale of Rates by considering an increase in the range of 34.54% to 150% over the existing tariff. The additional services/facilities proposed to be provided to the users and the benefit of productivity improvements accruing to users justifying this hike may be listed out.	The hike in tariff is to provide sufficient surpluses to sustain and maintain the level of services being provided as also to improve safety and environmental measures.		
(iv). 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 BPCL.	The clause as suggested by TAMP will be incorporated in the scale of rates as considered relevant for terminal operations.		
(v). A conditionality should also be incorporated in the SOR to specify that in case a vessel idles due to non-availability or breakdown of the shore based facilities of BPCL or any other reasons attributable to BPCL, rebate equivalent to berth hire charges payable to JNPT accrued during the period of idling of vessel shall be allowed by the BPCL.	Our ROCE Proposal does not include such an eventuality. If this has to be included, then upward revision in proposed Tariffs will have to be made. However, this practice is not being followed in other ports.		

7. BPCL was advised to make a presentation on 20 February 2007. On 20 February 2007, BPCL requested us to reschedule the date of presentation to 16 March 2007. While acceding to the request, BPCL was informed vide our letter dated 21 February 2007 that if the issue is delayed any further for want of its active participation, this Authority will be compelled to notify that the levy of tariff at the jetty does not have the authorization required under the MPT Act, 1963.

8.1. BPCL made a presentation of its proposal on 16 March 2007 when representatives of JNPT were also present. Based on the decisions taken at the meeting, a letter was issued on 22 March 2007 to BPCL (copy endorsed to JNPT) seeking additional clarifications. The clarifications sought and the BPCL's reply thereto received on 26 April 2007 is juxtaposed below:

Sl. No	Queries raised by us	Reply received from BPCL
1.	BPCL stated that the jetty was built jointly by BPCL and IOCL (Indian Oil Corporation Ltd.) sharing cost equally and hence only 50% of the	The concession agreement between BPCL and JNPT does not have direct references to the issue on ownership of assets located at the liquid cargo jetty. However certain clauses that provide indirect

	<p>value of the asset created is appearing in its books of accounts. Chairman, TAMP desired to know whether the entire value of the asset jointly created by BPCL and IOCL should be considered for revision of the tariff or whether only 50% thereof as appearing in the books of accounts of BPCL should be considered. The representative of the JNPT felt that the contribution made by IOCL should be treated as a grant to BPCL and only the asset value appearing in the books of BPCL should be considered for tariff fixation.</p>	<p>references to the issue have been noted. These have been explained as follows:</p> <ol style="list-style-type: none"> 1. Role of licensee- Article -2 Clause 2.1 and Clause 2.2 list out the grant of license and licensee's obligations under the license. It defines the role of the licensee to broadly cover provision of facilities at the terminal. 2. Clause 5.1 (e) reads as "make available all necessary resources including capital investment for construction of the Terminal." This implies own resources or otherwise. 3. Ownership of assets- Clause No 6.1.2 and 6.2 establish the rules of ownership of asset by licensee. 4. Clause 10.8 mentions "assumptions underlying computation of compensation". This clause states that termination payments referring to depreciated costs require reference to statement of costs by an Independent Chartered Accountant and not the books of licensee. <p>While the agreement contemplates the ownership of the assets to be with the licensee, it recognises possibility of encumbrances. The agreement is silent on leasing as a form of ownership as also joint ownership of assets. Termination payments require references, not to licensee's books of accounts, but an independent statement of a Chartered Accountant reflecting that ascertainment of cost of assets that will be taken over irrespective of ownership is an important determinant for termination payments where such references are required.</p> <p>The agreement with IOC requires sharing of depreciation, other costs and revenues in equal proportion. Thus it does not tantamount to a subsidy/grant to BPCL. The joint ownership arrangement is akin to an equity arrangement in the absence of an SPV undertaking in this project. Since termination payments which reference asset value would consider assets as a whole unmindful of the ownership split, return for tariff computation would also be on the same principle. Hence the total costs of the assets may be considered for Tariff setting as would be the case incase of termination payments that are based on depreciated replacement costs.</p>
2.	<p>BPCL informed that they have not assessed independently the design capacity of the jetty and the capacity calculation firmed up by the Engineers India Ltd. in December 1998 has been relied upon by them. BPCL is requested to get the capacity of the jetty assessed and a certification thereto submitted to this Authority at an early date.</p>	<p>A management representation to the effect that capacity is 5.5million MT is provided which is also what is stated by JNPT on its website. An appropriate certification of capacity will be furnished in due course.</p>

3.	<p>By letter dated 12 January 2007 BPCL was inter alia requested to furnish the relevant sections of the Schedule of Rates of JNPT under which the current and proposed rates for wharfage management, loading arm, pipeline charges, bunkering through pipelines, compressor, hard pigging, foam pigging, liquid nitrogen and fresh water supply are being levied. At the time of the presentation BPCL informed that for some of the services rendered by them to the trade presently the rates have not been approved by TAMP. In this connection, Chairman, TAMP stated that if any undue profit has been derived by the BPCL, it will have to be set off while revising the tariff. BPCL is requested to furnish a list of such services rendered to the trade and the rates levied therefore since commencement of the jetty operations.</p>	<p>A schedule of these rates has been submitted. The details of the services provided and the rates levied therefor which have not been approved by TAMP are as under:</p> <table border="1" data-bbox="802 434 1358 1003"> <tr> <td>I</td> <td>Wharfage Management</td> <td>Rs per MT</td> <td>2</td> </tr> <tr> <td>II</td> <td>Loading Arm</td> <td>Rs per MT</td> <td>2</td> </tr> <tr> <td>III</td> <td>Pipeline charges</td> <td>Rs per MT</td> <td>22</td> </tr> <tr> <td>IV</td> <td>Compressor</td> <td>Rs per Hour</td> <td>1,500</td> </tr> <tr> <td>V</td> <td>Hard Pigging</td> <td>Rs per operation</td> <td>14,500</td> </tr> <tr> <td>VI</td> <td>Foam Pigging</td> <td>Rs per operation</td> <td>10,000</td> </tr> <tr> <td>VII</td> <td>Liquid Nitrogen</td> <td>Rs per MT</td> <td>13,000</td> </tr> <tr> <td>VIII</td> <td>BPC Vaporiser</td> <td>Rs per operation</td> <td>4,750</td> </tr> <tr> <td>IX</td> <td>Bunkering services through Pipeline</td> <td>Rs per MT</td> <td>25</td> </tr> <tr> <td>X</td> <td>Fresh water-Coastal vessels</td> <td>Rs per MT</td> <td>94.35</td> </tr> <tr> <td>XI</td> <td>Fresh water-Foreign vessels (\$)</td> <td>US \$ per MT</td> <td>3.6</td> </tr> </table>	I	Wharfage Management	Rs per MT	2	II	Loading Arm	Rs per MT	2	III	Pipeline charges	Rs per MT	22	IV	Compressor	Rs per Hour	1,500	V	Hard Pigging	Rs per operation	14,500	VI	Foam Pigging	Rs per operation	10,000	VII	Liquid Nitrogen	Rs per MT	13,000	VIII	BPC Vaporiser	Rs per operation	4,750	IX	Bunkering services through Pipeline	Rs per MT	25	X	Fresh water-Coastal vessels	Rs per MT	94.35	XI	Fresh water-Foreign vessels (\$)	US \$ per MT	3.6
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4.	<p>BPCL stated that additional aggregate throughput of 1 million, 1.65 million and 2.30 million tones of crude is expected to be handled during 2007-08, 2008-09 and 2009-10 respectively by ONGC and Reliance Industries Limited. The proposal of BPCL is being forwarded for the comments of ONGC and Reliance Industries Ltd.</p>	<p>The additional aggregate throughput of crude oil is expected to be handled by ONGC only.</p>																																												
5.	<p>BPCL has proposed a new tariff (Facility Management Charge) of Rs.2.50 per metric tone to be levied on the providers of pipelines used to evacuate/transfer cargo at berth. A doubt cropped up as to whether the expenditure normally to be borne by cargo interest is being shifted to the pipeline providers by the introduction of this tariff. BPCL is requested to furnish (i) the composition of expenditure clubbed under the activity Facility Management Service and (ii) a statement showing the party wise throughput handled during the last 5 years.</p>	<p>A detailed break up of the expenses allocated to facility management charge has been provided. The major items are-</p> <table border="1" data-bbox="786 1509 1342 2022"> <thead> <tr> <th>Sr.No.</th> <th>Items</th> </tr> </thead> <tbody> <tr><td>1.</td><td>Equipment Running Costs</td></tr> <tr><td>2.</td><td>Depreciation</td></tr> <tr><td>3.</td><td>Repairs & Maintenance Expenses</td></tr> <tr><td>4.</td><td>Insurance</td></tr> <tr><td>5.</td><td>CISF expenses</td></tr> <tr><td>6.</td><td>Electricity</td></tr> <tr><td>7.</td><td>Jetty Operations & Maintenance Cost</td></tr> <tr><td>8.</td><td>Employee Costs</td></tr> <tr><td>9.</td><td>Travel Costs</td></tr> <tr><td>10.</td><td>Rent</td></tr> <tr><td>11.</td><td>Communication</td></tr> <tr><td>12.</td><td>Courier / Postal</td></tr> <tr><td>13.</td><td>Printing & Stationery</td></tr> <tr><td>14.</td><td>Inspection fees</td></tr> <tr><td>15.</td><td>Legal expenses</td></tr> <tr><td>16.</td><td>Vehicle on Hire</td></tr> <tr><td>17.</td><td>Bank Guarantee charges</td></tr> </tbody> </table>	Sr.No.	Items	1.	Equipment Running Costs	2.	Depreciation	3.	Repairs & Maintenance Expenses	4.	Insurance	5.	CISF expenses	6.	Electricity	7.	Jetty Operations & Maintenance Cost	8.	Employee Costs	9.	Travel Costs	10.	Rent	11.	Communication	12.	Courier / Postal	13.	Printing & Stationery	14.	Inspection fees	15.	Legal expenses	16.	Vehicle on Hire	17.	Bank Guarantee charges								
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		A list of the major party wise throughput handled since commencement of operations by BPCL is provided.
6.	BPCL is requested to state (i) whether the concession agreement provides for treatment of the royalty and (ii) whether the exclusion of royalty from cost would run into loss and if yes, the period, upto which such loss is likely to continue.	<p>The computation of the Return on capital employed accruing to the jetty has been calculated by both including and excluding royalty payments as an allowable cost. This computation has been submitted.</p> <p>The relevant clause 2.8.1 of the tariff guidelines is not applicable to the jetty's operations on account of the following reasons:</p> <ul style="list-style-type: none"> • The concession agreement does not provide for the treatment of royalty. • The proposal to develop the liquid cargo terminal was signed prior to 2003; and • The award to BPCL was on a non compete basis at the behest of the Government to manage the traffic congestion at Mumbai. <p>Hence royalty should be allowed as a pass through cost in the ROCE computation for the jetty.</p>
7.	BPCL has confirmed at one place (Sr.No.xi under operating cost) that it has not taken possession of the 20 hectares of land required for sitting tank farm area and pipeline routing. However, at another place (Sr.No.iv under General '), BPCL has stated that the land has been taken from JNPT. BPCL to furnish the correct position in this respect.	At Sr No (xi) it has been correctly stated as the possession of land has not been taken by BPCL. The response provided at Sr No (iv) has been incorrectly stated.
8.	BPCL was requested to furnish documentary evidence in respect of the capital value of various assets commissioned. Although in Annexure 4, a list of assets has been submitted, BPCL is yet to furnish the documentary evidence in this regard.	<p>BPCL, a Govt. of India Undertaking, is subject to statutory audit under the provisions of Companies Act 1956 every year. In addition to the above audit, BPCL, being a Government Company is also subject to audit and review of audit by Government Auditors (office of the CAG of India) under the provisions of Companies Act.</p> <p>Therefore all the assets capitalized by the company in its books (which also includes the assets at JNPT) have been audited as part of the audit process by the Statutory and the Government Auditors.</p>
9.	BPCL was requested to furnish the allocation details of capital employed to various activities and sub-activities and ensure the tally of the allocated activity wise capital employed with the	The activity wise capital employed has been provided. Further the differences have been reconciled in Form 4A of the proposal and a copy of the revised proposal has been submitted.

	aggregate capital employed shown in the main statement. BPCL was also requested to reconcile the difference in the capital employed shown in the main statement and activity wise statements. The Annexure 5 enclosed although mentions about the additional revenue arising to the liquid cargo jetty on account of the proposed tariff increase, it contains some figures on capital employed. Since the details furnished are not sufficient, BPCL is requested to recast Form 4A and submit a tallied statement to this Authority.																																																	
10.	BPCL is once again requested to furnish the additional revenue that would be generated on account of the proposed tariff.	<p>The additional revenue arising to the liquid cargo jetty on account of the proposed tariff increase is as follows:</p> <table border="1"> <thead> <tr> <th colspan="4" style="text-align: right;">Rs.in lakhs.</th> </tr> <tr> <th>Service</th> <th>2007-08</th> <th>2008-09</th> <th>2009-10</th> </tr> </thead> <tbody> <tr> <td>Wharfage</td> <td>574.92</td> <td>644.71</td> <td>714.21</td> </tr> <tr> <td>Facility management</td> <td>102.49</td> <td>119.79</td> <td>137.04</td> </tr> <tr> <td>Wharfage management & Loading arm charges</td> <td>119.57</td> <td>121.33</td> <td>122.98</td> </tr> <tr> <td>Pipeline</td> <td>3.50</td> <td>3.54</td> <td>3.59</td> </tr> <tr> <td>Compressor</td> <td>2.50</td> <td>2.53</td> <td>2.56</td> </tr> <tr> <td>Pigging</td> <td>0.58</td> <td>0.59</td> <td>0.60</td> </tr> <tr> <td>Vaporiser</td> <td>0.28</td> <td>0.30</td> <td>0.30</td> </tr> <tr> <td>Nitrogen Revenues</td> <td>0.70</td> <td>0.70</td> <td>0.70</td> </tr> <tr> <td>Bunkering</td> <td>0.08</td> <td>0.08</td> <td>0.08</td> </tr> <tr> <td>TOTAL</td> <td>804.62</td> <td>893.58</td> <td>982.06</td> </tr> </tbody> </table>	Rs.in lakhs.				Service	2007-08	2008-09	2009-10	Wharfage	574.92	644.71	714.21	Facility management	102.49	119.79	137.04	Wharfage management & Loading arm charges	119.57	121.33	122.98	Pipeline	3.50	3.54	3.59	Compressor	2.50	2.53	2.56	Pigging	0.58	0.59	0.60	Vaporiser	0.28	0.30	0.30	Nitrogen Revenues	0.70	0.70	0.70	Bunkering	0.08	0.08	0.08	TOTAL	804.62	893.58	982.06
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11.	BPCL is requested to furnish the full details of the items of expenditure included under the head "other expenses".	The details of the expense items included under the head "other expenses" has been submitted.																																																
12.	Although BPCL has stated that a copy of the insurance agreement has been furnished, this Authority has not received the same. BPCL is requested to submit a copy of the agreement.	A copy of the Insurance Agreement has been submitted.																																																
13.	BPCL is also requested to furnish the cost statements in the prescribed format (i) for the years 2002-03 to 2006-07 based on the actuals and (ii) for the years 2007-08 to 2009-10 based on the cargo projections and the income expenditure estimates.	The cost statements detailing actual expenses from the year 2002-03 till 2005-06 and projected expenses from 2006-07 (estimates for 2006-07 based on 10 month actuals and 2 months estimates) to 2009-10 is submitted.																																																

8.2. On the points addressed to BPCL and copy endorsed to JNPT the JNPT has furnished its views as under:

- (i). Generally, the entire assets value should be considered for the purpose of ROCE, with entire income and expenditure also being considered. However, we shall offer our final comments after perusing the opinion of CRISIL and comments of BPCL.
- (ii). Regarding the Facility Management charge, the doubt raised by TAMP is valid. This is more so because BPCL has brought out in their proposal that they themselves had considered recovery through wharfage. From their submission it is, however, seen that they feel it may lead to disproportionate increase in wharfage and loss of traffic can not be ruled out. The facility management charge can be considered provided all the tank farm operators agree to the same and also agree not to pass on to the ultimate customer. Otherwise it will defeat the purpose. TAMP may also advise whether this charge would fall under wharfage charges for the purpose of Royalty to JNPT. The agreement with BPCL defines wharfage charges as charges for import/export of liquid cargo to be handled at the berth as specified in the scale of rates.

8.3. As decided at the meeting held on 16 March 2007 ONGC and Reliance were addressed on 22 March 2007 to furnish their comments, if any, on the BPCL's proposal. Reliance in their reply dated 2 April 2007 stated that they agree with their Association's (JNPTLCBUA) comments in this regard. ONGC submitted a written statement in this respect on 8 May 2007 at the time of the joint hearing.

8.4. A letter was addressed to Ministry of Shipping, Road Transport & Highways on 22 March 2007 seeking clarification on the treatment of royalty in this case where the BOT agreement has been signed prior to July 2003 on a nomination basis and there is no other bid available for the purpose of comparison of the rates quoted by the next lower bidder. No reply has been received till date.

9.1 A joint hearing was held on 8 May 2007. At the request of Indian Merchant Chamber (IMC), a copy of the proposal was once again provided to them at the joint hearing to enable them to make written submissions, if any. IMC has not submitted any comments till date.

10. 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 will also be made available at our website <http://tariffauthority.gov.in>

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

- (i). BPCL commenced its commercial operation in February 2002. As per the license agreement, for the services provided by BPCL, JNPT should fix the tariffs as per the GOI notification or as directed by Tariff Authority for Major Ports, whichever is applicable. Neither the BPCL nor JNPT approached this Authority till January 2006 for fixing the tariff for the services being provided by BPCL at the jetty. BPCL continues to levy the wharfage charges as per the JNPT scale of rates. For many other services such as wharfage management, pipeline usages etc. the rates being levied by BPCL are not even provided in the SOR of JNPT. Only after continuous persuasion by this Authority, including informing BPCL that this Authority will be constrained to notify that the levy of JNPT tariff has not got the authorization required under the MPT Act, 1963, BPCL submitted a tariff proposal in November 2006. As per the details provided, the traffic handled during 2004-05, 2005-06 and 2006-07 was 3.50 MMT, 3.32 MMT and 3.24 MMT respectively as against the minimum guaranteed traffic of 3.50 MMT, 3.85 MMT and 4.00 MMT respectively for those years. The operating income for these 3 years stood at Rs.19.12 crores, Rs.17.13 crores and Rs.15.99 crores respectively. Excluding the royalty payment of Rs.5.93 crores, Rs.6.78 crores and Rs.5.87 crores to JNPT, but including the depreciation and other management overheads,

the total operating cost for these three years stood at Rs.8.10 crores, Rs.8.23 crores and Rs.11.16 crores leaving a surplus of Rs.11.01 crores, Rs.8.89 crores and Rs.4.83 crores respectively. The capital employed as furnished by BPCL for these three years of 2004-05 to 2006-07 stood at Rs.121.79 crores, Rs.114.96 crores and Rs.108.15 crores respectively. After adjustment towards capacity utilisation and providing ROCE at 15%, the resultant position is a deficit of Rs.0.64 crores, Rs.8.35 crores and Rs.4.73 crores respectively. Even though the initial tariff arrangement followed by BPCL is not in line with the MPT Act, analysis of the past financial position shows that such arrangement has not resulted in any undue financial benefit to BPCL.

- (ii).(a). The actual throughput handled by BPCL during 2004-05, 2005-06 and 2006-07 stood at 3.50 Million Metric Tonnes (MMT), 3.32 MMT and 3.24 MMT respectively. BPCL has estimated the throughput for 2007-08 to 2009-10 at 4.01 MMT, 4.79 MMT and 5.48 MMT respectively. Compared to the actual traffic of 2006-07, the projections for 2007-08, 2008-09 and 2009-10 are more by 14.57%, 36.85% and 56.57% respectively.
- (b). On a specific query, BPCL has informed that the traffic projections for the future have been estimated based on the indications given by the main users viz., Reliance Industries Limited, Indian Oil Corporation Ltd. and Oil and Natural Gas Corporation.
- (c). The cargo-wise traffic projection furnished by the BPCL for the purpose of tariff fixation is as under:

In Metric Tonnes

Sr. No.	Details	2006-07 (actuals)	2007-08	2008-09	2009-10
1.	Naphtha	9,30,000	6,90,000	7,00,000	7,10,000
2.	SKO	6,92,000	6,60,000	6,60,000	6,60,000
3.	Edible oil	5,01,000	5,90,000	5,90,000	5,90,000
4.	HSD	2,87,000	3,03,000	3,25,000	3,45,000
5.	Crude oil	0	10,00,000	16,50,00	23,00,000
6.	Others	8,31,000	8,56,700	8,66,700	8,76,700
	TOTAL	32,41,000	40,99,700	47,91,700	54,81,700

- (d). As per the license agreement, the minimum guaranteed traffic from the 5th year of commencement of the operation is 4 million tonnes per annum. The traffic projected for the years 2007-08 to 2009-10 exceeds the minimum guaranteed traffic and the JNPT and users consulted in this proceeding have not expressed any reservation on the projections. The traffic projections as furnished by BPCL are, therefore, relied upon in this analysis. Nevertheless, if any undue advantage is found to have accrued to BPCL due to wrong estimation, adjustment will be made in the tariff at the time of next review in line with the revised tariff guidelines.
- (iii). (a). The consolidated operating income from the liquid cargo terminal for the years 2004-05, 2005-06 and 2006-07 amounted to Rs.19.12 crores, Rs.17.13 crores and Rs.15.99 crores respectively. The operating income projected, based on the existing tariff and the estimated traffic for the years 2007-08 to 2009-10 is Rs.20.31 crores, Rs.23.01 crores and Rs.25.70 crores respectively. The operating income projected for the next three years is in tandem with the traffic projections for those 3 years.

- (b). BPCL has analysed the cost position under the five sub activities, viz, (i) Cargo handling, (ii) Wharfage Management and Loading Arm, (iii) Provision of pipeline, compressor, pigging, vaporizer and nitrogen and (iv) Bunker and supply of fresh water and (v) Facility Management.
- (c). As per the cost sheet submitted by BPCL, wharfage income from cargo operation stood at Rs.17.36 crores, Rs.15.81 crores and Rs.14.57 crores respectively for 2004-05, 2005-06 and 2006-07. Based on the existing tariff, the income projected from this activity for the next three years is Rs.18.82 crores, Rs.21.51 crores and Rs.24.18 crores respectively. The increase in income projected matches with the estimated increase in cargo throughput.
- (d). The income from wharfage management and provision of loading arm was Rs.89.57 lakhs, Rs.92.18 lakhs and Rs.81.72 lakhs respectively during 2004-05 to 2006-07. The income projected for the next 3 years of 2007-08 to 2009-10 is Rs.86.96 lakhs, Rs.88.24 lakhs and Rs.89.44 lakhs respectively. The increase in the projected income corresponds to the estimated increase in the cargo throughput.
- (e). For providing services towards pipeline, compressor, pigging, vaporizer and nitrogen, BPCL collected Rs.45.20 lakhs, Rs.18.43 lakhs and Rs.31.63 lakhs during 2004-05, 2005,06 and 2006-07 respectively. On this group of services to be rendered BPCL expects a revenue collection of Rs.33.58 lakhs, Rs.34.06 lakhs and Rs.34.47 lakhs during the three year period under consideration.
- (f). By providing bunkers and supplying fresh water to vessels, the revenue collected during 2004-05 to 2006-07 was Rs.41.55 lakhs, Rs.21.38 lakhs and Rs.28.71 lakhs. BPCL has projected a uniform revenue collection of Rs.28.51 lakhs per annum for providing these services during the next 3 years.
- (g). No separate revenue has so far been collected for the activity -facility management. BPCL's proposal is to collect a per tonne revenue under this activity from the tank farm operators.
- (iv). BPCL was requested to furnish the authority under which it is presently levying wharfage charges, wharfage management charges, charges for loading arm, pipeline, compressor, hard pigging, foam pigging, liquid nitrogen, BPC vaporizer, bunkering services and supply of fresh water. Despite repeated requests, BPCL has not furnished any documentary evidence showing the authority under which the above referred charges are being recovered. It is observed that except wharfage, the charges being recovered for all the other services mentioned above are not authorised as they have not been approved by this Authority. This Authority expresses its displeasure over the unauthorized action of BPCL. It is, however, observed that the income from these services has been accounted for in the books of BPCL and the income therefor has also been projected for the ensuing three years for the tariff analysis. Since these services are required by the trade, charges therefor are prescribed prospectively.
- (v). (a). As per the cost sheet submitted by BPCL, the operating cost of the jetty amounted to Rs.6.80 crores, Rs.7.69 crores and Rs.9.74 crores for the years 2004-05, 2005-06 and 2006-07. The projected operating cost for the next 3 years is Rs.10.06 crores, Rs.10.02 crores and Rs.10.72 crores respectively. The items included herein are equipment running cost, royalty payment to JNPT and other expenses excluding depreciation and management and administrative expenses.
- (b). Equipment running cost consists of (i) repairs and maintenance, (ii) the cost of spares, (iii) breakdown repairs and (iv) expenses towards meeting the annual

maintenance contracts for preventive maintenance of all the equipment including the marine loading arms, their various valves, fire fighting pumps, jetty pumps, air compressor.

- (c). Other expenses consist of electricity, water, safety expenses, pipeline way leave charges, insurance, environment management cost, CISF expenses and jetty operation and maintenance cost payable to Indian Oil Tank Limited.
- (d). Management and administration expenses consist of employee cost, travel cost, rent, communication, courier, postal, printing and stationery, inspection fees, legal and miscellaneous expenditure, hire of vehicles and bank guarantee charges.
- (e). Coming to the activity-wise details of operating cost, the BPCL has projected the cargo handling expenditure at Rs.8.45 crores, Rs.9.11 crores and Rs.9.78 crores respectively for the ensuing 3 years. The expenditure included herein is equipment running cost, royalty payment to JNPT and other expenses excluding depreciation.
- (f). Operating cost towards wharfage management and loading arm amounted to Rs.6.86 lakhs, Rs.6.78 lakhs and Rs.29.43 lakhs respectively during 2004-05 to 2006-07. The expenditure projected for the next 3 years is at Rs.16.44 lakhs, Rs.17.25 lakhs and Rs.18.10 lakhs. The items of expenditure included herein are equipment running cost and other expenses excluding depreciation.
- (g). The operating cost for maintaining the pipeline, compressor, pigging, vaporizer and nitrogen amounted to Rs.10.48 lakhs, Rs.13.61 lakhs and Rs.59.81 lakhs respectively during 2004-05 to 2006-07. The expenditure projected for the next 3 years is at Rs.33.53 lakhs, Rs.34.86 lakhs and Rs.36.25 lakhs respectively. The items of expenditure included herein are equipment running cost and other expenses excluding depreciation.
- (h). Rs.1.01 lakhs, Rs.1.28 lakhs and Rs.16.32 lakhs respectively were expended during 2004-05 to 2006-07 towards provision of bunker and supply of fresh water to vessels. This expenditure has been pegged at Rs.7.41 lakhs, Rs.7.78 lakhs and Rs.8.17 lakhs respectively for the next 3 years. The items of expenditure included herein are equipment running cost and other expenses excluding depreciation.
- (i). The operating expenditure projected by BPCL for the years 2007-08 to 2009-10 is in line with traffic adjusted for price fluctuation with reference to current movement of wholesale price index for all commodities announced by the Ministry of Finance, Government of India.
- (j). The cost sheet for 2007-08 includes Rs.96 lakhs as CISF expenses. When enquired, BPCL has informed that it is a provisional figure at the rate of Rs.24 lakhs per annum and the expenditure pertaining to the last 4 years has not been settled for want of the demand note from JNPT. It appears there exists a dispute between BPCL and JNPT on the quantum of CISF expenditure to be borne by BPCL. It is to be clarified that inclusion of the estimated expenditure of Rs.24 lakhs per year as furnished by BPCL should not be construed as this Authority settling the dispute of the two organizations or recognizes the estimated amount as the reasonable payment to be made by BPCL to JNPT.
- (vi). (a). As already stated at para. (iii)(g) above presently no income is generated under facility management activity. BPCL has prepared a separate cost statement for this activity. The total operating cost under this activity consists of (i) equipment

running cost (ii) other expenses such as water, electricity, insurance etc., and (iii) the entire management and administration overheads such as, employee cost, travel cost, rent, communication, courier, postal, printing and stationery, inspection fees, legal and miscellaneous expenditure, hire of vehicle and bank guarantee charges. Capital employed considered under facility management activity consists of office equipment and furniture and fixtures which have a common use.

- (b). For the reasons elaborated in para. (xviii). below, this Authority is not inclined to accord approval to the introduction of a per tonne levy as facility management charges on the tank farm operators. Hence, the operating cost such as equipment running cost, other expenses and the entire management and administration overheads considered by BPCL under this activity has been apportioned amongst the other four activities - (i) Cargo handling, (ii) wharfage management, (iii) pipeline, compressor, pigging etc. and (iv) bunkering and water supply- in proportion to the operating cost of those activities. Likewise, the depreciation and capital employed shown under facility management have also been apportioned amongst the other four activities in proportion to the capital employed of those activities. To sum up, while carrying out the cost analysis the operating cost projected by BPCL has not been altered; though the redistribution of the operating cost has been carried out amongst the different activities.
- (vii). In compliance with the license agreement, BPCL has made an initial payment of Rs.5 crores to JNPT at the time of commissioning of the jetty. This amount has been capitalized and is being depreciated over a period of 20 years at the rate applicable to fixed assets category as per Companies Act, 1956. The JNPTLCBUA has raised an objection on the deviation in the method of depreciation followed by BPCL. As per the revised tariff guidelines, the upfront payment is required to be amortized over the concessional period of 30 years. The implication of this deviation is that depreciation has been overstated and capital employed is understated. Accordingly, (i) the excess depreciation per year of Rs.25 lakhs has been deleted, (ii) Rs.16.67 lakhs permissible per year has been admitted as amortization expenditure and (iii) the capital employed has been increased by Rs.8.33 lakhs, per year towards unamortized expenditure on this account.
- (viii). BPCL has stated that it has not assumed any working capital for operation and maintenance of the jetty as all dealings are done without any credit period.
- (ix) .(a). As per the cost statement furnished by BPCL, the net block forming capital employed stands at Rs.121.79 crores, Rs.114.96 crores and Rs.108.15 crores respectively for the years 2004-05, 2005-06 and 2006-07. BPCL has identified and presented the net block relating to each of the activities, viz., (i) Cargo handling, (ii) Wharfage Management and Loading Arm, (iii) Provision of pipeline compressor, pigging, vaporizer and nitrogen and (iv) Bunker and supply of water and (v) Facility Management. The allocation made to each of these activities is accepted though the net block shown under facility management has been apportioned among the other four activities while carrying out this tariff setting analysis. The net block at Rs.106.23 crores projected by BPCL for 2007-08 includes a capital addition of Rs.5 crores to augment the oil spill response facilities. BPCL has confirmed that the requisite investment decision in this respect has been taken by its Board. The net block projected for 2008-09 and 2009-10 respectively is Rs.99.19 crores and Rs.92.15 crores.
- (b). BPCL has considered all its assets as business assets and it has no assets to classify under the category social obligation assets.

- (c). Though in the cost statement the capital employed as on 31 March 2005 has been shown by BPCL as Rs.114 crores, as per the certificate of its Chartered Accountant, the gross acquisition of assets is only Rs.71.65 crores as on that date. When requested, BPCL has clarified that the jetty was built by BPCL and IOCL jointly by sharing the cost equally and the certificate issued by the Chartered Accountant only mentions the acquisition value of the assets as appearing in BPCL books as the balance 50% of the acquisition value of assets has been transferred to IOC.
- (d). While processing the case, a doubt arose whether only 50% of the value of the assets as appearing in the books of accounts of BPCL should be considered. JNPT felt that the contribution made by IOCL should be treated as a grant to BPCL and only the asset value appearing in the books of BPCL should be considered for tariff fixation. BPCL informed that as per the clause pertaining to computation of compensation in the concession agreement, the termination payments referring to depreciated costs require reference to statement of costs by an independent Chartered Accountant and not the books of licensee. Further, the agreement with IOC requires sharing of depreciation, other costs and revenues in equal proportion and hence according to BPCL the contribution made by IOCL cannot be considered as a grant. BPCL has requested that the total cost of the assets may be considered for tariff setting since termination payments would consider the assets as a whole. At the joint hearing the JNPT representative also expressed the view that the entire asset value could be considered for the purpose of calculation of ROCE. In view of these explanations, the total value of the assets jointly created by IOCL and BPCL has been considered for this tariff setting exercise.
- (x). (a). At the existing level of tariff the royalty payable has been estimated by BPCL at Rs. 6.91 crores, Rs. 7.49 crores and Rs. 8.08 crores respectively for the years 2007-08, 2008-09 and 2009-2010.
- (b). As per the revised guidelines for tariff fixation, in case of bids finalised before 29 July 2003, the tariff computation must take into account royalty / revenue share payable by the private operators to the landlord port as cost for tariff fixation so as to avoid the likely loss on account of this item not being taken into account, subject to maximum of the amount quoted by the next lowest bidder.
- (c). The LA was signed by the BPCL in August 1999. The JNPT has informed that the licence was awarded on a nomination basis and no competitive bids were invited as per the directions of the Ministry of Petroleum. Since there is no second bid available for comparison, BPCL has sought pass through of the entire royalty payable to the JNPT on the Minimum Guaranteed Throughput envisaged in its proposal.
- (d). The revised tariff guidelines do not cover the situation where there is single technically qualified bidder and no other bid is available for comparison. Therefore, the Government has been requested to advise in the matter of treating revenue share/royalty in such cases as cost for tariff fixation. The decision of the Government in this regard is yet to be conveyed to this Authority.
- (e). In the absence of any specific direction from the Government about the treatment of royalty in instant case where no second highest bid is available for comparison, the royalty payable by BPCL is not allowed as pass through. If any decision contrary to this position is received from the Government, it will be open for BPCL to approach this Authority to review this Order to correctly reflect the decision of the Government.

- (xi).(a). The JNPT Liquid Chemical Berth Users Association (JNPTLCBUA) has commented on the expenditure incurred on construction of a multipurpose jetty as it feels a POL jetty to cater to the requirement of the trade could have been constructed at one third of the cost incurred. The views of this Authority in this respect have been brought out in sub-para (xii) of this analysis.
- (b). On the JNPTLCBUA's comment about inadequate facility for handling product mix such as edible oil, chemicals etc. apart from POL products, BPCL has stated that the jetty is designed to handle all liquid cargo and not limited to only POL products . Since the traffic handled at the jetty in the past includes substantial quantity of edible oil and other liquid cargoes other than POL and crude, it is difficult to subscribe to the view that the jetty has been designed only to handle POL products as contended by the Association
- (c). On the JNPTLCBUA's comment that the additional expenses incurred by its members in dismantling of pipelines and structures and shifting them for commissioning at the BPCL facility sequel to the shifting of liquid cargo handling from JNPT jetty and BPCL not sharing the cost therefor, BPCL has stated that the tank farm owners had to incur expenditure as JNPT had decided to stop handling of liquid cargo from their jetty. This issue does not appear to be relevant for tariff fixing. It has to be recognized that it is for the land lord port trust to decide on the activities to be carried out in its operational area.
- (xii). It is observed from the concession agreement entered into between BPCL and JNPT that the jetty has been constructed by BPCL at a cost higher than for a normal oil berth because as per the conditions laid down by JNPT in the BOT agreement berth is expected to cater to vessels carrying containers. BPCL was advised to consider a reasonable amount as capital employed which would be relevant for handling of about 5.5 million tonnes of liquid cargo. BPCL has not responded to this query. As per clause 2.9.11. of the revised tariff guidelines, in the case of private terminal operators, if the investment made is in accordance with the obligations under the concession agreement it will be considered for ROCE even if full capacity utilisation is not achieved. That being so, ROCE has been allowed on the entire investment reported.
- Notwithstanding the position mentioned above, this Authority finds merit in JNPTLCBUA about the users required to pay higher tariff due to over specification of the assets to be created. If the intention of JNPT is to use this terminal as container terminal in future and shift liquid bulk operation elsewhere, then the benefit of investment already made in this jetty should be recovered from the prospective container terminal operator and the benefit should be passed on to the liquid bulk users through reduced tariff in future.
- (xiii). BPCL was requested to furnish documentary evidence in respect of the capital value of various assets commissioned and included in the gross block. Instead of complying with the request BPCL has replied that it being a Government of India Undertaking, is subject to statutory audit under the provisions of the Companies Act, 1956 and is also subject to audit and review by the Comptroller and Auditor General of India. The BPCL has reiterated that all the assets capitalized in its books which also include the assets at JNPT, have been audited as part of the audit process by the statutory and the Government auditors.
- (xiv). BPCL was advised to arrive at the designed capacity of the jetty with reference to the designed parameters of the facilities created/to be created. Initially, BPCL informed that it has not assessed independently the designed capacity and the capacity calculations firmed up by the Engineers India Ltd. (who carried out the feasibility study) was relied upon. When BPCL was requested to get the capacity assessed independently and a certification thereto obtained, BPCL informed that as per their assessment the capacity is 5.5 million tonnes which is also what is stated by JNPT in its website. Although BPCL

has assured that an appropriate certification of the capacity will be furnished we have not received such a certification till date. In the absence of any scientific calculation substantiating the designed capacity of the jetty, this Authority is constrained to accept the capacity of the jetty as 5.5 million tonnes as stated by BPCL.

- (xv). In light of the analysis given above, the cost statements for the jetty as a whole and for different main activities have been modified. The modified cost statements are attached as **Annex-I (a) to (e)**.

- (a). Summarized results of the main activities and the jetty as a whole are as follows:

Sr. No.	Particulars	Operating Income (Rs. in lakhs) (at the existing tariff)			(Net surplus(+)/Deficit(-) (Rs. in lakhs)				(Net surplus (+)/Deficit (-) as a % of operating income.			Average Surplus/D eficit %
		2007-08	2008-09	2009-10	2007-08	2008-09	2009-10	Total	2007-08	2008-09	2009-10	
1.	Cargo handling	1882.27	2150.62	2418.12	-189.02	196.17	539.53	546.68	-10.04	9.12	22.31	7.13
2.	Wharfage management	86.96	88.24	89.44	-155.98	-139.85	-129.47	-425.30	-179.37	-158.49	-144.75	-160.87
3.	Pipeline pigging etc.	33.58	34.06	34.47	-351.91	-325.94	-311.52	-989.37	-1047.99	-956.97	-903.74	-969.56
4.	Bunker and water supply	28.51	28.51	28.51	-15.67	-12.10	-11.05	-38.82	-54.96	-42.43	-38.76	-45.38
5.	TERMINAL AS WHOLE	2031.32	2301.43	2570.54	-712.58	-281.72	87.49	-906.81	-35.08	-12.24	3.40	-0.15

- (b). The activity-wise additional revenue sought to be generated by BPCL through the proposed tariff revision, as arrived at by applying the proposed percentage of increase in rates on the estimated level of tariff is as follows:

Sl. No.	Activity	Rs.in lakhs			
		Additional Income			Total
		2007-08	2008-09	2009-10	
1.	Cargo handling	574.92	644.71	714.21	1933.84
2.	Wharfage management	119.57	121.33	122.98	363.88
3.	Pipeline pigging etc	7.56	7.66	7.75	22.97
4.	Bunker and water supply	0.08	0.08	0.08	0.24
5.	Facility management	102.49	119.79	137.04	359.32
	Total	804.62	893.57	982.06	2680.25

- (xvi). The increase in rates proposed is required to be justified in terms of the revised tariff guidelines with reference to the cost deficit position for the terminal as a whole. Since the percentage of proposed hike varies with different activities, the summarised result brought out at para. (xv)(a) above are analysed below for admissibility of the proposed hike in rates for the respective activities reckoning with the estimated additional revenue position brought out at para. (xv) (b) above.
- (xvii). The estimated financial position at the existing level of tariff for the jetty as a whole shows an aggregate deficit of Rs.9.06 crores for the three years of 2007-08, 2008-09 and 2009-10 vis-a-vis the targeted additional revenue generation of Rs.26.80 crores through the proposed tariff revision.
- (xviii). By introducing a new revenue stream as facility management, BPCL has proposed to generate an aggregate additional income of Rs.3.59 crores during the next three years. The expenditure to be covered under this levy are a part of equipment running cost, a part of other expenses like water, electricity etc. and the entire management and administrative overheads such as employee cost, travel cost, rent, etc. The proposed charge at Rs.2.5 per tonne is recoverable from the tank farm operators. JNPT has stated

that it is not in favour of this levy. BPCL has contended that this segment of users of the jetty does not contribute for the operation and maintenance of the jetty. JNPTLCBUA has opposed introduction of the facility management charges stating that it is unjustified and such a levy does not exist in any other ports. This Authority is of the view that the management and administrative overheads are part of every commercial units and such expenditure has to be apportioned to all the activities. BPCL's proposal to separate this expenditure from wharfage and other services and recover it from the tank farm operators lacks merit since it attempts to saddle one segment of jetty users with a levy which they need not bear. This Authority, therefore, does not approve the proposal of the BPCL to introduce the facility management charges.

- (xix). The wharfage management activity shows an aggregate deficit of Rs.4.25 crores which is 160.87% of the operating income. BPCL has sought a rate increase of 125% on this activity (from existing Rs.2 per tonne to Rs.4.5 per tonne). In view of the deficit position reflected in the income-cost analysis, the hike sought by BPCL is approved.
- (xx). The activity of providing pipeline services, compressor, hard pigging, foam pigging and liquid nitrogen shows an aggregate deficit of Rs.9.89 crores during the ensuing 3 years which is 969.16% of the operating income. The increase sought by BPCL on these activities is 13.63% on pipeline charges, 66.66% on compressor charges, 24.13% on hard pigging and 20% on foam pigging, 53.84% in liquid nitrogen charges and 57.89% on vaporizer charges. In view of the deficit position reflected in the cost analysis, the upward revision sought by BPCL is approved.
- (xxi). The activity bunkering services and supply of fresh water to vessels shows a deficit of Rs.0.39 crores for the 3 years 2007-08 to 2009-10. The average deficit expressed as a percentage of operating income shows a negative figure of 45.38. BPCL has not sought any increase in rates on the fresh water supply to coastal and foreign going vessels. It has however sought a rate increase of 20% (from Rs.2.5 per MT to Rs.30/- per MT) on bunkering services. Since the cost analysis of this activity shows a deficit position, the rate increase of 20% on bunkering services as sought by BPCL is approved.
- (xxii). The cargo handling activity shows an aggregate surplus of 5.47 crores. BPCL has sought an increase in rates ranging between 2.35% and 34.55% in wharfage. Although the stated position of this Authority is not to allow any increase in tariff for those activities which show a surplus, the fact remains that at the existing level of tariff the terminal as a whole shows an aggregate deficit of Rs.9.06 crores for the three years of 2007-08 to 2009-10. Acceding to the rate increase sought in the other three activities, viz., (i) wharf management, (ii) pipeline pigging etc. and (iii) bunker and water supply would generate additional revenue of Rs.3.87 crores leaving a net deficit of Rs.5.19 crores. Since the group of users availing the facilities provided at the jetty is generally the same, this Authority approves increase in the wharfage rates to the extent required to cover the resultant deficit of Rs.5.19 crores. An 8% across-the-board increase in the existing wharfage rates would meet this requirement.
- (xxiii). Presently, BPCL levies a charge of U.S. \$ 3.60 per MT for supply of fresh water to foreign going vessels. A concessional coastal rate therefor at Rs.87.13 per MT considering the present exchange rate of one U.S \$ = Rs.40.34 is prescribed.
- (xxiv). (a). On the request of this Authority, BPCL has agreed to incorporate in the SOR the standard provisions contained in clauses (i) 2.11.1, (ii) 2.15, (iii) 2.16.1 to 2.16.3, (iv) 2.18.1 to 2.18.4, (v) 4.5 and (vi) 5.8.1 of the revised tariff guidelines. Likewise, BPCL has also agreed to incorporate a conditionality whereby the users shall not be required to pay for any delay caused by reasons directly attributable to BPCL.

- (b). BPCL was advised to incorporate in the SOR a conditionality specifying that in case a vessel idles due to non-availability or breakdown of the shore based facilities of BPCL or any other reasons attributable to BPCL, rebate equivalent to berth hire charges payable to JNPT accrued during the period of idling of vessel shall be allowed by the BPCL. Although BPCL has expressed its resentment stating that accepting this conditionality would warrant an upward revision in the proposed tariff, this Authority introduces such a clause in the SOR as has been done in the case of other private terminals operating in the Major Port Trusts.
- (c). Some of the proposed provisions which are not in line with the common prescription at other major ports/private terminals and the revised tariff guidelines have been modified.

12.1. In the result and for the reasons given above and based on a collective application of mind, this Authority approves the revised Scale of Rates of the BPCL attached as **Annex – II**.

12.2. The revised Scale of Rates and conditionalities of the BPCL will come into effect after expiry of 30 days from the date of Notification of the Order in the Gazette of India and shall be in force till 31 March 2010. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

12.3. In this regard, BPCL may be required to furnish to this Authority through JNPT its annual accounts and performance report within 60 days of closing of the respective accounting year. If BPCL fails to provide such information within the stipulated time limit the JNPT may initiate appropriate action against BPCL. This Authority may proceed suo motu to review the tariff of BPCL. This apart, analysis of variation may also be made at the time of the next general review at the end of the usual tariff validity period and adjustment of additional surplus will be made in the tariff to be fixed for the next cycle.

12.4. The tariff of the BPCL has been fixed relying on the information furnished by the operator and based on assumptions made as explained in the analysis. If this Authority, at any time, during the prescribed tariff validity period, finds that the actual position varies substantially from the estimations considered or there is deviation from the assumptions accepted herein, it may require the BPCL to file a proposal ahead of the schedule to review its tariff and to setoff fully the advantage accrued on account of such variations in the revised tariff. Analysis of variation may also be made at the time of the next review and adjustments may be made as provided in the revised tariff guidelines.

(A. L. Bongirwar)
Chairman

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

F.No.TAMP26/2006(BPCL)JNPT - Proposal from M/s.Bharat Petroleum Corporation Ltd.(BPCL) for fixation of tariff at the Liquid Cargo Berth at Jawaharlal Nehru Port Trust (JNPT) operated on BOT basis.

1. The comments received from the JNPT and port users / representative bodies of port users and response furnished by the BPCL are tabulated below:

Sr. No.	Comments received from user associations	Reply furnished by BPCL
1.	JNPT Liquid Chemical Berth Users' Association, (JNP TLCBUA), Mumbai.	
	<p>1. a. BPCL's jetty project was conceived and established as a dedicated POL jetty for captive use.</p> <p>BPCL constructed multi purpose Jetty at huge cost of Rs.150 crores on the insistence of JNPT so that this Jetty can be used by JNPT in future as container Jetty. In fact POL Jetty of such capacity can be constructed at one third of the cost. Under this circumstances why Association members should pay for extra cost?</p>	<p>The jetty has been designed so that the same can be used by JNPT in future for handling containers. The same has been done as per the directive of JNPT.</p>
	<p>b. The jetty project on BOT basis was awarded to BPCL on nomination basis and as such no competitive bidding was involved.</p> <p>The liquid import and export activities of JNPT were being handled at Bulk Berths of JNPT viz BB1, BB2, BB3 & BB4.</p>	<p>BPCL/IOCL was awarded this project by the Ministry of Surface Transport based on the approval from the Govt. of India.</p>
	c. From the above it is clear that BPCL had	Yes, the liquid cargo was being handled at

	made their own short/long term business plans to justify the investment made by them in the Jetty project.	bulk berths of JNPT.
	d. As a facility to meet captive requirement, their Jetty and facility were designed to handle POL products and was not suitable for handling the multiple/product mix prevailing at JNPT which included edible oil, chemicals, apart from POL products. The Jetty facility of BPCL is also not ideally suited to handle the Trade and Industry requirement of variety of products and the smaller parcel sizes.	BPCL/IOC had constructed the jetty with only one plan that is to handle the liquid cargo. Handling containers in future at this jetty is a future plan of JNPT The jetty is designed to handle any liquid cargo which can be handled at the tank farms situated at JNPT. The jetty is designed to handle all liquid cargo and not limited to only POL. The jetty can handle multiple / product mix prevailing at JNPT. The liquid cargo jetty is one of the most modern jetties in the country and best suited for to handle any requirement of the trade and industry.
	2. BPCL did not plan the Jetty project as a Common User service jetty and hence the representation by BPCL for upward tariff revision due to less berth occupancy and reduction in throughput is not justified.	The jetty is designed as a common user service jetty. The jetty is already being utilised to a berth occupancy level which is considered as an ideal berth occupancy level and is comparable with any other port in the country. The business is depending up on several factors like the services being offered by the tank farm owners , the rules / regulations of JNPT, industrial scenario etc. BPCL is entitled to propose for the upward tariff revision in line with the TAMP guidelines.
	3. The members of JNPT Liquid Chemical Berth User's Association (JNPTLCBUA) have been allotted the land by JNPT. On this land the members have developed the facility to handle the storage needs of the surrounding industrial belt which depends on import/export of variety of liquid cargo including POL products. For the three years prior to shifting to BPCL's facility the JNPTLCBUA handled approximately 3millions M.T. per year of throughput through JNPT's facility. This was the additional business transferred by JNPT to BPCL by requesting JNPTLCBUA to shift the pipelines and start handling the operation from BPCL's jetty's as JNPT had plans to develop Container Terminal at Bulk Berths viz BB1, BB2, BB3 & BB4.	The tank farm owners have developed the liquid cargo storage / transfer facilities as per their business plans and with the mutually agreed terms, conditions and the commitment with JNPT prior to BPCL liquid cargo jetty was constructed. JNPT had decided to utilise their bulk terminals for the container purpose instead liquid cargo with the objective to get more returns. Since BPCL liquid cargo jetty was the only jetty available where the liquid cargo can handle therefore BPCL had agreed to handle the existing trade.
	4. The shifting of cargo handling from JNPT to BPCL's jetty involved considerable expenses due to dismantling of pipelines/structures and shifting and commissioning of the same at BPCL's facility. Cost of nearly Rs.8.25 crores was incurred by members of JNPTLCBUA. In the meeting convened by JNPT with BPCL & JNPTLCBUA, JNPT agreed in principle to share 1/3 rd of the shifting cost of the pipelines and the structural at actual on. It is relevant to note that	BPCL/IOCL has not agreed to share any cost for shifting the pipelines laid by the tank farm owners which became necessary for them as JNPT had decided to stop handling of liquid cargo from their jetty.

	BPCL did not agree to share any cost.	
	<p>5. It is therefore clear apart from their own business plans; BPCL enjoyed the benefit of established cargo throughput of JNPT, at the cost of the JNPTLCBUA. Hence we strongly oppose their proposal for any tariff revision, which is due to drop in business over the past three years thus, affecting in reduced ROCE as claimed by them. BPCL has no relevant/ logical justification to revising the tariff upward by 35% in average and in some cases it is more than 100%. BPCL should revise tariff downward in view of the additional/ increased throughput gained by BPCL on shifting of the operations of JNPTLCBUA members to their jetty by JNPT, depreciated assets, improvement in productivity and efficiency due to experience gained in handling the liquid cargo jetty operations.</p>	<p>The shifting of pipelines has not only helped the tank farm owners to continue to carry out their business but also helped them to expand their business due to our jetty being better planned, designed as compared to the previous arrangement. Apart from the tank farm owners, JNPT also got the opportunity to have better returns from the jetty while converting into the container purpose.</p>
	<p>6. The business of JNPTLCBUA can be categorised as service industry and is solely depended on viability of import/export through the port. This also depends on the facility offered at the port jetty, vessel turnaround time & the delays resulting in demurrage, wharfage rates and other cargo related service charges charged levied and their appointed operators.</p> <p>By shifting operation from JNPT's Bulk Berths viz BB1, BB2, BB3 & BB4 to BPCL's facility, the number of berths have been reduced from 4Nos to 2 Nos, thus resulting in a very serious congestion at least two to three times in a year. This resulted in the importers paying heavy demurrage running into crores of rupees. A comparison of the rates offered by MbPT with those of the existing and proposed rates of BPCL would reveal the hike proposed by BPCL. Due to the proposed revision in tariff, the viability of import/export and the competitiveness shall be seriously compromised, thus resulting in many of the Importers/ Service providers shifting to alternate nearby ports to carry out their business.</p> <p>Priority accorded to PSU vessels under the agreement with JNPT is further adding to the demurrage situation & particularly hurting the core manufacturing business of our members which primarily depends on the import/ export of liquid cargo.</p>	<p>The tank farm owners operating at JNPT is comparatively in a better position to offer better services to the industry. The facilities offered at our liquid cargo jetty is far better compared to other jetties. Vessel turn around time and delays are largely depending up on the facilities being used by the tank farms and several other factors related to the liquid cargo movement.</p> <p>The JNPT had decided to reduce the no of berths as it was not commercially viable for them to keep the berth vacant for most of the time. Congestion on some occasions is only due to bunching of the vessel / poor planning of the vessels.</p> <p>As per the guidelines, the rates are to be finalised as port specific. At MbPT also the similar increase in the tariff has been sought.</p> <p>The port users will be required to take various steps to improve their service efficiency to be competitive. Such revisions, that is after a gap of 5 years, is necessary just to only take care of the inflation.</p> <p>The agreement signed with JNPT allows BPCL to offer preferential berthing to cargo belonging to PSU. The vessels planning by PSU is very systematic and carried out in advance, thus, the same does not add to any demurrage to any other vessels. Preferential allotment rather supports the PSU systematic planning and ensures that their vessels rather not paying demurrage on account of other vessels unplanned movements.</p>
	7. BPCL is proposing to levy facility management charges @ Rs.2.5, to cover their	The Facility Management charge is proposed to be levied per tonne of cargo

	<p>administration and management cost from the importers/ service providers which is totally unjustified / unwarranted. In any case we need to have item wise breakup of this proposed charge, to comment further, as this is a new charge not existing anywhere/ ports in India in their tariff structure.</p>	<p>handled at the facility. It would be levied on the providers of pipelines used to evacuate /transfer cargo at the berth.</p> <p>As indicated in the Proposed scale of rates, BPCL seeks to introduce a new tariff line of Rs 2.5 per MT applicable to all users of the terminal to defray facility management costs.</p> <p>Since no specific rule for allocation across services could be arrived at for</p> <p>a) general and administrative overheads comprising employee costs, rent, travel costs, administration expenses-printing and stationery, Insurance, communication, inspection fees, legal charges, postal and courier expenses</p> <p>b) Common capital employed relating to office equipment and furniture and fixtures etc.</p> <p>Such costs are hence treated as common costs and represent expenses incurred in connection with the overall management of the jetty. The recovery of such common expenses that pertain to the overall facility are proposed as a uniform levy through a separate tariff line instead of being loaded on to the existing rates for services such as wharfage which is the only universal tariff borne by all cargo owners.</p> <p>A breakup of these costs and allocated capital employed are provided in Form 5 B of the Tariff proposal titled as "Cost statement for Facility Management".</p>
	<p>8. The main point to be noted is that BPCL has calculated the ROCE on the basis of net revenue i.e. net of the royalty paid to JNPT. This is not justified and the ROCE should be calculated on the gross revenue, which is received by the way of wharfage and cargo related charges from the importers/ service providers, to get a correct picture of the returns.</p>	<p>ROCE is calculated in line with the TAMP guideline.</p>
	<p>9. BPCL has itself mentioned a deviation about the method of depreciation followed by them and thus it may be possible for downward reduction in the tariff rates.</p>	<p>With the proposed tariff, ROCE works out to be only 12% against guidelines of TAMP i.e. permissible ROCE is 15%. No downward reduction is possible.</p>
	<p>10. No efforts have been made by BPCL/ IOCL to get the clearances for handling the additional products. In fact the experience shows that the new products are discouraged. The facility of nitrogen pigging is not provided to the users and the facility is not properly maintained at all. The 24"x 3 Nos pipelines for handling POL products have not been much used by BPCL due to their own business plans, despite of huge</p>	<p>The liquid cargo jetty has all the necessary approvals to handle the liquid cargo. During the interaction, several potential port users have stated that the tank farms existing at JNPT are yet to get approval from MPCB/ MOE&F/ EXPLOSIVES for handling any additional products.</p> <p>The nitrogen facilities have been provided at our jetty to facilitate the jetty users who</p>

	<p>investments made by them. Also the users not allowed having connectivity to their pipe lines/ facilities for handling their products to get better efficiency.</p>	<p>are importing Class A POL product. Since the tank farms currently receiving class A POL products on very occasional basis, the use of these facilities is very frequent. There is no restriction from BPCL and if any user wants to utilise they can approach to us for the same.</p> <p>All the tank farms owners who were interested while shifting their pipelines from JNPT jetty to BPCL jetty have been given the connectivity. In order to do so, BPCL has incurred huge expenditure and also modified / changed some designed parameters which have added constraint to BPCL / IOCL smooth operations.</p> <p>We have also made the provision at the exchange pit (IOC's terminal) for any giving some more connections to tank farms if they desire in future.</p> <p>Some of the tank farms had not opted for this facility and not taken any connection as this may be due to their lack of long term business plan.</p> <p>In a jetty which is in operation round the clock and explosives defined licence premise, no work can be allowed for any such adhoc connections just to meet individual's short term requirement which becomes hindrance to the other existing jetty users. BPCL do not have any objection in providing such connections in future to any tank farm provided all terms / conditions is finalised in the interest of the trade and more so for the existing users .</p>
	<p>11. Various safety audits conducted by the multinational port user's comment about the poor firefighting facilities, which are very critical. These create risk to conduct business through BPCL facility and negative effect to attract new business/customers.</p>	<p>The fire fighting facilities as provided at the jetty confirms to OISD 156 and it is the best as compared to any other port including earlier liquid cargo jetty at JNPT and some of the terminals suited at JNPT. We have recorded a good growth in handling Class A POL products like Naphtha etc.</p>
	<p>12. Our Association therefore feels that BPCL themselves are responsible for so called reduction in the throughput and revenue, resulting in reduced returns on the capital employed.</p>	<p>If all the constraints as caused by the tank farms are addressed gradually then the jetty can be utilised for more volume and can generate more returns.</p>
2.	Jawaharlal Nehru Port Trust	
	<p>1. An agreement for development of Liquid Cargo Jetty for handling crude oil and chemicals was entered into with BPCL on 17.8.1999 with a construction period of 24 months and grace period of 6 months. The same was awarded to BPCL on a nomination basis and no competitive bids were invited as per the directions of Ministry of Petroleum and in view of its national importance.</p>	<p>No comments.</p>
	<p>2. BPCL commenced commercial operation in</p>	<p>The first vessel was commissioned on</p>

	<p>Feb. 2002 though as per term of agreement BPCL was to furnish completion certificate from Proof Consultants as per the License Agreement. BPCL did not submit the requisite performance guarantee until 14th October, 2002 and delayed in furnishing the completion certificate which they submitted only on 19 June 2002. However, BPCL commenced the operations of vessels in their jetty since 13 Feb. 2002. Accordingly, Port has categorized the entire operation of BPCL Jetty in the following manner.</p> <p>a) For Vessels from 13 Feb.2002 to 18 June.2002 : 100% wharfage and wharf service charges are due to JNPT, since completion certificate from Proof Consultants and performance guarantee were not available to Port which is a requirement.</p> <p>b) For Vessels handled from 19 June 2002 to 31 July .2002: Wharfage to be shared as per the terms of agreement in spite of non-submission of Performance Bank Guarantee.</p> <p>For Vessels handled from 1 August 2002 to 13 October 2002: 100% Wharfage and wharf management service charges are due to JNPT as Performance guarantee has not submitted till 13th Oct., 2002.</p>	<p>13/02/2002 and therefore the jetty is operation since 13/02/2002.</p>																					
	<p>3. In addition there are outstanding against BPCL as on 31 January 2007 as under.</p> <table border="1" data-bbox="320 1227 906 1704"> <thead> <tr> <th>Sr. No.</th> <th>Particulars</th> <th>Amount (Rs/lakh s)</th> <th>Remark</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Lease rental</td> <td>1500.68</td> <td rowspan="3">The matter of outstanding has been referred to</td> </tr> <tr> <td>2.</td> <td>Way leave rent</td> <td>421.56</td> </tr> <tr> <td>3.</td> <td>Security deposit</td> <td>732.04</td> </tr> <tr> <td>4.</td> <td>Premium</td> <td>732.04</td> <td rowspan="2">Bureau of Public Enterprises as per JNP Boards directions in respect of Sr. Nos. 1,2,3,4.</td> </tr> <tr> <td>5.</td> <td>Royalty due from BPCL of which disputed up to Sept., 2004</td> <td>53.17</td> </tr> </tbody> </table>	Sr. No.	Particulars	Amount (Rs/lakh s)	Remark	1.	Lease rental	1500.68	The matter of outstanding has been referred to	2.	Way leave rent	421.56	3.	Security deposit	732.04	4.	Premium	732.04	Bureau of Public Enterprises as per JNP Boards directions in respect of Sr. Nos. 1,2,3,4.	5.	Royalty due from BPCL of which disputed up to Sept., 2004	53.17	<p>BPCL had plan to develop the tank farm at JNPT , however, BPCL had not taken possession of any piece of land from JNPT , hence , there is no amount is due to be paid by BPCL to JNPT on account of Lease Rental, Security deposit, Premium .</p> <p>There is no agreement specifying the rate / amount to be paid against way leave charges. Following are the issues while addressing this issue-</p> <p>The lease rent amount as demanded by JNPT is not acceptable to BPCL as it is very high.</p> <p>The formula as being followed by JNPT for the period till September 2004 (prior to the order passed by TAMP in this regard) is not acceptable as not being the practice followed by any other organisation</p>
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	<p>4. There is some confusion of reckoning of dates for the purpose of Minimum Guaranteed Throughput (MGT). The MGT fixed is as follows :-</p> <p>3.5 MT upto 2004-05 3.85 MT upto 2005-06 4.00 MT from 2006-07 to 2009-2010.</p>	<p>Since the jetty became operation in Feb 2002, therefore, the first year of operation should be considered from Feb 2002.</p>																					

	<p>5. No bills have been raised in respect of short fall in MGT so far. The traffic handled by BPCL is as follows:</p> <table border="1" data-bbox="323 371 914 593"> <thead> <tr> <th>Year</th> <th>Traffic handled in MT</th> </tr> </thead> <tbody> <tr> <td>2002-03</td> <td>0.03</td> </tr> <tr> <td>2003-04</td> <td>2.208</td> </tr> <tr> <td>2004-05</td> <td>3.481</td> </tr> <tr> <td>2005-06</td> <td>3.327</td> </tr> <tr> <td>2006-07</td> <td>4.120(RE)</td> </tr> <tr> <td>2007-08</td> <td>4.505(BE)</td> </tr> </tbody> </table>	Year	Traffic handled in MT	2002-03	0.03	2003-04	2.208	2004-05	3.481	2005-06	3.327	2006-07	4.120(RE)	2007-08	4.505(BE)	<p>BPCL has requested JNPT to waive off the shortfall in MGT as the same is due to various factors which is beyond BPCL control.</p>
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	<p>6. The amount recovered as royalty is as follows:-</p> <table border="1" data-bbox="323 656 898 817"> <thead> <tr> <th>Year</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>2002-03</td> <td>0.09 Crores</td> </tr> <tr> <td>2003-04</td> <td>3.49 Crores</td> </tr> <tr> <td>2004-05</td> <td>6.75 Crores</td> </tr> <tr> <td>2005-06</td> <td>6.27 Crores</td> </tr> </tbody> </table>	Year	Amount	2002-03	0.09 Crores	2003-04	3.49 Crores	2004-05	6.75 Crores	2005-06	6.27 Crores					
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2004-05	6.75 Crores															
2005-06	6.27 Crores															
	<p>7. Other charges received are as follows :-</p> <table border="1" data-bbox="323 931 898 1093"> <thead> <tr> <th>Year</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>2002-03</td> <td>NIL</td> </tr> <tr> <td>2003-04</td> <td>11.57 lakhs</td> </tr> <tr> <td>2004-05</td> <td>13.47 lakh</td> </tr> <tr> <td>2005-06</td> <td>4.75 lakhs</td> </tr> </tbody> </table>	Year	Amount	2002-03	NIL	2003-04	11.57 lakhs	2004-05	13.47 lakh	2005-06	4.75 lakhs					
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	<p>8. Even though agreement provides for recovery of CISF charges, the same have not been billed and recovered so far. CISF cost incurred as shown by BPCL in their consolidated statement may be taking into account prior period expenditure. CISF expenditure shown by them is as follows:-</p> <table border="1" data-bbox="323 1368 906 1480"> <thead> <tr> <th>Year</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>2007-08</td> <td>Rs. 96 lakhs</td> </tr> <tr> <td>2008-09 & 2009-2010</td> <td>24 lakhs each</td> </tr> </tbody> </table>	Year	Amount	2007-08	Rs. 96 lakhs	2008-09 & 2009-2010	24 lakhs each	<p>JNPT has not sent any demand note for the prior period as well as for the current year. The amount as shown from 2007-08 onwards is provisional. BPCL has expressed their views to JNPT stating that the CISF as deployed by them for mainly to the container activities where so much movement of man, machinery takes place round the clock, whereas such activities / area of operation etc is practically negligible for BPCL liquid cargo jetty. JNPT have not yet arrive the basis of sharing the cost of CISF expenditure.</p>								
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	<p>9. BPCL has paid upfront fees of Rs. 5 Crores. We are in agreement with their contention of amortizing this cost over a period of 30 years and allocating it to different assets. We find that as per certificate of Chartered Accountant the gross acquisition value of assets is Rs. 71.65 Crores as on 31.3.2005 and Rs. 71.67 Crores as on 31.3.2006, though in BPCL's consolidated income statement capital employed has been shown as Rs. 114 Crores. The difference is not understood.</p>	<p>The jetty has been built by BPCL and IOCL jointly by sharing the cost 50 % each. The certificate issued by the chartered accountant only mentions the acquisition value of assets as appearing in BPCL books. The balance 50% of the acquisition value of the assets has been transferred to IOC.</p>														
	<p>10. The basis of allocation of assets to various activities is not clear. Further as per License Agreement entered into with BPCL all Vessel Related Charges are to be recovered by JNPT. Therefore, fresh water charges shown in the tariff proposal that also dollar denominated is highly irregular and needs to be deleted. In case they</p>	<p>The fresh water to the vessels calling at our jetty is being supplied by BPCL from the day of commissioning the jetty after receiving the applicable charge form the user. All such matters were discussed with JNPT prior at the time of commissioning. This is for the first time</p>														

	have made any recovery on such amount the same has to be reimbursed to JNPT. Assumption of nil working capital etc. is in order and we have no comments to offer.	JNPT has objected stating that this is a vessel related charges. At the jetty, BPCL has provided the facilities & also providing services for supplying fresh water to the vessels.
	11. There is huge increase in equipment running cost from Rs. 7.56 lakhs in 2005-06 to Rs. 258.30 lakhs in 2006-07. The reason for sudden increase could not be understood.	The jetty was commissioned in 2002 and therefore now all the facilities, equipments require servicing, overhauling and preventive maintenance system.
	12. On an average there is more than 20% increase in wharfage charges which may be detrimental to the interest of the trade. Further, it would be better to have fewer tariffs since the activities are more or less common though it should not be lead to abnormal increase for user who do not avail a particular service by burdening them with that element of cost also.	The increase is being sought after a span of 5 years and this is mainly to take care of mainly the inflation, additional maintenance requirement. Without asking for the revision the investment will not be justified based on the guidelines of TAMP i.e. ROCE. Though TAMP guidelines permits 15 % of ROCE but in the interest of the trade only 12% ROCE is being demanded
	13. The concept of facility management charges also should be dropped as such costs are bound to be there in any such user facilities.	The Facility Management charge is proposed to be levied per tonne of cargo handled at the facility. It would be levied on the providers of pipelines used to evacuate /transfer cargo at the berth. Rationale for the proposed tariff item has already been explained.
	14. As per BPCL's working, return on capital employed is improving only with proposed increase in tariff and that too in later years.	Ref 13 above.
	15. In the absence of separate A/c for this Liquid Cargo Jetty, expenditure needs to be scrutinized in details if any Head Office expenses have been debited/charged to this facility.	No head office expenses have been debited / charged to this facility.
	16. The extracts of feasibility study prepared by Engineers India Ltd. are furnished.	No comments.
	17. BPCL has considered the royalty payment to JNPT as a pass through cost as there are no specific guidelines in this regard.	Proposal is prepared in line of TAMP guidelines.

2. A joint hearing in this case was held on 8 May 2007. In brief, at the joint hearing, the following submissions were made:

Bharat Petroleum Corporation Limited

(1). Shri Raghuram of CRISIL, Consultants to BPCL, on behalf of BPCL made a brief presentation of the tariff proposal. He stated that the prevailing rates results in a shortfall of 10% in ROCE. The proposal envisages an increase in wharfage revenue between 2% to 35% amongst the various commodities. Towards facility management services a new rate is proposed to be levied on the pipeline providers. If this levy is included as part of wharfage it would result in higher royalty payment.

(2). (i). Tariff proposal targets a return lower than the allowable return as per guidelines.

(ii). Introduction of facility management charge is user friendly and the intention therefor is to spare wharfage from a further rate increase that may arise out of inclusion of additional royalty as a cost. Tank farm operators could absorb

this element as business expenditure. Presently, they do not contribute anything for the maintenance and operation of the jetty. By recovery of the proposed facility management charges from tank farm operators BPCL would be compensated to some extent for maintaining the jetty.

- (iii). On the JNPT's statement as to non-isolation of assets' cost on BPCL's specific requirements, CRISIL reaffirmed that such isolation has been made in the tariff proposal. Pipeline costs have been allocated for pipeline charge tariff category and loading arm cost has been isolated in the wharfage management charge tariff category.

Reliance Industries Ltd.

(3). Instead of a dedicated POL jetty for captive use, BPCL has constructed a multi-purpose jetty at a cost of Rs.150 crores which can be used even as a container jetty. 50% extra cost has been incurred on construction of this jetty. Why users should pay for the extra cost? Upward tariff revision citing less berth occupancy and reduction in throughput is not justified.

Oil & Natural Gas Commission

(4). We need further clarification and information in the matter. The hike proposed on Naphtha and crude is 25%. When the operating cost for 2004-05 and 2005-06 shows only an increase of 7.26% the hike at 25% sought is not justified. We submit herewith a written statement in this respect.

Indian Oil Tanking Limited

(5). The tank farm operators have heavily invested in their tank farms. If wharfage is increased it would result in diversion of cargo to MBPT. The increase proposed on other products is too high when compared to the increase proposed on crude.

Indian Molasses Company

(6). The jetty is constructed for exclusive handling of POL products. There is no justification for increasing the wharfage citing heavy investments in the jetty. Payment of royalty by BPCL to JNPT is a commercial decision of BPCL at the time of entering into the BOT agreement. ROCE calculations should hence exclude royalty payment.

Indian Merchant's Chamber (IMC)

- (7). (i). Payment of royalty is an issue between BPCL and JNPT and the cost should not be passed on to the consumers. Instead of a rate increase the tariff, in fact, should come down.
- (ii). The data received by IMC is insufficient to form an opinion. IMC was informed that full set of the copy of the BPCL proposal was forwarded to the concerned users. IMC will collect the details from TAMP and furnish its comments within a week.

All India Liquid Bulk Importers and Exporters Association

(8). If the rate increase is approved the liquid bulk users presently having establishments at Mumbai and JNPT would migrate to places like Barooch. Hindustan Lever has already initiated the trend. A re-look on the hike proposed in the rates is warranted.

Jawaharlal Nehru Port Trust

- (9). (i). Entire asset value could be considered for the purpose of calculation of ROCE.
- (ii). Anticipated captive traffic of IOC/BPCL should be added to the total volume to estimate the actual return.
- (iii). Facility management charges can rather be loaded to wharfage.
- (iv). Assets' costs on BPCL specific requirements have not been isolated in the tariff proposal

9.2. At the request of IMC, a copy of the proposal was once again provided to them at the joint hearing to enable them to make written submissions, if any. IMC has not submitted any comments till date.
