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**TARIFF AUTHORITY FOR MAJOR PORTS**

G. No. : 153

New Delhi, 28 August, 2004

**NOTIFICATION**

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of the Jawaharlal Nehru Port Trust for prescribing a formula for calculating way leave area for pipelines as in the Order appended hereto.

**( A.L. Bongirwar )**  
Chairman

**Tariff Authority for Major Ports**  
**Case No. TAMP/41/2003-JNPT**

**The Jawaharlal Nehru Port Trust**

- - -

**Applicant**

**ORDER**

(Passed on this 10th day of August 2004)

This case relates to a proposal received from the Jawaharlal Nehru Port Trust (JNPT) for prescribing a formula for calculating way leave area for pipelines.

2. The JNPT has made the following submissions:
  - (i). JNPT, during the period 1993-95, has allotted eleven plots of land on lease rental basis for creation of storage facilities for B&C class liquid chemicals in the area earmarked for development of tank farms with the approval of the Ministry of Surface Transport (MOST). The MOST stipulated certain terms and conditions in respect of each allotment such as,
    - (a) Lease rentals for area and way leave corridor,
    - (b) Escalation per annum,
    - (c) Lease period,
    - (d) Periodicity of review and re-fixation of lease rentals.
  - (ii). The users were unable to workout pipeline configuration among themselves. The JNPT, on behalf of the users facilitated appointment of consultant for providing technical services for the development of common user facilities and other related issues connected with the handling of liquid from service berth.
  - (iii). The consultants made a study report which was discussed in the liquid chemical users meetings. The users approved the final report presented in the meeting held on 17 November 1995. The details of allotment of pipelines were agreed by the users and the pipelines were provisionally planned from service berth to Common User Manifold (CUM) and CUM to users' terminals.
  - (iv). The users allocated among themselves responsibilities for constructing pipeline racks, rail flyover bridge, approach bridge at jetty and different cross sections and were to undertake laying the pipelines on the basis of the agreed proposal among themselves. The implementation schedule of this project was planned among themselves and JNPT was monitoring agency. JNPT had permitted to lay the pipelines as per their request without any delay.
  - (v). On the basis of a pipe rack of 3.5 mtr. and 4 mtr. the corridor will require roughly 12 sq. mtr. space for 11 numbers of pipelines then planned. This space was reserved as a way leave corridor.
  - (vi). Considering on an average 12" dia pipe and safety distance of 1 dia on either side of the pipe, way leave for each pipe works out to 3 times dia of pipe and length. The JNPT adopted this formula for calculating way leave charges. Since the tank farm users protested the methodology, a committee of officers visited the MBPT and CIDCO to find out the methodology followed by them. The Committee confirmed that the procedure adopted for calculating area of way leave corridor is appropriate.
3. Since formula for calculating way leave area is not stipulated in Government sanction, a proposal for adopting the formula 3 X dia of pipe X length of pipeline for calculating way leave area has been submitted by the port for approval of this Authority.
4. In accordance with the consultation procedure adopted, the proposal of the JNPT was forwarded to the concerned port users / representative bodies of port users for their comments.

5. The comments received from the concerned user organizations were forwarded to JNPT as feed back information.

6. A joint hearing in this case was held on 4 March 2004 at the office of this Authority. At the joint hearing, the JNPT and concerned users have made their submissions.

7. (i). As decided at the joint hearing, the JNPT was requested to conduct a joint survey with the JNPT LCBUA of the land allotted for pipeline corridor and furnish the joint survey report showing separately the areas where foundation piling was done by users at their cost. The JNPT was also requested to furnish details of outstanding dues from tank farm operators towards lease rentals.

(ii). The JNPT LCBUA wanted to submit its suggested formula for measurement of land allotted for pipeline corridors after finalisation of the joint survey report. The LCBUA was also required to furnish details of the areas of individual operators for which the billing is done by JNPT and also the actual area occupied by the pipeline of individual parties.

8.1. (i). In response, the JNPT vide its letter dated 21 April 2004 furnished the joint survey report of pipeline corridor. The details of area occupied by the pipelines are as follows:

(a).	Net area occupied by pipelines	21,032.59 sq. mtr.
(b).	Shared area	<u>5,616.00 sq. mtr.</u>
		<b><u>26,648.59 sq. mtr</u></b>
(c).	Area occupied by Cross-Country pipelines (underground).	30,408.36 sq. mtr

(ii). The JNPT also furnished the details of areas where foundation piling was done by the users at their cost.

(iii). The details of outstanding dues from tank farm operators as on 31 March 2004 was also furnished by JNPT.

8.2. (i). As agreed at the joint hearing the LCBUA vide its letter dated 12 May 2004 furnished the following details of areas of individual operators for which billing is done by JNPT and the actual area occupied by pipeline of individual parties:

Sl. No.	Party	Pipe Dia ( Mtrs)	Total length of pipeline laid	Area of Pipeline	Area charged by JNPT (Sq. Mtrs)
1.	DFCL	0.4064	4422.13	1797.154	5388
2.	GBL	0.2191	4570.23	5144.518	25396.05
		0.3239	4570.23		
		0.4572	4570.23		
		0.4572	1254.10		
3.	IMC	0.2191	4871.23	<b>1067.286</b>	24,944.40
		0.3239	4937.32	<b>1348.382</b>	
		0.4064	4871.23	<b>1577.791</b>	
		0.4064	4871.23	<b>1979.668</b>	
4.	RIL	0.4064	5206.73	2116.015	6624.00
5.	IOTL	0.4064	130.00	4031.302	12,093.91
		0.6096	3263.18		
		0.6096	3263.18		
6.	VIRAJ AGRO	0.2191	4024.33	4076.758	12463.05
		0.3239	4090.42		
		0.4572	4090.42		
7.	BS	0.3239	5002.13	1620.190	4576.00
8.	HOCL	NO LINES LAID		-	8868.00
<b>TOTAL</b>				<b>24759.064</b>	<b>100353.41</b>

- (ii). The LCBUA has suggested 50% of the product of the pipeline dia and the length of the pipeline as formula for measurement of land allotted for pipeline corridor. It has given the following main reasons for the suggested formula:
- (a). Its members have met the cost to develop the marshy, un-approachable and waste land.
  - (b). The corridor width does not exceed 3.5 to 4.0 mts anywhere throughout the length of the pipeline corridor. Areas below the road, over the Railway-line and under the conveyor belt should not be considered for charging way leave area. Members had to incur additional cost in constructing large culverts of heavy design to allow vehicle movements of port and other users.
  - (c). Corridor width is 3.5 to 4.0 mtrs throughout the length of the pipeline corridor mainly to accommodate other users. The corridor involves two and three tiers at the cost of members.
- (iii). The date of application of way leave charges should be 18 months from date of approval of lines allowing time for statutory clearances, procurement, erection, testing and commissioning of lands.
- (iv). Way leave charges shall be applicable only in cases where JNPT has made available all statutory clearances and common user manifold.

9. A copy of the written submissions dated 12 May 2004 filed by the JNPT LCBUA was forwarded to the JNPT as feed back information. The JNPT vide its letter dated 23 June 2004 responded to the written submission of LCBUA. The main points made in the written submission of LCBUA and the comments of JNPT thereon are tabulated below:

Sl. No.	Written submission of LCBUA	Comments of JNPT
(i).	The JNPT proposed formula ( 3 X dia X length of pipeline) is indifferent to ground realities and is not at all justified.	JNPT had kept approach road / open space on both or one side of the pipe rack as a safety zone / space for patrolling. The pipes are laid in 2 or 3 tiers on the pipe rack. The formula was adopted on the basis of pipe rack of 3.5 m width and 4 m wide inspection / patrolling space on both sides. While fixing the formula 11 numbers of pipes were planned. Considering on an average 12" dia pipes and safety distance of 1 dia on either side the way leave area for each pipe works out to 3 times dia of pipe X length. The formula adopted by JNPT is, therefore, justifiable.
(ii).	<p>LCBUA recommends the formula (way leave area = pipeline dia X length of pipe line X 0.50) for calculation of way leave area on the following rationale:</p> <ul style="list-style-type: none"> <li>(a) Members have met the cost to develop the marshy, un-approachable and waste land. The JNPT collected Rs. 15 Crores from members and the account is yet to be settled. Entire investment of pipe racks is done by Tank Farm Operators.</li> <li>(b) The corridor width does not exceed 3.5 to 4.0 mts anywhere throughout the length of the pipeline corridor. It is mainly to accommodate other users. Areas below the road, over the Railway-line and under the conveyor belt should not be considered for charging way leave area. Members had to incur additional cost in constructing large culverts of heavy design to allow vehicle movements of port and other users.</li> </ul>	<p>The users approved the report of the consultants and allocated among themselves the responsibility for constructing pipeline racks. The investment for construction of pipe racks was done by them as agreed earlier. The Association was informed by the JNPT that the balance of the amount deposited by the users in the Common Pool Fund Account was adjusted against the users' long pending port dues.</p> <p>The shared area must be measured while calculating way leave area as it is used by users for commercial purposes. The pipe rack is approachable and is also passing through the land earlier reclaimed by JNPT.</p>

Sl. No.	Written submission of LCBUA	Comments of JNPT
(iii).	The date of application of way leave charges should be 18 months from the date of approval of lines allowing time for statutory clearances, procurement, erection, testing and commissioning of lines.	The way leave is chargeable from the date of allotment as per allotment letter. This was also agreed by all users.
(iv).	Way leave charges shall be applicable only in cases where JNPT has made available all statutory clearances and Common User Manifold (wherever applicable).	It is the responsibility of users to take all statutory clearances. JNPT has no role in this regard. Common Users Manifold is in operation from October / November 1999. All tank farm operators have their individual pipelines from jetty to their tank farms. Only two pipelines of IMC and Viraj Agro are passing from a Common User Manifold.

10.1. A second joint hearing in this case was held on 25 June 2004 at the office of this Authority. At the joint hearing, the JNPT and the JNPT Liquid Chemical Berth Users' Association have made their submissions.

10.2 At the joint hearing, the JNPT submitted a comparative statement showing the outstanding billing position calculated as per JNPT formula and as per users' formula.

10.3. As agreed at the joint hearing, the JNPT was requested to verify and furnish certain information on way leave area as adopted by the MBPT. In response, the JNPT vide its letter dated 13 July 2004 furnished the requisite details as tabulated below:

Queries	Response from JNPT
(a). Formula for calculation of way leave area adopted at the MBPT.	(i). <u>For pipe line on land (whether buried or on the ground)</u>  (Length of the pipe line on land X (external dia including insulation + 600 mm subject to a minimum of 1 meter) X Rate in Rupees per sq. mtr per month.)  (ii). <u>For pipe lines laid on trestle:</u> Way leave fees per month = Length of the pipe line X External dia of the pipe line in mm including insulation + 300 mm X Rate of relevant time. (The way leave charges for the pipe lines laid on trestle are based on the actual cost of construction.) (iii). <u>Way leave charges for laying new pipe line on land:</u> The way leave charges are fixed based on the market value of the area prescribed in the Ready Reckoner of 2004. This rate is increased by 4% every year and revised every 5 years.
(b). Whether MBPT allows any concessional lease rent as compared to normal lease rent for land, if land is used for way leave.	No response.
(c). Whether expenditure on foundation for laying pipelines is incurred by MBPT.	No response. However, the Committee report on way leave charges furnished earlier by JNPT to us as a part of its proposal indicates that trestles were built by MBPT.

11. As agreed at joint hearing, the JNPT LCBUA was requested to furnish calculations of way leave as per the formula suggested by Association. The J.N.P.T. LCBUA did not respond even after a reminder.

12. 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 available in our website [www.tariffauthority.org](http://www.tariffauthority.org).

13. Based on the information collected during the processing of the case, and the arguments advanced at the joint hearings, the following position emerges:

- (i). The JNPT had allotted land from time to time on lease basis to the private operators for creation of storage facilities for liquid chemicals. In addition, the port has also allotted land for way leave corridor in order to enable the private operators to lay pipe lines. The pipelines are intended to handle liquid cargo from the berths to the tank farms of the users. The port has also an arrangement of Common User Manifold (CUM). The dedicated pipelines carry the liquid cargo from the berth to the tank farms of the users. In some cases, pipelines carry the liquid cargo from the berth and terminate at the CUM. The users are also permitted to lay their pipelines from the CUM to their tank farms.

The JNPT has allotted land based on the approvals received from the Government of India in the Ministry of Shipping. The port has reported that the Government approvals for allotment of land is subject to the terms and conditions specified. The formula for calculating way leave area is not stipulated in Government approvals. Hence the port has come up with a proposal for approval of a formula for calculating way leave area.

- (ii). Apart from the disagreement with regard to the proposed formula for calculation of way leave area, the disagreement between the users and the JNPT extends to the quantum of area allotted by the port for laying pipelines, minimum guaranteed throughput, effective date of levy of lease rental on the land allotted for way leave area and outstanding dues from the users etc. The issue before this Authority is confined to the proposal of the port regarding the formula for calculation of way leave area for charging purposes.
- (iii). The LCUBA has made an interesting argument of comparing road/rail infrastructure for other bulk cargo/containers with the pipeline provided for liquid cargo. In the present structure of Indian ports, which are self-financing in nature, cost of every infrastructure provided is to be recovered through user charges. The tariff structure may vary from case to case. For liquid cargo pipe lines, way leave charges are levied not only at JNPT but in most other major port trusts.
- (iv). The JNPT LCUBA has demanded adjustments in lease rental rates to the extent of 50%, even though they strongly feel nothing should be charged for way leave permission. As correctly pointed out by JNPT its proposal is not for fixing/revising the lease rents which are to be levied as per the existing orders / agreements.
- (v). The JNPT has proposed to levy way leave charges for an area calculated by considering three times the diameter of the pipelines. It is noteworthy that multiple layer pipeline arrangement exists at many places in the way leave corridor allowed by JNPT and if the proposed formula is implemented, each of the pipelines will pay for an area of 3 times its diameter, which obviously defies any logic. As pointed out by users and revealed by the joint survey report, there is no sufficient margin physically available on both sides of the pipeline corridors. That being so, margin required at both sides of the pipeline for maintenance purposes is not feasible because alongside of pipeline are Railway line, Coast, Public Road etc., and, therefore, not relevant even if it is conceded that maintenance is the responsibility of users, as admitted by them. It will definitely be unreasonable to charge for an area of 98383 sq. mtrs when the actual area occupied by the pipelines is far less. Users cannot be required to pay for the area not provided to them. The formula proposed by JNPT cannot, therefore, be accepted.
- (vi). It is to be admitted that no uniform formula is applied across all the major port trusts for calculation of way leave area. This issue need to be gone into while examining the proposals for revision of rates at the respective ports. At the JNPT, it is significant to note that lease rent for way leave area is also calculated at the rate applicable for the tank farm area, reportedly based on the Government decision at the time of initial allotment. While it may not be appropriate to go into the merit of this arrangement at this juncture, it appears reasonable to calculate way leave area reckoning only the

actual area occupied by the pipelines. Since that is the area which is in actual possession of users and therefore justifiably has to be paid for.

- (vii). Way leave area covers two types of alignment in the corridor – i.e. single pipelines and multi-layer stacks of pipelines. The area occupied by single pipeline should be calculated based on the diameter and length of that pipeline. In case of multi-layer pipeline stacks only the physical area occupied by the pipelines should be considered and individual users should be billed pro rata on the basis of the diameter and length of their pipelines passing through that area.
- (viii). The joint survey report indicates certain quantum of area shared in the way leave corridor, both over-ground and underground. Such shared area relates to jetties, railway bridges, culverts, roads, etc. It is noteworthy that there is no disagreement between the port and the users on the quantum of shared area. There is, however, disagreement on the question of levy of way leave charges on such shared area. The LCBUA has suggested to exclude the shared area for billing purposes. On the other hand, the port has contended that the shared area must be reckoned for calculation of way leave area as such shared area is used by the users for commercial purposes. There is no doubt a case for levy of way leave charges for the shared area.

Apart from the shared area, the issue raised also concerns underground cross-country pipelines. The entire area can be counted for way leave charge purpose provided the right of possession of the surface area is available to the pipeline owners. If the users are able to establish that right of possession of the surface area is not with them due to the physical constraints, then it may be reasonable to count only 50% area for billing purposes. This position should hold good in case of the shared area where pipelines go over jetties, railway bridges etc. By design, right of possession of the surface area in these area is not available to the pipeline owner. They get only a right of way and, therefore, the area for billing purpose in such cases can be taken at 50% of the total shared area. In short the principle for billing should be whether the area is in actual possession of users and if that is not so and what they are enjoying is only 'Right of Way' billing should be done by calculating 50% of such area where users enjoy 'Right of Way'.

14.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority rejects the formula proposed by the JNPT for calculation of way leave area.

14.2. For the purpose of way leave charges, the area occupied by single pipelines should be calculated based on the diameter and length of those pipelines. In case of multi-layer pipeline stacks, the physical area occupied by the multilayer pipeline stacks should be considered and the respective users should be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. With respect to the area shared with road, rails, jetties, etc., the respective users should be billed pro-rata for 50% of concerned area assuming that they do not have exclusive possession of land and what they have is only 'Right of Way'. As far as underground pipes are concerned if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines should be counted 50% of the product of diameter and length, for the purpose of levy of way leave charges.

**( 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. TAMP/41/2003-JNPT** - Proposal from the Jawaharlal Nehru Port Trust for adopting formula for calculating way leave charges for laying pipelines.

1. The comments received from the port users / representative bodies of port users are summarised below:

**Viraj Agro Products Private Limited ( VAPPL )**

- (i). The MOST allotted 4005 sq. mtrs., of land to us. The area of the plot between our land and CUM is approximately 700 sq. mtrs only whereas JNPT is claiming way leave charges for 4005 sq. mtrs. The JNPT, however, charged way leave charges on 4005 sq. mtrs from August 1994 to March 1999 and revised the area to 12463.05 sq. mtrs and billed accordingly from May 1995 onwards which is highly irregular.
- (ii). We were allotted pipelines, on 8 June 1998 and September 1999, which were originally allotted to the Reliance Industrial Infrastructure Limited (RIIL) and Indian Oil Corporation Limited (IOC). JNPT is charging way leave for these pipelines from the date of allotment to RIIL and IOC.
- (iii). The pipelines pass through roads, railway lines and alongside the port roads and our terminals and it is not correct to say that 3 times the width of the actual corridor has been allotted for pipeline.
- (iv). When the way leave charges are the same as the land lease rental charges, then the area of land allotted for pipeline corridor also should have the basis as land allotted for tank farm.

**J.N.P.T. Liquid Chemical Berth Users Association (J.N.P.T. LCBUA)**

- (i). JNPT's role is that of providing infrastructure at economic rates. They should promote the international trade of the country rather than earning profit from such real estate revenue. Pipeline corridor should not be the revenue contributor.
- (ii). To facilitate the movement of the containerized cargo, the port constructs adequate roads linking the container handling jetty to the container yards / highways, etc., There is no levy comparable to the way leave charges in these stretches of land over which the roads have been constructed and are used for transportation of the cargo from / to jetty. Correspondingly and logically no such levy as way leave charges should be imposed. The entire cost of development and maintenance of this facility for liquid cargo movement has been borne by the tank farm developers. As against this, the cost of development and maintenance of the roads is the port's responsibility.

- (iii). The Port levying way leave charges and the formula now adopted by them unreasonable and incorrect. The issue should be reviewed in the context of the following:
- (a). The area allotted for pipeline corridor was totally undeveloped and mainly without any approach roads. The Association members spent substantial amount for the development of this area as per the suggestions of the JNPT. The maintenance of the corridor and the pipe racks that have facilitated 3 tires of pipelines to be constructed as well as the footings is also the responsibility of the Association members with no cost to the port.
  - (b). The rates charged for way leave area is much higher in JNPT when compared to many other major ports of the country. Hence, the rates should be reasonable and in no case shall exceed the rate of 50% of the lease rent of Rs.133.1 ps per sq. mt per annum to all users on uniform basis.
  - (c). The total pipe area chargeable to all the members based on the existing pipeline works out to 24380.72 sq.mts. Port should adopt this total area as chargeable area to all the members and proportionately charge according to size of the pipeline laid by each member. Further, when only one or few pipelines were laid in the initial stage, the charges for the way leave to the pipeline user should not exceed area occupied by the pipeline.
  - (d). The users, who have no dedicated line to the jetty and have to use the CUM should be charged way leave charges only after common user manifold is operational. Similarly, pipelines which could not be laid due to absence of "CRZ" permission by JNPT should not be charged till same are obtained by JNPT.
  - (e). Due to topography of the JNPT area some of our members have also laid substantial length of pipelines underground through otherwise unusable portion of land in JNPT area. The surface areas in these sections in the JNPT area continue to be available for usual activities such as agricultural fields, etc. Even then JNPT has claimed way leave charges at 3 times the diameter of the pipelines laid with considerable higher ground rent for stretches of land through which these pipelines are laid.
- (iv). The suggestions of the Association are -
- (A). Way leave charges should not be charged
  - (B). Alternatively,
    - (a). Uniform rate of 50% of lease rental charges of Rs. 133.1 per sq. mts per annum to be charged.

- (b). The calculation for the way leave area to be done on section to section basis and allocation will be reviewed on annual basis. The charges for the way leave to the pipeline user should not exceed area occupied by the by the pipeline.
- (c). The way leave charges should not be applicable for the portions of corridor which are shared by railways, conveyor belts, etc.,
- (d). The way leave charges shall commence after 18 months from the date of allocation of pipeline by JNPT or actual use whichever is earlier.
- (e). Rate for per square meter area of way leave corridor should preferably without any annual escalation.
- (f). The users, who have dedicated line to the jetty and have to use the CUM only, should be charged way leave charges only after CUM is operational. Similarly, pipelines which could not be laid due absence of CRZ by JNPT should not be charged till it has been obtained by JNPT.
- (g) The duplication of charging our members for the same pipelines should be rectified.

**Reliance Industrial Infrastructure Limited (RIIL)**

- (i). The pipeline width and breadth taken by the JNPT in March 1995 as well as their revised pipeline width of 3 X pipeline diameter which was taken in March 2000 for calculating the way leave charges can not be agreed to.. Taking into account physical measurement of the proportionate width of the pipeline, the chargeable way leave area is 2972.55 sq. mts against claimed area of 5215 sq. mts.
- (ii). Sizeable length of the pipeline is touching the compound wall of users and water front touches the entire length of corridor passing under conveyor belts to BB- 1 / BB-3. The balance length of pipe rack which travels near railway track or under the culvert does not have any space on either side of the pipe rack. Thus the argument made by JNPT of reserving 4 meter space on either side of pipe rack is not tenable. Similarly, charging rent for another 8 meter width which does not exist has no justification.
- (iii). JNPT has tried to justify the pipeline width of 3 times of diameter quoting MBPT and CIDCO practice. Surprisingly, MBPT practice of charging 50% of the normal leave rent for same pipeline width is not acceptable to JNPT. Such pick and choose practice may not be allowed by TAMP.

- (iv). Association members spent a substantial amount for development of the area allotted to the pipeline corridor as per the requirement of the JNPT. The maintenance of the three tire corridor is also the responsibility of the Association members. The rates are much higher than charged by any other major ports. The rate should be 50% of the lease rent of Rs.133.10 per sq. mt. per annum. The way leave charge for the area on the basis of 1.45 times of the pipe line diameter (580 mm for width of 400 mm) is justified.

**Hindustan Organic Chemicals Limited (HOCL)**

- (i). The common manifold must be built by JNPT and even as on date the common manifold is not completed. Had HOCL completed its tank farm, it would not have been able to operate since there is no way of getting our products exported or imported without any pipeline link to the port. Way leave charges become applicable only after common manifold is ready.
- (ii). Way leave charges are not applicable to HOCL for the following reasons:
  - (a). No pipeline exists today for HOCL
  - (b). The common manifold planned by JNPT as part of the project which is not yet commissioned though HOCL has contributed its share for the same.
  - (c). The allotment of pipelines is not as per original configuration cited by JNPT in its proposal to the TAMP. The existing structure of pipe rack is used by other users and there is no space available on the rack for HOCL piping.
  - (d). All other allottees have one or more lines for connecting their tank farm to service berth. Only provisional allotment of two pipelines from HOCL plot to a common user manifold has been intimated to HOCL with no indication as to how to pump material from CUM to service berth. JNPT has no lines of their own. HOCL has to depend on other users' lines for transacting business.
- (iii). The formula suggested by JNPT for levy of way leave charges is not acceptable.
- (iv). Without prejudice to our argument, we agree to the rate of 50% of the lease rent to all users on uniform basis.
- (v). The total pipe area chargeable to all the members based on the existing pipeline works out to approximately 24380 sq. mts. Port should adopt this total area as chargeable area to all the members together and proportionately charge according to size of the pipeline laid by each

member. The port should not recover multiple rentals for the same stretch of land.

- (vi). Way leave charges should be levied only after common user manifold is made operational.

**IMC limited (IMCL)**

- (i). The total area of the pipeline corridor as calculated by the Association is 24380.72 sq. mts and the JNPT should recover charges towards total area as stated above through individual users in proportion of their pipeline diameter and length.
- (ii). The port is charging way leave charges once for phase – I land allotted and again for phase – II land allotted to us for the same pipelines and this amounts to charging us for the same pipelines twice.
- (iii). The Port is charging the way leave charges for the pipeline area as per the tank farm rentals. The land required for tank farms is developed land and lease charges are arrived on the basis of developed land, whereas the land allotted for laying pipelines was undeveloped land and the entire pipeline corridor was developed by liquid terminal operators of JNPT jointly as this was an undeveloped land. The Association also maintains the corridor.
- (iv). The Port has started charging from the date of allotment of the land for tank farm construction instead of charging from the date of which clearance for laying pipeline was given.

**Deepak Fertilizers and Petrochemicals Corporation Ltd., (DFPCL)**

- (i). The port revised the basis of the leave charges in March 2000 unanimously and that too with retrospective effect from May 1992.
- (iii). JNPT has taken into consideration the formula for way leave charges levied by MBPT and CIDCO alone. It has conveniently ignored the MBPT practice of levying way leave charges at 50% that of lease rent for main plot.

**Bharat Shell Limited (BSL)**

There should be no revision of rate to the way leave charges and area calculations need a revision as the areas are currently on the higher side.

**2. A joint hearing in this case was held on 4 March 2004 at the office of the Authority and the following submissions were made in the joint hearing:**

**Jawaharlal Nehru Port Trust (JNPT)**

- (i). Liquid bulk business started in mid 1990s at our port. A consultant was appointed by tank farm operators to suggest configuration and plan of pipelines. In reality, pipeline allotments were made alongwith the plots for tank farms.
- (ii). Initially, we followed 1 mtr x length of pipeline for calculating way leave area. We changed to the proposed method in consultation with the users. One year time was allowed to make pipelines operational.
- (iii). Most of the parties default in payment to us. We will give the details of outstanding.
- (iv). Our proposal is to take 3 times the dia of pipeline for the purpose of calculating way leave area.
- (v). We agree for joint measurement and submit the report within one month. We will also segregate the areas where piling had to be done by users because of marshiness land.

#### **JNPT Liquid Chemical Berth Users' Association**

- (i). Technically, the proposal to take '3 D' appears to be alright. But this approach is applicable only in the case of single pipelines. Not in the case of multiple pipeline rakes.
- (ii). Allotment lands in JNPT was in phases. Entire development was done by tank farm operators. JNPT only said the corridor of 8.5 mtrs. should be used for laying all pipelines. JNPT appointed the consultant at the cost of users.
- (iii). Viraj agro and HOCL were not given any dedicated lines.
- (iv). We paid Rs. 15 crores in advance to JNPT for entire pipeline modification, culverts, railway over bridge, common manifold, etc. When we spent, JNPT used to reimburse from this fund. There was a time gap of about 18 months between spending and reimbursement. We have not even received final accounts for this work so far. They, however, paid interest for 12 months
- (v). JNPT cannot charge from the date of allotment. There is a moratorium of 1½ years specified in the allotment letter. Let JNPT follow this.
- (vi). We have given the details of total area occupied by all pipelines which is about 24,000 sq. mt. JNPT, however, charges for about 75000 sq. mt. We will give the details of areas for which JNPT demands way leave charges.
- (vii). We will suggest a formula taking into account the land area used by all users.

**GBL**

JNPT allotted tank farm areas about 5 Kms from the Jetty. Way leave for pipeline is incidental to this decision of JNPT. Therefore, there should not be any separate way leave charge for the pipeline corridor.

**Viraj Agro**

We put the pipeline in 1999. But JNPT charges us from 1994.

**Reliance**

- (i). JNPT says they want 4mt. clearance on either side of the corridor. This is not possible because the pipeline is by the side of water front, rail, road etc where 4 mtr. clearance is not at all possible.
- (ii). Let there be a joint measurement between JNPT and Liquid Berth Users' Association.

3. A second joint hearing in this case was held on 25 June 2004 at the office of the Authority and the following submissions were made in the joint hearing:

**JNPT Liquid Chemical Berth Users' Association**

- (i). Association and Jawaharlal Nehru Port Trust (JNPT) agree with the joint survey report.
- (ii). We have suggested a formula. We will give calculation of the area as per our calculations.
- (iii). Lease rent approved was for tank farm. JNPT has extended it to way leave also.
- (iv). Way leave is only right of way. It cannot be used for any other purpose. We suggest to levy only 50% for way leave.
- (v). In case of lease of plot for tank farms, there is no addition made for calculation of area. Why should there be an addition of two dia for pipelines?

**JNPT**

- (i). Lease rentals are approved by the Government at the time of allotment. No further approval of TAMP is required, as no revision is proposed.