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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 628

New Delhi,

30 November 2021

NOTIFICATION

This Authority, in exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), had disposed of the proposal received from Mumbai Port Trust (MBPT) for fixation of Schedule of Rates for way leave / special way leave fees of MBPT for the period 01 October 2017 to 30 September 2022 on 25 October 2021. However, considering the time involved for notifying the Speaking Order, along with the Schedule for MBPT prescribing way leave charges for the 17 Ready Reckoner Zones for Cargo Operated and associated pipelines and for 31 Ready Reckoner Zones for Non Cargo Operated Pipelines of MBPT for the period from 01 October 2017 to 30 September 2022 approved by this Authority, this Authority decided to notify only the Schedule of way leave charges for the 17 Ready Reckoner Zones for Cargo Operated and associated pipelines and for 31 Ready Reckoner Zones for Non Cargo Operated Pipelines of MBPT for the period from 01 October 2017 to 30 September 2022, on 25 October 2021. This order was notified in the Gazette of India on 01 November 2021 vide Gazette no.535. It was stated in the said Notification that this Authority will notify the Speaking Order, in due course of time. Accordingly, this Authority hereby notifies the Speaking order connected with disposal of the proposal of MBPT for fixation of Schedule of Rates for way leave / special way leave fees of MBPT for the period 01 October 2017 to 30 September 2022, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/49/2021-MBPT

Mumbai Port Trust

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Applicant

QUORUM

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Sunil Kumar Singh, Member (Economic)

ORDER

(Passed on this 25th day of October 2021)

This case relates to a proposal received from Mumbai Port Trust (MBPT) vide its letter No.FA/OEA-L/21(90)/Gen/229 dated 07 September 2021 seeking approval for fixation of Schedule of Rates (SOR) for way leave / special way leave fees for the period from 01.10.2017 to 30.09.2022.

2.1. The main highlights of the MBPT proposal dated 07 September 2021 are as follows:

- (i). Government has issued Policy Guidelines on Land Management for all major ports vide letter No. PD-13017/2/2014/-PD.IV dated 17.07.2015. By Clarification Circular No. 1 of 2018 dated 14.05.2018 and Clarification Circular No.1 of 2019-20 dated 29.04.2019, the Ministry has extended the applicability of the PGLM 2015 to the non-home occupation / commercial areas of the township areas of Mumbai, Kolkata and Kandla Port. Clause 13 (c) of PGLM of 2015 requires the port to refix the SOR once in five years and obtain TAMP's approval thereto.
- (ii). As provided in Clause 13 of PGLM, Land Allotment Committee (LAC) has recommended rates to be charged for Way Leave / Special Way Leave Fees in various Ready Reckoner Zones for the period 01.10.2017 to 30.09.2022. Same have been approved by MBPT Board vide TR No.149 dated 24.08.2021.
- (iii). In this backdrop, the MBPT has come up with the subject proposal for fixation of Schedule of Rates for way leave / special way leave fees for the period from 01.10.2017 to 30.09.2022 which is submitted for approval to the SOR in terms of Clause 13 (c) of PGLM 2015.

2.2 The background and other main points made by the MBPT in its proposal dated 07 September 2021 are summarized below:

A. Background of the proposal :

- (i). MBPT owns about 944 Hectares of land in Mumbai City from Colaba to, Mahul, Mahim, Mazgaon, Wadala, Worli, Govandi, Titwala etc. MBPT's land is let out on long term leases, 15 months' leases, monthly tenancies and licenses. MBPT also grants permission for Right of Way, without any allotment of land and any right on the land, to the applicant to lay a pipe / cable on payment of some fees either Nominal or Special, where no tenancy right or the beneficial interest is created, whatsoever, in the Trustees' land so occupied, and such permission is not transferable.
- (ii). Nominal way leave are general Way Leaves, which are given on nominal way leave charge of ₹.1/- or ₹.10/- p.m./ p.a. for Utility services like laying of water supply lines,

drainage lines by MCGM, electric cables by BEST, telephone lines by MTNL/ BSNL/ DOPT – Telecom, etc. and no profits are derived by laying such connections on the Trustees' land/ passages/ roads to PSU/ Govt. bodies and private parties in terms of policy laid down under various statutes/ laws in accordance with TR No.123 of 1977. The clarification No 17 of PGLM state that “where there is specific central act /statute which govern right of way permission the provision under said central act /statute shall over write these guide lines “for pipe lines, conveyors, jetty & other commercial related pipe lines to be charged as per the policy frame by the respective Board of port.

- (iii). Special way leave is granted for commercial and beneficial use of the Trustees' land for any such right of way like laying of pipelines for crude oil, chemical, vegetable oil, gas or optical fiber cable, railway tracks, electric cables, transmission lines etc. by charging some special way leave fees over a period of time. Way Leave fee is one of the important sources of revenue for the Port.
- (iv). The Ministry vide Clarification Circular No.1 of 2018 dated 14.05.2018 extended the applicability of the PGLM 2015 to the non-home occupation/ commercial area of the township areas of Mumbai, Kolkata and Kandla Port. Thus, the PGLM 2015 has become applicable to the commercial occupations of the township areas of Mumbai Port Trust.
- (v). PGLM provides that proposals for Right of Way permission, etc. shall be recommended by the Land Allotment Committee and approved by the Board. It further provides that Port Trust Board would formulate and approve their own policy for one-time supervision charges, MGT and additional compensation charges, if any, for granting way leave permission.
- (vi). The provision with regard to Way Leave has been covered in para 19 of the guidelines under the head “Right of Way permission” in PGLM 2014/ 15, which reads as ‘The Right of Way permission for laying pipelines / conveyors, etc. from jetties to the tank farms within and outside Port area shall be given with approval of the Board. It shall neither be a lease nor a license. As far as possible, the pipeline should be permitted only underground. There shall not be any allotment of land to a party for giving Right of Way permission. As far as possible, these shall be laid on common user basis and if the same pipeline is required by any other party, it shall be spared, on such terms as agreed between the parties and the Port Trust Board. The parties shall have to abide by the conditions specified by the Port.’
- (vii). The Special Way Leave Fee has been revised by the Board from time to time. In accordance with the Board’s Resolution No.138 of 2009 by relating it to 6% p.a. return on land value as per the Stamp Duty Ready Reckoner for the year 2009 for the period up to 30.09.2012. The Special Way leave fee is due for revision from 01.10.2012. Presently, Special WLF cases are being billed as per rate fixed under the TR 138 of 2009 with 4% increase every October.
- (viii). In terms of provision of PGLM 2015, Policy for Right of Way (Special Way Leave) permission, a policy for right of way (special way leave) along with revised SOR, for MBPT land/ water area including Port area has been prepared and recommended by the Land Allotment Committee and approved by the Board vide TR No.109 of 2019 for period 2012-2017 under the title Policy for Right of Way (Special Way Leave) Permission.

B. Main Proposal

- (i). The SoR from 1.10.2017 to 30.9.2022 for Special Way Leave fee is proposed to be revised on the basis of 6% return p.a. on land values of respective zones of Ready Reckoner 2017 for cargo operated pipelines and associated pipelines with 4% increase every year. For non-cargo operating pipelines, Special Way Leave fee is proposed to be revised on the basis of 6% return p.a. on land value arrived by considering highest of the five factors as per PGLM 2014/15.
- (ii). The way leave fee shall be computed based on approval of SoR for the period of 2017-22 by Board and thereafter TAMP for way leave permission granted to air space, under- ground, sea bed and over ground as per policy and procedure followed by MbPT as per TR 540 of 1994 and TR 138 of 2009.
- (iii). There are about 152 nos of pipelines covered by the revision for period 01.10.2017 to 30.09.2022. The special way leaves of pipe line connecting jetty to storage tank and tank to tank are being treated as cargo operated pipe lines and other than that are treated as non-cargo operated pipe lines.
 - (a). Out of which about 113 nos Cargo operated line would mean any special way leave permission meant for conveyance of cargo destined to the Port from the Port could or through the Port limit be in form of pipelines or approach channel or mean of access or any other similar of right of way. The same shall be charged on the basis of 6% return on Ready Reckoner (RR) 2017 values on shown in Annexure -I with 4% increase every year.
 - (b). Remaining about 39 nos Non Cargo operated line would mean any special way leave permission not meant for conveyance of cargo destined to the Port from the Port could or through the Port limit be in form of pipelines or approach channel or mean of access or any other similar of right of way. The same shall be charged by adopts 6% return p.a. on land value arrived on the basis of highest of the five factors as per PGLM 2014/15. The value of highest of five factors are shown in Annexure II. They are as per proposal for approval of SoR in respect of land for the period from 1.10.2017 to 30.9.2022 forwarded to TAMP by Estate Division.
- (iv). Charges for special way leave for occupation of air space, underground, seabed and below seabed will be 50% of the rate. Special Way Leave fee for water area would be 50% of the land value of abutting land. The Special Way Leave fee for over-ground pipe lines/ service shall be based on entire land value.
- (v). Further, the re-fixation of the Special Way Leave will be every 5-year subject to maximum of 150% of the Way Leave charges applicable for the fifth year. In case, the prevalent way leave fee is higher than the rate worked out on the above lines, the higher prevalent rate will be continued with 4% increase p.a.
- (vi). Rate for Special Way leave fee for new permission will be at 6% return per annum on value of land as per Stamp Duty Ready Reckoner of relevant year in case of nomination and also be the reserve price in case of competitive bidding with 4% annual escalation compounded in both the cases for cargo operated pipelines and associated facilities of Special Way leave cases, where as non-cargo operating pipelines of Special Way leave cases will be charged on the basis of 6% return p.a. on the land value arrived by considering highest of the five factors as per PGLM 2014/15.

- (vii). Rate applicable for loop length of pipeline On Trestle – The rate for loop length of pipeline laid on trestle are taken at 60% of Spl Way Leave Fee rate of respective trestle in accordance with TR No.257 of 2015.
- (viii). Whenever there are existing agreement/MoU which are still subsisting, the agreement conditions will be prevalent over the new conditions. Whenever there are conflicts, such specific cases will be dealt on case to case basis with LAC recommendations.
- (ix). Wherever, there is limited space/limited width of land available and multiple contenders in such cases the allotment of Right of Way leave will be by the tender cum auction on the basis of MGT or Cargo related way leave or Special Way leave fees for Non-Cargo related occupations. Further, for further allotment and new terms for the pipelines to be laid on the trestle of OPP, FCB and SCB at Pir Pau will be in accordance with Boards approval.
- (x). Each proposal of Right of way permission/Special Way Leave for providing public utility services under the statutory act by the authority such as water supply lines, drainage and sewage lines, electricity cables, overhead lines, infrastructural roads, telegraph cables, optical fiber lines, railway lines, etc., will be dealt on merit as provided under clarification no. 14(i) of clarification circular (Land Management) No-1 of 2019-20 dated 20.4.2019 issued by Ministry of Shipping, Govt of India. The right of way charges/ special way leave fee will be determined on the basis of provision and rate as per the statute for the same. For utility services by the statutory authority, right of way charges/special way leave fee will be as provided in the respective statutes for infrastructure services. The revision of existing utility services which have been given on nominal basis will be continued at the same rate has been presently charged at nominal rates in accordance with TR 123 of 1977.
- (xi). Interest on differential arrears due to Revision – Interest will not be applicable on differential arrears on account of revision of Spl way leave fee as per the updated SOR 2017-22, till raising of demand notice. If party fails to pay as per the demand notice/ invoice within the stipulated time mentioned in the demand notice/ invoice, interest as approved by the Board from time to time will be applicable.
- (xii). Rate applicable for pipelines laid on the TRESTLE of Old Pir Pau Pier (OPP), First Chemical Berth and Second Chemical Berth (SCB) which are based on return on investment.
 - (a). The rate of Spl Way Leave Fee for the pipeline laid on Old Pir Pau Pier(OPP) and First Chemical Berth (FCB) was finalized vide TR 540 of 1994 at ₹.80.25 per sq meter per month up to 30.09.1992 with 4% increase annually and was valid up to 30.09.2012. Accordingly, rate as on 01.10.2012 works out to ₹.182.87 per sq. m per month. The Board vide TR No 176 of 2018 had accorded the approval to continue the said rate with 4 % annual increase every October valid up to 30.9.2017 and accordingly rate works out to ₹.213.93 per sq. mtr per month, as on 30.09.2017. It is proposed to continue the said rate with 4% increase every October till Sept.2022.
 - (b). The rate of Spl Way Leave for the pipeline laid on Second Chemical Berth (SCB) was finalized at ₹.230.64 per sq.mtr. per month for 300 dia. Pipeline as on 01.01.2015 with 4% increase every October as approved vide T.R.No.176 of 2018 and the same will be continued till Sept.2022. The same would be proportionately increased for higher diameter of Pipelines.

- (xiii). In view of above, for cargo operated pipelines, Special Way Leave fee / rates are proposed, which are based on market value as per respective zones of Ready Reckoner of 2017 as on 1.10.2017 with 4% increase every year. For non-cargo operating pipelines Special Way Leave fee/rates are proposed, which are on the basis of 6% return p.a. on land value arrived by considering highest of the five factors as on 1.10.2017, with 4% increase every year.

2.3. Thus, MBPT has sought TAMP's approval for the following SoR :

- (i). **Statement showing Zone Wise Ready reckoner land values for Special Way Leave rates as on 01.10.2017 for Cargo Operated pipelines etc.**

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Sr.No	Division/ Village Name	R R Zone No.	Land Value as per RR 2017 in ₹.	@ 6% return on land value as per RR 2017 per SQ.M. per month as on 1.10.2017 in ₹.
1	Colaba	1/3	280000	1,400.00
		1/3A	239300	1,196.50
		1/6	196600	983.00
		1/6A	188600	943.00
2	FORT	2/9	150000	750.00
		2/12	229800	1,149.00
		2/13	183100	915.50
		2/22	101300	506.50
		2/23	97000	485.00
3	PRINCESS DOCK	2/34	98500	492.50
		3/35	78400	392.00
		3/35B	77900	389.50
		3/36	56400	282.00
4	Malabar Hill	3/36A	98500	492.50
		7/64	257500	1287.50
		7/66	338100	1960.50
		5	MAZGAON	10/78A
10/78B	37500			187.50
10/79	69700			348.50
10/79A	28100			140.50
10/80	27100			135.50
6	PAREL SEWRI	11/84	95100	475.50
		11/84A	56400	282.00
		11/85	31300	156.50
		11/85A	39200	196.00
		11/86	26200	131.00
7	WORLI	13/97	113500	567.50
8	DADAR NAIGAUM	14/101	40200	201.00
		14/101A	65200	326.00

Sr.No	Division/ Village Name	R R Zone No.	Land Value as per RR 2017 in ₹.	@ 6% return on land value as per RR 2017 per SQ.M. per month as on 1.10.2017 in ₹.
9	MATUNGA	16/110	90700	453.50
10	MAHIM	17/116	121700	608.50
		17/119	98600	493.00
11	MAHUL	90/419	19400	97.00
12	AMBAPADA	96/436	45200	226.00
13	GOVANDI/DEONAR	100/471	106600	533.00
14	GOVANDI/BORLA	99/463	56400	282.00
15	TITWALA (KDMC)	26/81	22249	111.25
16	Kanhoji Angre		4,499.45	22.50
17	Jawahar Dweep	90/419	19400	97

Notes:

1. Above rates are exclusive of all Taxes (GST, Taxes, etc.), Service Charges, Penalties, and Interest etc. Same are separately payable by lessees, as may be applicable.
2. The Special Way Leave fee for Optical Fiber Cable will be applicable as per the above rates but taking the width subject to a minimum of half a meter for computation instead of 1 mtr.
3. In the event of failure of achieve Minimum Guarantee Throughput (MGT) , the user should compensate the port by paying additional wharf age charges for the shortfall quantity.
4. Transfer- Right of Way Permission are not transferable. However, any case of specific requirement of the party transfer of the Right of Way may be permitted by the Board in its discretion and subject to payment to all past dues, prevailing SoR and transfer fee equivalent to 12 months' way leave fee as per prevailing SoR and for the unauthorized assignment/transfer of way leave permissions granted in past due to merger, amalgamation, etc.be regularized by levy of 24 months revised way leave fee as per prevailing SoR
5. Other aspect related to Right of Way permission will be dealt with as per Policy approved by the Board.
6. Every Special Way Leave shall be examined as per definition of cargo & non cargo operational pipeline before revision of Special Way Leave 2017-22
7. The area occupied by pipe line other than on trestle shall be calculated as per TR 138 of 2019.
8. Wherever stamp duty RR values are not available, land values obtained by the Valuer will be considered.
9. Way Leave/ Special Way Leave fee, whether demanded or not, shall be paid by the lessees/ tenants/ licensees on or before the 15th day of each month succeeding that for which Way Leave / Special Way Leave fee is due.

(ii). **Statement showing Zone wise highest land values of five factors and Special Way Leave rates as on 01.10.2017 for non-cargo operated pipeline etc.**

Sr. No.	Ready Reckoner Zone	Unit No.	Division	TR No / LAC conducted	Rates for land per sq.m. as on 01.10. 2017 (in ₹.)	Rate per sq. mtr. per month @6% return per annum as on 01.10.17 as per PGLM 2015 (in ₹.)
A	B	C	D	E	F	G
1.	14/101	Unit 1	Dadar- Naigaum	TR 112 of 2019 Dt. 20.08.2019	1,15,000/-	575.00
2.	90/419 (PirPau)	Unit 1,14	Mahul	TR 87 of 2019 Dt. 13.08.2019	53,820/-	270.00
3.	10/79	Unit 2, 6,7	Mazgaon	TR 254 of 2020 Dt. 29.01.2021	1,71,310/-	856.55
4.	10/80	Unit 4,7,8,9,13	Mazgaon	(i) TR 289 of 2019 Dt. 25.02.2020 (ii)TR 287 of 2019 Dt. 25.02.2020	1,87,700/-	938.50
5.	2/13	Unit 9,11,15	Fort	TR 269 of 2019 Dt 25.02.2020	2,52,500/-	1262.50
6.	2/22	Unit 11	Fort	TR 150 of 2019 Dt. 24.09.2019	1,91,040/-	955.18
7.	17/119,	Unit 14	Mahim	TR 268 of 2019 Dt. 25.02.2020	1,90,000/-	950.00
8	17/116	Unit 14	Mahim	TR 268 of 2019 Dt. 25.02.2020	1,90,000/-	950.00
9.	14/101A	Unit-1	Dadar-Naigaum	BR 141of 2021 Dt 24.8.21	1,15,632/-	578.16
10.	11/86	Unit-1,5,13	Parel –Sewree	BR 128 Dt 24.8.2021	1,20,200/-	601.00
11.	11/85A	Unit-3	Parel–Sewree	Chairman Approval dated 07.01.2020	1,78,450/-	892.23
12.	11/85	Unit-4,5,13	Parel –Sewree	BR 128 Dt 24.8.2021	1,68,450/-	842.30
13.	11/84	Unit-2	Parel –Sewree	BR 129 of 2021 Dt 24.8.21	1,71,310/-	856.55
14.	11/84A	Unit-2	Parel –Sewree	BR 130 of 2021 Dt 24.8.21	1,71,310/-	856.55
15.	10/79A	Unit-3	Mazgaon Divi	BR 140 of 2021 Dt 24.8.21	1,85,585/-	928.00
16.	10/78A	Unit-6,8	Mazgaon	BR 127/24.8.2021	1,70,240/-	851.20
17.	10/78B	Unit-8	Mazgaon	BR 127 of 2021 Dt 24.8.21	1,70,240/-	851.20
18.	3/36	Unit-9,14	Elphiston,Mallet Bunder	BR 132 of 2021 Dt 24.8.21	1,89,633/-	948.16
	3/36	Unit -14	Ferry Wharf, Princess Dock.	BR 139 of 2021 Dt 24.8.21	1,42,467/-	712.34
19.	3/35	Unit-9,10,14	S D /Bunder	BR 133 of 2021 Dt 24.8.21	1,70,240/-	851.20
20.	3/35B	Unit-9,10	Princes Dock	BR 134 of 2021 Dt 24.8.21	1,89,633/-	948.16
21.	2/23	Unit-9,11,15	Mody Bay ,fort,Indira Dock	BR 152 of 2021 Dt 24.8.21	2,11,500/-	1057.50

22.	2/9	Unit-11	Fort	BR 150 of 2021 Dt 24.8.21	2,68,300/-	1,341.50
23.	2/12	Unit-12,	Wellington Estate, Apollo Bunder, Fort	BR 154 of 2021 Dt 24.8.21	2,90,635/-	1453.17
24.	1/6A	Unit-14,12	Jamsadji Bunder, Colaba	BR 136 of 2021 Dt 24.8.21	1,74,381/-	871.91
	1/6A	Unit-12 &14	Sassoon Dock (inside), Colaba	BR 135 of 2021 Dt 24.8.21	1,45,077/-	725.38
	1/6A	Unit -12	Apollo Estate	BR 144 of 2021 Dt 24.8.21	2,90,635/-	1453.17
25.	1/3	Unit-12	Apollo Estate, Colaba	BR 148 of 2021 Dt 24.8.21	2,90,635/-	1453.17
26.	1/3A	Unit-12	Colaba	BR 146 of 2021 Dt 24.8.21	3,31,600/-	1658.00
27.	1/4	Unit-15	Pilot Bunder, Colaba	BR 138 of 2021 Dt 24.8.21	2,90,635/-	1453.17
28.	100/471	Unit-5	Govandi/Deonar	TR 43 of 2019	1,55,800/-	752.90
29.	99/463	Unit-5	Govandi/Borla	TR 43 of 2019	1,55,800/-	752.90
30.	26/81 (Thane -Kalyan RR)	Unit-5	Titwala	TR 44 of 2019	22,249/-	111.25
31.	Jawahar Deep (Island) & land under reclamation	Unit-12,14	Nearest Zone 90/419	BR 137 of 2021 Dt 24.8.21	28,523/- (J D Island) & 24,680/- (as on 01.10.2019 for land under reclamation)	142.62 (as on 1.10.2017 for J D Island) & Rs 123.40 (as on 01.10.2019 for land under reclamation)

(All the rates for land values has been rounded to the nearest ₹. 10/-)

Notes:

1. Above rates are exclusive of all Taxes (GST, Taxes, etc.), Service Charges, Penalties, and Interest etc. Same are separately payable by lessees, as may be applicable.
2. The Special Way Leave fee for Optical Fiber Cable will be applicable as per the above rates but taking the width subject to a minimum of half a meter for computation instead of 1 mtr.
3. In the event of failure of achieve Minimum Guarantee Throughput (MGT), the user should compensate the port by paying additional wharf age charges for the shortfall quantity.
4. Transfer- Right of Way Permission are not transferable. However, any case of specific requirement of the party transfer of the Right of Way may be permitted by the Board in its discretion and subject to payment to all past dues, prevailing SoR and transfer fee equivalent to 12 months' way leave fee as per prevailing SoR and for the unauthorized assignment/transfer of way leave permissions granted in past due to merger, amalgamation, etc. be regularized by levy of 24 months revised way leave fee as per prevailing SoR.
5. Other aspect related to Right of Way permission will be dealt with as per Policy approved by the Board.
6. Every Special Way Leave shall be examined as per definition of cargo & non cargo operational pipeline before revision of Special Way Leave 2017-22
7. The area occupied by pipe line other than on trestle shall be calculated as per TR 138 of 2019.
8. Wherever stamp duty RR values are not available, land values obtained by the Valuer will be considered.
9. Way Leave/ Special Way Leave fee, whether demanded or not, shall be paid by the lessees/ tenants/ licensees on or before the 15th day of each month succeeding that for which Way Leave / Special Way Leave fee is due.

2.4. The MBPT has stated that its Board has approved the above SOR vide BR No. 149 dated 24.08.2021.

3. In accordance with the consultative procedure prescribed, a copy of the MBPT proposal dated 07 September 2021 was forwarded to the concerned users/ user organizations vide our letter dated 14 September 2021 seeking their comments. Some of the users / user organisations have furnished their comments. The comments received from the users / user organisations were forwarded to MBPT as feedback information. The MBPT vide its letter dated 13 October 2021 has responded to the comments of users / user organisations. Subsequently, the MBPT vide its letter dated 20 October 2021 has furnished its revised reply on some of the comments of the users.

4.1. While acknowledging the proposal, we have vide our letter dated 14 September 2021 requested MBPT to furnish some information/ clarification. The MBPT vide its letter No. EMS/AS-GEN/F-301/1915 dated 06 October 2021 has responded. The information/ clarification sought and the response of the MBPT thereon is tabulated below:

Sl. No.	information/ clarification sought	Response of MBPT
1.	Based on the proposal filed by MBPT, the TAMP vide its Order dated TAMP/62/2019-MBPT dated 8 September 2020 has approved Schedule of Rates (SOR) for Special Way Leave charges of MBPT for 13 Ready Reckoner zones viz. 14/101, 11/86, 10/79A, 10/80, 11/85, 10/78B, 3/36, 3/35, 2/22, 1/6A, 90/419, 10/78A and 2/23 for the period 01 October 2012 to 30 September 2017. The present proposal of MBPT seeking approval for SOR Way leave/ Special Way leave charges for the period 01.10.2017 to 30.09.2022 is seen to be for 39 Ready Reckoner zones for cargo operated pipelines and 34 Ready Reckoner zones for non-cargo operated pipelines. As such, in the present proposal in reference, the MBPT is seeking approval of Way leave fees for additional 26 RR Zones in respect of cargo operated pipelines and 21 RR Zones in respect of non cargo operated pipelines proposed in addition to Way leave charges prescribed for the RR Zones approved by TAMP vide Order dated 8 September 2020. In this regard, the MBPT to clarify the following :	The present proposal submitted to TAMP is covering 39 Ready Reckoner zones covering entire Port Trust land. However, in the earlier proposal, submitted to TAMP for the period from 01.10.2012 to 30.09.2017, the same was for revision of SoR limited only to 13 zones. It is to be mentioned that majority of the Way Leaves are concentrated only in the 13 zones. However, as abundant caution, if any new case comes up in any of the other Ready Reckoner zones, it was prudent to get the SoR approved from the TAMP. Accordingly, all the FMV and SoR rate for 39 zones have been submitted to TAMP for period 2017-22.
(a).	The Land policy Guidelines, 2014 has not prescribed any distinction for arriving the Special Way leave Charges for cargo operated pipelines and the non cargo operated pipelines. Further, the earlier approved SOR dated 08 September 2019 has also not prescribed any different rates/ fees for cargo operated pipelines and the non cargo operated pipelines. However, the MBPT has now chosen to propose two different	In this case, attention is invited to para No.7 of TR 109 dated 20.8.2019 by which policy for Way Leave was approved by the Board. The distinction was mentioned in all type of Way Leave permissions, i.e. cargo based Way Leave permissions and non-cargo based Way Leave permissions as brought out in para 4 of policy Annexed with the said TR. A copy of the said TR along with the Annexure has been furnished by MBPT.

	<p>rates/fees for cargo operated pipelines and the non cargo operated pipeline arrived on two different basis respectively. The MBPT to clarify with justification for adopting two different approaches for arriving at the Special way leave charges for cargo operated pipelines and the non cargo operated pipelines separately.</p>	
(b).	<p>The MBPT to confirm that no such way leave permissions were granted/ or applicable during for the period from 01.10.2012 to 30.9.2017 for the additional RR Zones covered by MBPT in the proposal in reference.</p>	<p>As far as the additional zones are concerned, no new permission for non-cargo use or for cargo use was granted during the period 2012-2017. However, 9 new permissions were granted by MbPT in the 13 approved zones during the period 2012-2017 (details of the 9 permissions enclosed herewith) and these permissions were given on nomination basis i.e. without tender-cum-auction-basis and on the basis of 15% return on Ready Reckoner values as provided in the policy provided by the Board vide TR 109 of 2019. The said 9 permissions are different from SoR prescribed for SoR 2012-17 approved by the TAMP and also now proposed in this SoR 2017-22 as the rates of return are based on 15% on the Ready Reckoner values of the corresponding area with 4% increase and not 6% return. Port Trust in the TR No.109 of 2019 (para 7) and in the policy annexed with the said TR (para 4) had taken decision for the existing rates are higher than the proposed rates, the same will continue with 4% increase and no return will be effected in Way Leave charges. Further para 4 c (iii) of policy (annexure of the said TR) state that "Earlier for new permission the return of 15% per annum as per RR value of relevant year was being adopted in accordance with TR 269 of 2014 and these cases will not be reopened". However, there is also prescribed ceiling of 150% increase in the fifth year as brought out in para 4 c (iii) of the policy. Accordingly, a note has been added in the revised notes covering the above aspects already approved by the TR. The additional note may be considered for approval.</p>
(c).	<p>If the MBPT had already granted way leave permission/ applicable for the above additional RR zones during the period 01.10.2012 to 30.9.2017, the reason for not proposing the way leave fee for the said additional RR Zones for the period 2012-2017 may be explained. Also, the basis for recovery of the way leave fees during the period 01.10.2012 to 30.9.2017 without the</p>	<p>Not applicable in view of Sl. no.1.(b) above.</p>

	tariff approved by the TAMP, also to be explained																															
2.	The MBPT to furnish the documentary evidence/ relevant extract of Ready reckoner of land value for each of all the 39 RR zones proposed for Special Way leave Charges as on 01.10.2017 for cargo operated pipelines	[The MBPT has furnished the documentary evidence of relevant Ready Reckoner zones for 39 RR zones].																														
3.	The MBPT to furnish the individual LAC recommendations along with Board Agenda item and Board resolution approving the Land Rates per sq. mtr as per PGLM 2015 for each of the 34 RR zones proposed for Special Way leave Charges as on 01.10.2017, for non-cargo operated pipelines.	[The MBPT has attached the relevant LAC recommendation and the Board vide TR approved the FMV and SOR rates for respective zones along with respective TR No. and LAC note].																														
4.	<p>The MBPT has proposed following formula for calculation of Way leave charges in the Notes to SOR while seeking approval for SOR for Special way leave charges for the period 01.10.2012 to 30.09.2017 during the month of December 2019.</p> <p><u>Formula for calculation of W.L.Fee :</u></p> <table border="1" data-bbox="319 929 869 1478"> <tr> <td>(i).</td> <td>W.L.Fee per month on land</td> <td>= length of pipeline</td> <td>X (External dia including insulation + 600 mm)/ 1000mm</td> <td>x Rate applicable</td> </tr> <tr> <td></td> <td></td> <td></td> <td>(Subject to minimum width of 1 mtr)</td> <td></td> </tr> <tr> <td>(ii)</td> <td>W.L.Fee per month on trestle</td> <td>= length of pipeline</td> <td>X (External dia including insulation) / 300mm</td> <td>x Rate applicable</td> </tr> </table> <p>However, no such formula for calculation of way leave charges is seen to be proposed to the notes of SOR of Way leave charges for both cargo operated and non-cargo operated pipelines. The MBPT to furnish the reasons for not proposing such notes relating the formula for calculation of Way leave fees.</p>	(i).	W.L.Fee per month on land	= length of pipeline	X (External dia including insulation + 600 mm)/ 1000mm	x Rate applicable				(Subject to minimum width of 1 mtr)		(ii)	W.L.Fee per month on trestle	= length of pipeline	X (External dia including insulation) / 300mm	x Rate applicable	<p>MbPT is using the following way leave formulae since decades.</p> <table border="1" data-bbox="885 705 1428 1254"> <tr> <td>(i).</td> <td>W.L.Fee per month on land</td> <td>= length of pipeline</td> <td>X (External dia including insulation + 600 mm)/ 1000mm</td> <td>x Rate applicable</td> </tr> <tr> <td></td> <td></td> <td></td> <td>(Subject to minimum width of 1 mtr)</td> <td></td> </tr> <tr> <td>(ii)</td> <td>W.L.Fee per month on trestle</td> <td>= length of pipeline</td> <td>X (External dia including insulation) / 300mm</td> <td>x Rate applicable</td> </tr> </table> <p>The same was brought out in the earlier proposal for SoR 2012-17 and also in the review application dated 22.7.2021. Further the said formulae were also covered in para 2 of the proposal which state that “ as per policy and procedure followed by MbPT as per TR 540 of 1994 and TR 138 of 2009”. In TR 138 of 2009 the formulae are mentioned in para 2.4 and 2.1. A copy of the TR 138 of 2009 was also enclosed with the proposal. However, the formulae are now mentioned in the revised notes furnished herewith which may be considered for approval.</p>	(i).	W.L.Fee per month on land	= length of pipeline	X (External dia including insulation + 600 mm)/ 1000mm	x Rate applicable				(Subject to minimum width of 1 mtr)		(ii)	W.L.Fee per month on trestle	= length of pipeline	X (External dia including insulation) / 300mm	x Rate applicable
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	charges for the period 01.10.2017 to 30.09.2022. The MBPT may re-look the notes prescribed in the proposed SOR, with reference to the earlier approved SOR for Way leave charges for the period 01.10.2012 to 30.9.2017 and revise accordingly																																																																																	
6.	The MBPT to confirm whether the clause relating to achievement Minimum Guaranteed Throughput (MGT) prescribed in the approved SOR for Special Way leave charges for the period 01.10.2012 to 30.09.2017 is applicable to both cargo operated pipelines and non-cargo operated pipelines. If not applicable for the non-cargo operated pipelines, the MBPT may delete the said clause accordingly.	The MGT clause is applicable only for cargo operated pipelines whereas there is no MGT for non-cargo pipelines. Accordingly, the clause is deleted in the revised footnotes for the non-cargo pipelines enclosed herewith. [The MBPT has attached revised notes to the SOR for Special Way leave rates as on 01.10.2017 for Non Cargo Operated Pipelines]																																																																																
7.	A comparative statement to show the Way leave charges approved by TAMP for the period 01.10.2012 to 31.09.2017 and the proposed way leave charges for the period 01.10.2017 to 31.09.2022, for all the areas under consideration, may be furnished.	The comparative statement of Way Leave charges approved by the TAMP for 2012-2017 and the proposed Way Leave charges for 2017-2022 for respective 13 zones is as follows.																																																																																
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		11	90/419	68.50	80.14	97	270	21.05	236.93
		12	10/78A	174.50	204.14	258	851.20	26.38	316.97
		13	2/23	265.00	310.01	485	1057.5	56.45	241.12

4.2 While furnishing additional information / clarification, MBPT has revised the conditionalities governing levy of special way leave charges on cargo and non-cargo operated pipelines. The Revised Notes to the SOR for the Special Way leave rates as on 01.10.2017 for Cargo Operated pipelines and Non Cargo Operated pipelines as furnished by the MBPT vide its letter dated 06 October 2021 is given below.

A. Revised Notes to Annexure- I (Cargo Operated Pipelines)

1. Above rates are exclusive of all Taxes (GST, Taxes, etc.), Service Charges, Penalties, and Interest etc. Same are separately payable by lessees, as may be applicable.
2. The Special Way Leave fee for Optical Fiber Cable will be applicable as per the above rates but taking the width subject to a minimum of half a meter for computation instead of 1 mtr.
3. In the event of failure of achieve Minimum Guarantee Throughput (MGT), the user should compensate the port by paying additional wharf age charges for the shortfall quantity.
4. Transfer- Right of Way Permission are not transferable. However, any case of specific requirement of the party transfer of the Right of Way may be permitted by the Board in its discretion and subject to payment to all past dues, prevailing SoR and transfer fee equivalent to 12 months' way leave fee as per prevailing SoR and for the unauthorized assignment/transfer of way leave permissions granted in past due to merger, amalgamation, etc.be regularized by levy of 24 months revised way leave fee as per prevailing SoR.
5. Other aspects related to Right of Way permission will be dealt with as per Policy approved by the Board.
6. Every Special Way Leave shall be examined as per definition of cargo & non cargo operational pipeline before revision of Special Way Leave 2017-22.
7. Wherever stamp duty RR values are not available, land values obtained by the Valuer will be considered.
8. Way Leave/ Special Way Leave fee, whether demanded or not, shall be paid by the lessees/ tenants/ licensees on or before the 15th day of each month succeeding that for which Way Leave / Special Way Leave fee is due.
9. Earlier for new permission, the return of 15% per annum as per RR value of relevant year was being adopted in accordance with TR 269 of 2014 and these cases will not be reopened. Accordingly, the new permissions granted till TR No. 109 of 2019 will not be reopened.
10. The way leave formulae will be as under.
Way Leave fee per month on land =

Length of pipeline X (External dia including insulation +600 mm) X rate applicable
1000

(Subject to minimum width of 1 meter)

Way Leave fee per month on trestle =
Length of pipeline X (External dia including insulation) X rate applicable
300

11. Rates for way leave fee on land and trestle (i.e. trestle of OPP, FCB, SCB and TCB) will be applicable for the period from 1.10.2017 to 30.9.2022 as approved by Board TR 109 of 2019 and will be revised every five years or as decided by the Board from time to time.
12. Way leave fees will increase by 4% every October. First such 4% increase will be effected from 1.10.2018.
13. In case, the prevalent way leave fee is higher than the revised rate, the higher prevalent rate will be continued with 4% increase per annum.
14. For the purpose of Right of way leave charges, the area occupied by pipelines other than those on trestle shall be calculated based on the width (subject to minimum of 1 meter) and length of those pipelines.
15. Charges for way leave for occupation of air space, under ground, seabed and below seabed will be 50% of the above rates. License fee for water area would be 50% of the license fee of abutting land. The way leave fee for the service shall be based on the full rates.
16. The rate of sp. Way leave for the pipelines laid on OPP and FCB was finalized vide TR 540 of 1994 at ₹. 80.25 per sq meter per month upto 30.9.1992 with 4% increase annually and was valid upto 30.9.2012. Accordingly, rate as on 1.10.2012 works out to ₹.182.87 per sq meter per month. The Board vide TR 176 of 2018 had accorded approval to continue the same rate with 4% increase annual increase every October valid upto 30.9.2017 and accordingly the rate works out to ₹. 213.93 per sq meter per month as on 30.9.2017 which will be continued with 4% increase every October till Sept 2022.
17. The rate of sp. Way leave for the pipelines laid on SCB was finalized vide TR 176 of 2018 at ₹.230.64 per sq meter per month for 300 mm dia pipeline as on 1.1.2015 with 4% increase every October and the same will be continued with 4% increase every October till Sept 2022. The same will be proportionately increased for higher dia pipelines.
18. The rate applicable for loop length of pipeline laid on trestle will be taken at 60% of way leave fee of respective trestle in accordance with TR 257 of 2015.
19. Interest will not be applicable on the differential arrears on account of the revision of the rates till raising of the Demand Notice. However, if party fails to pay as per the Demand Notice or invoice within the time stipulated in the Demand Notice or invoice then interest as approved by the Board from time to time will be applicable.

B. Revised Notes to Annexure- II (Non-Cargo Operated Pipelines)

1. Above rates are exclusive of all Taxes (GST, Taxes, etc.), Service Charges, Penalties, and Interest etc. Same are separately payable by lessees, as may be applicable.
2. The Special Way Leave fee for Optical Fiber Cable will be applicable as per the above rates but taking the width subject to a minimum of half a meter for computation instead of 1 mtr.
3. Transfer- Right of Way Permission are not transferable. However, any case of specific requirement of the party transfer of the Right of Way may be permitted by the Board in

its discretion and subject to payment to all past dues, prevailing SoR and transfer fee equivalent to 12 months' way leave fee as per prevailing SoR and for the unauthorized assignment/transfer of way leave permissions granted in past due to merger, amalgamation, etc. be regularized by levy of 24 months revised way leave fee as per prevailing SoR.

4. Other aspects related to Right of Way permission will be dealt with as per Policy approved by the Board.
5. Every Special Way Leave shall be examined as per definition of cargo & non cargo operational pipeline before revision of Special Way Leave 2017-22.
6. Wherever stamp duty RR values are not available, land values obtained by the Valuer will be considered.
7. Way Leave/ Special Way Leave fee, whether demanded or not, shall be paid by the lessees/ tenants/ licensees on or before the 15th day of each month succeeding that for which Way Leave / Special Way Leave fee is due.
8. Earlier for new permission, the return of 15% per annum as per RR value of relevant year was being adopted in accordance with TR 269 of 2014 and these cases will not be reopened. Accordingly, the new permissions granted till TR No. 109 of 2019 will not be reopened.
9. The way leave formulae will be as under.

$$\text{Way Leave fee per month on land} = \frac{\text{Length of pipeline} \times (\text{External dia including insulation} + 600 \text{ mm}) \times \text{rate applicable}}{1000}$$

(Subject to minimum width of 1 meter)

$$\text{Way Leave fee per month on trestle} = \frac{\text{Length of pipeline} \times (\text{External dia including insulation}) \times \text{rate applicable}}{300}$$

10. Rates for way leave fee on land and trestle (i.e. trestle of OPP, FCB, SCB and TCB) will be applicable for the period from 1.10.2017 to 30.9.2022 as approved by Board TR 109 of 2019 and will be revised every five years or as decided by the Board from time to time.
11. Way leave fees will increase by 4% every October. First such 4% increase will be effected from 1.10.2018.
12. In case, the prevalent way leave fee is higher than the revised rate, the higher prevalent rate will be continued with 4% increase per annum.
13. For the purpose of Right of way leave charges, the area occupied by pipelines other than those on trestle shall be calculated based on the width (subject to minimum of 1 meter) and length of those pipelines.
14. Charges for way leave for occupation of air space, under ground, seabed and below seabed will be 50% of the above rates. License fee for water area would be 50% of the license fee of abutting land. The way leave fee for the service shall be based on the full rates.
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18. Interest will not be applicable on the differential arrears on account of the revision of the rates till raising of the Demand Notice. However, if party fails to pay as per the Demand Notice or invoice within the time stipulated in the Demand Notice or invoice then the interest as approved by the Board from time to time will be applicable.

5. A joint hearing on the case in reference was held on 14 October 2021 at 3.30 p.m. through Video Conferencing. At the joint hearing, MBPT made a brief power point presentation of its proposal. The MBPT and the users/ user organisations have made their submissions during the joint hearing.

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

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

- (i). Section 49 of the Major Port Trusts Act, 1963 (MPT Act) mandates this Authority to frame the Scale of Rates and statement of conditions for use of property belonging to a Board. In other words, Section 49 of the MPT Act empowers this Authority to fix the tariff for the use of the port properties. The way leave charges is a levy, levied for the use of the property of the port. Clarification No. 17 of the clarifications on Policy Guidelines for Land Management, 2015 issued by the MOS vide its letter No.PD-13017/2/2014-PD.IV dated 14 May 2018 read with clause 14 of PGLM 2015 provides that Right of Way permission for laying pipelines / conveyors, etc. for purposes such as telegraph cables, OFC Lines, tank farms, telephone towers, electric cables, etc., can be within and outside port area.
- (ii). The Way Charges in respect of the gas or optical fiber cable, railway tracks, electric cables, transmission lines and pipelines passing through various Ready Reckoner (RR) zones was fixed for the first time by this Authority vide Order No. TAMP/62/2019-MBPT dated 8 September 2020, for a period of five years from 01 October 2012 and upto 30 September 2017. For the period prior to 01 October 2012, the MBPT has reported to have levied the way leave charges as approved by its Board of Trustees. Also, as regards the period prior to 01 October 2012, the lease rentals are reported to have been governed by the Supreme Court judgment.

In this backdrop, the MBPT has now come up with the proposal for revision of way leave charges in respect of the gas or optical fiber cable, railway tracks, electric cables, transmission lines and pipelines laid for carrying of crude oil, chemical, vegetable oil, etc. for the various RR Zones for a period of 5 years from 01 October 2017 and upto 30 September 2022. The proposal of the MBPT has the approval of the Board of Trustees of MBPT.

- (iii). In the subject proposal, the MBPT has sought approval for the separate way leave charges/ fees to be levied for cargo operated pipelines and the non cargo operated pipelines.

In this regard, it is relevant here to mention that the Land Policy Guidelines, 2014 does not prescribe any distinction for arriving at the Special Way leave Charges for

cargo operated pipelines and the non cargo operated pipelines. Further, the earlier approved SOR dated 08 September 2019 by this Authority also did not prescribe any different rates/ fees for cargo operated pipelines and the non cargo operated pipelines. On a specific query in this regard, the MBPT has clarified that the distinction for the way leave fees proposed for cargo operated pipelines and non-cargo operated pipelines is as per the policy of Way Leave permission approved by the MBPT Board of Trustees vide its TR 109 dated 20.8.2019. In this regard, it is relevant to mention here that as per the Broad Terms and Conditions for issuance of Right of Way permission for laying pipelines / conveyors etc., which is annexed to the Land Policy Guidelines, it is indicated that the permission for use of various pipelines / lines will be given by the Port Trust Board on such terms as agreed between the parties and Port Trust Board.

- (iv). As stated earlier, the proposal of MBPT seeks approval for levy of way leave charges for the period from 01 October 2017 to 30 September 2022. In this connection, the Bharat Petroleum Corporation Limited (BPCL), Tata Power Company Limited (TPCL), Aegis Logistics Limited (ALL), Hindustan Petroleum Corporation Limited (HPCL), All India Liquid Bulk Importers & Exporters Association (AILBIEA), Reliance Industries Limited (RIL), GAIL (India) Limited have objected to the retrospective fixation of the Special Way Leave fees from 01 October 2017 to 30 September 2022, on the ground that retrospective revision would jeopardise their financials and would increase their burden, which they may not be in a position to pass it on to customers.

In the case in reference, the lease rentals approved by the Board of Trustees for the lands of MBPT for the period from 1980 upto 30 September 2012 as per the Compromise formula had been upheld by the Hon'ble Supreme Court of India. As such, the Government has advised the MBPT in May 2019 to fix the SoR for all areas of Mumbai Port including Township areas with effect from 01 October 2012 onwards. For the first time way leave charges were approved by this Authority vide Order No. TAMP/62/2019-MBPT dated 8 September 2020 retrospectively, for a period of five years from 01 October 2012 and upto 30 September 2017.

In this regard, it is noteworthy that this Authority does not ordinarily give retrospective effect to the Order. But, in cases governed by special circumstances, it does require retrospective application of its Order. In a case relating to an agreement between New Mangalore Port Trust and the Kudremukh Iron Ore Company Ltd., on the advice of Ministry of Law, the (then) Ministry of Surface Transport had vide its Communication No. PR-14011/5197-P4 dated 16 March 1998 advised this Authority to give retrospective effect. Similarly, based on a proposal received from MBPT, retrospective effect was given for recovery of way leave charges leviable as per the agreement between ONGC and MBPT.

Further, it is to state that this Authority had passed an Order no. TAMP/15/2007-NMPT dated 16 June 2010 revising the lease rentals/ licence fee of the lands of New Mangalore Port Trust (NMPT), retrospectively with effect from 20 February 2007 i.e. on expiry of 5 years from the effective date of the implementation of the previously revised rates. The said Order was notified in the Gazette of India on 23 July 2010 vide Gazette no. 184. A batch of Writ Petitions were filed in the Hon'ble High Court of Karnataka by various parties mainly challenging the retrospective revision of the lease rentals. The Hon'ble High Court of Karnataka vide its Order dated 28 June 2013 has disposed of all the Writ Petitions. The Hon'ble High Court at paragraph no. 16 of the Order has stated the following:

“There cannot be any dispute that collection of enhanced licence fee with retrospective effect is illegal as held by the Apex Court in the case of LALA RAM (D) by L.R. & ORS. – vs – UNION OF INDIA & ANOTHER reported in 2013 SAR (Civil) 347. But if the authority at the inception itself has made it clear to the licensees that what is being charged is only a provisional licence fee after approval by the TAMP, the action of the NMPT cannot be said to be illegal. At the time of issuing the licence itself as well as the time of renewal of licence, it has been made clear by the NMPT that it has proposed revision of licence fee to the TAMP and till such time only provisional licence fee will be charged and that licensees will have to pay the revised licence fee after approval of the TAMP. The licensees having agreed for the said conditions, entered into the contract. Therefore it is not open for the licensees to go against the terms of the contract and contend that it is not open for the authorities to charge licensees revisional licence fee from 20.2.2007. In view of the above, the challenge to the Circular pertaining to revision of licence fee w.e.f. 20.2.2007 vide Annexure-H fails.”

In the proceedings relating to the case in reference, the MBPT has conveyed that it had intimated all the stakeholders that the way leave charges are due for revision from 01 October 2017 onwards.

Incidentally, reference is also drawn to the Order passed by the Gujarat High Court in March 2017, wherein the Hon'ble High Court of Gujarat has taken a view and held that TAMP would consider the proposal and follow the prescribed procedure including inviting suggestions and comments from stakeholders. The determination of Scale of Rates would take place thereafter and that because of very nature of this exercise, when the actual demand would be raised, it would relate to past period. It is the retroactiveness and not retrospectiveness. A retroactive operation of demand would not make it unsustainable in the given set of facts. Thus, the Gujarat High Court had held a view that the ground that the demand is retrospective is, therefore, prima facie not tenable.

Under these circumstances and for the reasons given in the earlier paragraphs, the proposal of the MBPT for recovery of way leave charges for the period from 01 October 2017 to 30 September 2022 is taken up for consideration.

- (v). The MBPT has filed its proposal in September 2021. The said proposal alongwith the information/ clarification furnished by MBPT during the processing of the case, is considered in this analysis.
- (vi). This Authority is mandated to follow the Land Policy Guidelines issued by the Government from time to time for the purpose of determining lease rentals for the lands belonging to the Port Trusts. The Ministry of Shipping in the Government of India has announced Land Policy Guidelines for Major Ports, 2014 in January 2014 which has come into effect from 2 January 2014. Subsequently, the Ministry of Shipping has issued amended Land Policy Guidelines, 2014 under Section 111 of the MPT Act, 1963 for implementation with effect from 17 July 2015. The MBPT has, come up with a proposal for revision of Way Leave Charges, based on the provisions of the Land Policy Guidelines for Major Port Trusts, 2014, as amended in July 2015.
- (vii). As per clause 13(a) read with clause 11.2(e) of the amended Land Policy Guidelines 2014, a Land Allotment Committee (LAC) constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic shall determine the market value of land as per the methodology prescribed in clause 13(a). Accordingly, the MBPT has constituted a Land Allotment

Committee (LAC) under the chairmanship of the Dy. Chairman of the Port and the Heads of Departments of Finance, Traffic and Estate being the other members of the Committee.

- (viii). (a). Para 13(a) of the Land policy guidelines of July 2015 prescribes the methodology for determination of market value of the land based on the five factors as prescribed therein. In terms of the said para of the amended Land policy guidelines of 2014, the Land Allotment Committee may normally take into account the highest of the factors mentioned therein, viz. (i). State Government ready reckoner of land values in the area if available for similar classification/ activities, (ii). Highest rate of actual relevant transactions registered in the last three years in the Port's vicinity with an appropriate annual escalation rate to be approved the Port Trust Board, (iii). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (iv). Rate arrived at by an approved valuer appointed for the purpose by the Port and (v). Any other relevant factor as may be identified by the Port. The amended Land Policy Guidelines of 2014 also stipulates that in case the LAC is not choosing the highest factor, the reasons for the same have to be recorded.
- (b). To determine the Way Leave Charges for cargo operated pipelines and associated pipelines during the period from 01 October 2017 to 30 September 2022, the LAC is seen to have determined the way leave charges considering land value based on the Stamp Duty Ready Reckoner (RR) for the year 2017 as base for the respective areas. For non-cargo operating pipelines, the land value as arrived by land valuer being highest of the five factors as listed in as per PGLM 2014/15 for the respective areas, has been considered to determine this way leave charges.
- Thereafter, 6% return on the land value (RR value 2017 in case of cargo operated pipelines and land value as per valuer's Report in case of non-cargo pipelines as considered by LAC) for the respective area has been considered to determine the way leave charges for the overhead pipelines/ cables passing through the said area. Further, a 50% discounting factor has been considered to determine the way leave charges for the pipelines/ cables for occupying airspace, underground, overhead, sea bed and below sea bed, through the respective areas. Thus, the way leave charge has been derived from the market value of the relevant parcel of land over which the pipeline passes.
- (c). The Land Policy Guidelines does not prescribe any specific methodology for determination of way leave charges. In the absence of any specific methodology for determining way leave charges in the Land Policy Guidelines, this Authority has relied on the approach adopted by the MBPT to determine the way leave charges for the cargo operated pipelines and associated pipelines, based on the market value of land based on the State Government Ready Reckoner.
- (d). With regard to non cargo pipelines, as stated earlier, MBPT has considered the Land value of the respective Zones based on the Valuer's Report for arriving the way leave charges. It is noteworthy that Land Policy Guidelines stipulates determining lease rentals based on the market value of the land, irrespective of the end use of the Land. Given that there cannot be a different value for land falling in the same zone on the basis of usage, and considering that earlier way leave charges for the period 01.10.2012 to

30.9.2017 as approved by this Authority vide its order no. TAMP/62/2019-MBPT dated 8 September 2020 is also based on the market value based on State Government Ready Reckoner and also since there is no justification either in the Board approval or the recommendation of LAC as to why highest Market value as per PGLM guidelines is considered for granting way leave permission only for non cargo operated pipelines, this Authority prescribes the Way leave charges for non cargo operated pipelines in MBPT for the period 01 October 2017 to 30 September 2022 based on the State Government Ready Reckoner rates only for the respective Zones.

- (e). Further, as per Clause 12 (A) (I) of the amended Land Policy Guidelines, Licence fee for water area would be 50% of licence fee of abutting land. Resultantly, this Authority approves the way leave charges for the pipelines/cables for occupying airspace, underground, overhead, sea bed and below seabed, as proposed by the Port.
- (ix). The MBPT has proposed a note in the Schedule for non-cargo pipelines to the effect that the rates for way leave fee on MBPT land and trestles [i.e. trestle of Old Pir Pau Pier (OPP), First Chemical Berth (FCB) and Second chemical berth (SCB)] will be applicable for the period from 01 October 2017 to 30 September 2022 as approved vide Board's TR no. 109 of 2019 and will be revised every five years or as decided by the Board from time to time.

The TR no. 109 of 2019 as referred by MBPT, indicates that the rate of way leave fee on trestle of OPP, FCB and SCB is based on return on investment and that the existing rate will be continued till September 2022 with 4% increase. In this regard, it is to state that the proposal of MBPT does not give details of the methodology adopted by MBPT to determine the existing Way leave charges based on return on investment. The proposed SOR also does not categorically bring out the existing way leave fees being levied and the way leave charges proposed to be levied on trestle of OPP, FCB and SCB.

In this regard, it is submitted that the MBPT has come up with a separate proposal for levy of way leave charges on the trestle of OPP, FCB and SCB, based on the stipulations contained in the Land Policy Guidelines. Therefore, the proposed note is deleted.

- (x). The MBPT is seen to have proposed a note (under both schedules i.e cargo operated and non-cargo operated pipelines) to the effect that the way leave charges shall increase by 4% every October and that the 1st such revision will be effected from 01 October 2018. In this regard, it is relevant here to mention that Clause 13(c) of the Land Policy Guidelines of 2014 gives flexibility to the ports to fix annual escalation which would not be less than 2%. Accordingly, the MBPT has proposed 4% annual escalation. Since the annual escalation rate of 4% is seen to be as per the provision of the Land Policy Guidelines, the proposed rate of 4% annual escalation is approved.
- (xi). The MBPT is seen to have proposed a note (under both schedules) to the effect that in case, the prevalent way leave fee is higher than the revised rate, the higher prevalent rate will be continued with 4% increase p.a.

The Land Policy Guidelines requires the port to prescribe rentals based on the market value of the land. As per the Land Policy Guidelines, the Rent Schedule shall be escalated by minimum of 2% per annum. The Rent Schedule is subject to

revision after every five years. These provisions are reflected in the Rent Schedule by way of conditionalities. The provision proposed by the Port is for the purpose of inclusion in the Way Leave Agreement to be entered by the Port. The Scale of Rates framed by this Authority need not contain the clauses to be inserted in the Way Leave agreements to be entered by the port trust with the concerned parties. It is for the Port to enter into Way Leave Agreement ensuing compliance of the Rent Schedule and Land Policy Guidelines of the Government. Even in the case of Kolkata Port Trust, a similar note proposed by the Port was not included in the Rent Schedule approved by this Authority. Even otherwise, it is seen that the proposed rentals based on the land value as per Ready Reckoner, 2017 as furnished by MBPT for all the areas as on 01 October 2017 is higher than the existing rentals as on 30 September 2017. Therefore, prescription of the note proposed by MBPT is seen to be only theoretical and may not be relevant as it will not serve any purpose. Hence, the proposed note is not included in the Way leave Schedule.

- (xii). The MBPT is seen to have proposed a note (in both the schedules) to the effect that for the purpose of Right of way leave charges, the area occupied by pipelines, other than those of trestle shall be calculated based on width (subject to minimum of 1 meter) and length of those pipelines. In this regard, the MBPT has taken a view that since as per the current practice being followed by MBPT, a minimum distance of 300 mm is taken on both sides of pipeline for safety purposes, a minimum land width of 1 meter is necessary for calculating Way leave fees. A formula in this regard has been proposed by the port as one of the note. Many of the users viz., BPCL, TATA, ALL and HPCL have objected to the proposed note and have requested that the special way leave rates may be charged only on the actual area of the pipelines rather than fixing a minimum width of 1 meter.

In this regard, the MBPT has countered the objection made by the users by stating that a minimum distance of 300 mm is taken on both sides of pipeline for calculating the Special way leave fees, keeping in view the safety, repairs and maintenance of pipelines, which has been in vogue at MBPT since the year 1994 and that all the way leave occupants of MBPT were aware of the formula adopted of considering additional distance of 300 mm on both sides of pipeline as a buffer area by MBPT and have paid the way leave charges as per the then prevailing formula without any dispute.

Incidentally, it may be recalled that in September 2020, while fixing the way leave charges for the period 2012-17, the buffer area as proposed by the port then had been deleted. However, subsequently, the port had submitted that the buffer area of 300 mm on both sides of the pipelines is essential as the pipelines generally carry highly inflammable Petroleum products/ inflammatory gases/ poisonous gases etc. and as such, any damage to these pipelines will result in major catastrophe in a highly populated city of Mumbai. The buffer zone was reported to avoid damage to the pipelines while undertaking the construction activity by way of pile foundation/ excavation work. The port had also further stated that exclusion of buffer area of 300 mm on both sides of pipeline in the calculation of way leave charges deprives the port of receiving any remuneration on such excluded area, as the said buffer area cannot be put for any other use by the port. Accordingly, this Authority vide its Order dated 15 September 2021 had restated the inclusion of buffer area in the calculation of way leave charges of pipelines. Hence, the said proposed notes are continued to be prescribed.

- (xiii). A note has been proposed by the port (in both the schedules) to the effect that charges for way leave for occupation of air space, underground, seabed and below seabed will be 50% of rate and that License fee for water area would be 50% of the

license fee of abutting land. The said note further stipulates that the way leave fee for over-ground service shall be based on full rate.

In this regard, as per Annexure forming part of the Land Policy Guidelines, 2014, which lists down the Broad Terms and Conditions for issuance of Right of way Permission for laying Pipelines/ Conveyors etc., as per Note no. 3, with regard to underground pipelines, 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 shall be considered as 50% of the diameter and length, for the purpose of levy of Right of Way charges. The note proposed by the port is seen to be based on the stipulation contained in the Land Policy Guidelines, 2014, and hence approved.

- (xiv). Few notes have been proposed by the port (in both the schedules) in connection with levy of Special Way Leave for the pipelines laid on Old Pir Pau Pier (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB). In the said notes, the MBPT has drawn reference to some of its Board Resolutions and have indicated that the rates as finalized by the Board of Trustees of MBPT would prevail till September 2022. Since the proposed notes are not in connection with the rates proposed by the MBPT in the subject proposal, it is felt that the said notes may not form part of the Rent Schedule notified by this Authority. Hence, the proposed notes are not incorporated in the Rent Schedule for Way Leave Charges notified by this Authority.
- (xv). Further, a note proposed by the port (in both the schedules) to the effect that the rate applicable for loop length of pipeline laid on trestle will be taken at 60% of Way Leave rate of respective trestle in accordance with TR No.257 of 2015, is found not in connection with the rates proposed by the MBPT in the subject proposal. Since the charges for loopline is linked to trestle and also on the advice of this Authority in the earlier order dated 8 September 2020 prescribing the way leave charges for the period 1.10.2007 to 1.10.2012, the MBPT has already filed a separate proposal for levy of way leave charge on trestle of OPP, FCB and SCB. It is felt that the said notes may not form part of the Rent Schedule to be approved by this Authority. Hence, the proposed notes is not incorporated in the Rent Schedule for Way Leave Charges notified by this Authority.
- (xvi). A note has been proposed by the port (in both the schedules) to the effect that the special way leave fee for Optical Fibre Cable will be at applicable rates but taking the width subject to a minimum of half a meter for computation instead of 1 mtr. A minimum area is stated to have been proposed by the port for safety and maintenance/ repairs purposes. The note as proposed by the port is approved.
- (xvii). A note has been proposed by the port (in both the schedules) to the effect that whenever the Stamp Duty Ready Reckoner values are not available, land value rate obtained by the valuer will be considered. In this regard, it is to state that the Rent Schedule for the Special Way Leave charges during the period from 01 October 2017 to 30 September 2022 has been proposed by the port taking into account the State Government Ready Reckoner rates for all the areas. In such a scenario, prescription of the proposed note is not found relevant. Further, in this regard, it is to state that this Authority is mandated under Section 49 of the Major Port Trusts Act, 1963, to frame Scale of Rates [SOR] at which, and the statement of conditions under which any property belonging to, or in possession or occupation of the Board or any place within the limits of the port approaches may be used for the purposes specified u/s 49 of the Act. As such, this Authority is required by the Act to fix and notify the lease rentals for the port estates. As a result, a blanket approval cannot

be given to MBPT to determine the rentals based on Valuer's Report and adopt the same on its own, without specifically seeking TAMP's approval. The proposed note is therefore, deleted.

- (xviii). The MBPT is seen to be erroneously omitted to prescribe a note to the effect that Interest for delayed payment of monthly bills will be charged at 18% per annum as per the existing policy or as may be decided by the Board from time to time, which existed in the SOR of Way leave fees for the period 2012-17. The levy of interest will instill discipline on the users for timely payment of rentals and hence, a note to that effect is included in the SOR in both Rent Schedules.
- (xix). The MBPT has proposed a note regarding the differential interest of Way Leave as per the updated SOR for the period from 2012-17. The note states that the interest will not be applicable on the differential arrears till raising of demand notice and that if the party fails to pay as per the demand/ invoice within the stipulated time, i.e. 3 months from the receipt of demand notice/ invoice, interest will be applicable as may be decided by TAMP. In this regard, when the Board of MBPT has already decided a rate of 18% interest on delayed payments, the question of this Authority deciding a particular rate of interest for delay in payment of differential rent does not arise. The note proposed by MBPT is, therefore, modified to reflect this position.
- (xx). A note has been proposed by the port (in cargo pipelines schedule) to the effect that in the event of failure to achieve Minimum Guaranteed Throughput (MGT), the user should compensate the port by paying additional wharfage charges for the shortfall quantity. As per the General Terms and Conditions for issuance of Right of Way permission for laying pipelines/ conveyors etc., forming part of the Land Policy Guidelines, for the purpose of Right of way leave charges, each Port Trust Board would formulate and approve their own policy for one time supervision charges, MGT and additional compensation charges if any for granting way leave permission. Prescription of MGT is in the domain of the port. However, the note proposed by the Port is only indicating that failure to achieve MGT will attract payment of additional charges for shortfall quantity, and hence approved to be incorporated in the Schedule of way leave charges.
- (xxi). A note has been proposed by the port (in both the schedules) to the effect that transfer right of Way Permissions are not transferrable. However, any case of specific requirement of the party transfer of Right of Way may be permitted by the Board in its discretion and subject to payment of all past dues, prevailing SoR and transfer fee equivalent to 12 months way leave as per the prevailing SoR and for the unauthorized assignment / transfer of way leave permissions granted in the past due to merger, amalgamation, etc. be regularized by levy of 24 months' revised Way Leave fee as per prevailing SoR. The provision relating to transfer of right of Way Permissions is in the domain of the port. Hence, the proposed note need not form part of the Schedule of Way Leave Charges.
- (xxii). The MBPT has proposed a note to the effect that other aspects related to Right of Way Permission will be dealt with as per policy approved by the Board. The said note is modified to read that other aspects related to Right of Way Permission will be dealt with as per extant Land Policy Guidelines.
- (xxiii). The Bharat Petroleum Corporation Limited (BPCL) have stated that the SOR proposed by the port does not include the case when pipelines are laid in multilayer stacks. The MBPT, while responding to the comments of the users have stated In terms of MBPT policy guidelines under TR No. 109 of 2019, for fixation of charges for special way leave, each way leave pipeline requires prior permission of MBPT

and each such way leave permission letter with set of terms and conditions letter Its acceptance become a binding contract for both the parties. The way leave occupations neither lease nor license. The way leave charges are subject to revision of rate of every 5 years. BPCL has been allowed for laying of pipelines on port trust land from Pir Pau to Wadala and other parts of port trust land. For each pipe line there was way leave contract as per the terms and conditions quoted by MbPT and accepted by BPCL. In the said contract terms there was no distinction made for single pipeline over the ground or pipelines in multilayer and every pipeline of special way leave is charged as per formula Therefore, now there is no question to go back terms of such existing contracts by BPCL. The decision of the port in this regard is relied upon.

- (xxiv). The MBPT has also proposed note (in both the schedules) to the effect that whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month. Since the proposed note give clarity and would avoid ambiguity and would instill discipline amongst the tenants/ lessees in the payment of way leave charges, the proposed note is approved.
- (xxv). The MBPT has proposed another note (in both the schedules) to the effect that the rates are exclusive of Taxes, service charges, penalties, interest rates and are separately payable by the lessees. In this regard, it is to state that the tariff approved by this Authority is exclusive of any taxes and statutory duties. The taxes and statutory duties are to be levied by the Port at the applicable rates on the tariff so approved by this Authority. In view of this position, the note as proposed by the Port is approved.
- (xxvi). The MBPT has proposed another note (in both the Schedules) to the effect that every special way leave shall be examined as per the definition of cargo and non-cargo operational pipeline before revision of special way leave in 2017-22. In this regard, no differentiation has been envisaged in the determination of market value of land for cargo and non-cargo operational pipelines, the examination to categorise the pipelines to cargo or non-cargo may not be relevant and hence deleted.
- (xxvii). The charges to be levied for Right Of Way Permission (ROWP) would be as per the Broad terms and conditions for issuance of ROWP for laying pipelines / conveyors etc., forming part of Policy Guidelines for Land Management, 2015. As per clarification 17 on Policy Guidelines for Land Management, 2015 issued by Ministry of Shipping (MOS) vide its letter dated 14 May 2018, where there is a specific Central Act / Statute which govern such ROWP, the provisions under the said Central Act / Statute shall override the Policy Guidelines for charges to be levied for ROWP. In this context, the TATA Power Company Ltd. (TPCL) has contended that the proposed way leave charges are not applicable to the TPCL since the TPCL is a Telegraph Authority and in terms of Telegraph rules – 2016, the underground utilities are not chargeable. So far as the overhead transmission lines are concerned, charges are permitted to be recovered only if the land beneath is unlikely to be used for any other purpose, as per the contention of the TPCL. The TPCL has further requested to classify the power utilities as 'cargo operated', sought further reduction from 50% reduction in rates for HT lines / cables passing through CRS areas, to stop further annual increase in the rates for the pipelines laid on first chemical berth and to levy only administrative fees for unauthorized assignment / transfer of way leave permissions granted in the past due to merger, amalgamation etc. When these contentions of TPCL were shared with the MBPT in consultation process for its response, the MBPT has stated that the TPCL has filed

a writ petition before the Hon'ble High Court of Bombay and that the matter is sub-judice.

As per Section 49 of the Major Port Trusts Act, 1963 this Authority is mandated to frame Scale of Rates (SOR) and Statement of Conditions from time to time for use of the properties of the Port. Since the matter is sub-judice, this Authority is not the appropriate forum to adjudicate on the issues raised by TPCL in the current tariff proceedings.

8. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves, the Schedule of way leave prescribing way leave charges for the 17 Ready Reckoner Zones for Cargo Operated and associated pipelines and for 31 Ready Reckoner Zones for Non Cargo Operated Pipelines at of MBPT for the period 01 October 2017 to 30 September 2022 which have been notified separately vide Gazette No. 535 dated 1 November 2021

(T.S. Balasubramanian)
Member (Finance)

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.

TAMP/49/2021-MBPT	:	Proposal received from the Mumbai Port Trust (MBPT) seeking approval for fixation of Schedule of Rates (SOR) for way leave / special way leave fees for the period from 01.10.2017 to 30.09.2022.
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A summary of the comments received from some of the users / user organisations and the response of Mumbai Port Trust (MBPT) thereon is tabulated below:

Sr.	Comments received from various users / user organisations	Response of MBPT
1.	Bharat Petroleum Corporation Limited (BPCL) vide its e-mail dated 24..09.21	
(i).	BPCL is utilising 38543.13 sq mtr of land at Jawahar Dweep Island. The Island has been included in the Mahul RR Zone 901419 valuing the land at ₹.19400 in 2017. Land Allotment Committee Report (LAC Report) 29/07/2021 has arbitrarily revised the JD land rates to ₹.28523/sq mtr citing the revised Valuation Report of MBPT appointed Valuer, Mr Avinash Pendse.	The subject proposal is for revision of way leave rate for period from 1.10.2017 to 30.9.2022. As for JD, there are no way leave occupation in the name of BPCL and there is no way leave charges. Mumbai Port Trust proposed SoR based, on highest of five factors in terms of PGLM. Further as far as JD is concerned, since there is no revision of way leave charges for period from 1.10.2012 to 30.9.2017, therefore the valuation is carried out for JD Island. The value submitted in valuer's report is giving the fair market value of ₹. 28,523/- per sq.m. and the SoR rates work out @6% p .a. return thereon. The SoR is for expired leases. LAC also recommended increase of rate @ 4% every year and arrived at base SoR rate as on 1.10.17 and also on 1.10.2012 on the same methodology. The other option considered by valuer is that compared the return earned by JNPT, which was highest of five factors and recommended by LAC and approved by the Board of Trustees of Port of Mumbai.
(ii).	The Island is 4.2 km from the land i.e. Mahul Jetty. In our opinion, it does not fall under any Division for the purpose of SOR. The absence of road connectivity with mainland enhances operational costs for all activity in addition to additional infrastructure measures. There are situations when due to adverse weather conditions the Island remains cut off from main land for days together. In view of the peculiar isolated location of the Island the Land parcel on the Island needs to be valued bearing in mind the above.	
(iii).	BPCL has been regular in rental payments as per demand raised by MbPT. No Demand has been pending with BPCL for the period from 1.10.2017. MBPT has proposed a revision in rates for a period which has already been settled. Any revision in rates should be prospective & not retrospective as our accounts for the respective earlier years are already closed.	PGLM mandates that the SoR would be refixed once in every five years by TAMP. TAMP had approved retrospective revision for the previous five years' period of 2012-17 despite party's objections. Parties are aware of the fact that the rates are revised every five years.
(iv).	The highest rate of transaction in the islands vicinity was MbPT's offer for land at Jawahar Dweep for bunkering business tanks to HPCL, vide letter no EM/U-12/JD-Bunkering/4656 dated 7th January 2017, at a lease rent of ₹.99.84 /sq mtr/month valuing the land at ₹.20000/sq mtr. The offer was as	The fair market value is reported by Valuer on the basis of highest of the five factor and the same was examined by LAC. Thereafter recommended to Board for valuation in terms of PGLM.

	per TAMP regulation & works out to ₹.1198/sq mtr /year.	
(v).	BPCL has 2 pipelines at Pirpau (12" MPPL & 24"HTPL), in instances of multi-layered stacks the actual surface area occupied is a division between the different pipes. MBPT proposal does not include the instance of pipelines laid in multilayer stacks. MbPT should charge wayleave on actual area of pipeline rather than fixing a minimum width of 1m on land.	In terms of Mumbai Port Trust policy guidelines under TR No. 109 of 2019, for fixation of charges for special way leave, each way leave pipeline requires prior permission of Mumbai Port Trust and each such way leave permission letter with set of terms and conditions letter, Its acceptance, become a binding contract for both the parties. The way leave occupations are neither lease nor license. The way leave charges are subject to revision of rate of every 5 years. BPCL has been allowed for laying of pipelines on port trust land from Pir Pau to Wadala and other parts of port trust land. For each pipe line there was a way leave contract as per the terms and conditions quoted by MbPT and accepted by BPCL. In the said contract terms there was no distinction made for single pipeline over the ground or pipelines in multilayer and every pipeline of special way leave is charged as per formula. Therefore, now there is no question to go back to the terms of such existing contracts by BPCL.
(vi).	MbPT should charge wayleave on actual area of pipeline rather than fixing a minimum width of 1m on land.	TAMP, vide order No. TAMP/62/2019-MbPT dated 15.9.2021 has restored the MbPT's way leave formula.
(vii).	The above need to be considered and rental charges of MbPT should be calculated accordingly	No remarks
2.	Tata Power Company Limited (TPCL) vide its letter dated 27 September 2021	
(i).	The comments below are without prejudice to the pending writ petition and to one another and in the alternative.	No remarks
(ii).	We reiterate, confirm and adopt our submission under letter No.BP/225-A/360 dated 26.08.2021 furnishing our comments on the proposed Schedule of Rates from 01.10.2017 to 30.09.2022 for 8 Ready Reckoner Zones of MbPT Estate lands. It may be noted that the fundamental questions raised on the valuation methodology therein have not been responded to.	The comments pertain to the proposed revision of land rates. Remarks on the same have been sent to the Finance Department of MbPT by Estate Manager's 07:08 pm email dated 14.10.2021 for examining and forwarding to TAMP
(iii).	Attention is also invited to TR 109 of 28.10.2019, wherein at Para 7, it is mentioned that "the amended policy of Right of Way (Special way Leave Fees) is again reviewed in the LAC meeting dated 03.08.2019 and also decided that whenever there are conflicts such cases will be dealt on case to case basis with LAC's recommendation e.g. ONGC (BUT, HUT, MUT pipelines), Tata, RCF, Customs etc. Therefore, whatever rates are finally	The party has filed a Writ Petition before Bombay high court in the matter. The matter is sub-judice.

	<p>adopted, they shall have due consideration to the applicable Act / Rule / Guidelines governing the occupations of Tata Power. It is submitted that MbPT's current proposal has not dealt with these aspects.</p>	
(iv).	<p>The Supreme Court in its judgment dated 13.01.2004 appeal (Civil) 5559 of 2001 J. H. Wadia Vs. MbPT had inter-alia answered the following questions as to status of MbPT as a landlord; the rent that it can charge being exempted from the Rent Control Act and to act in a fair and reasonable manner.</p> <p>The following principles have been laid down in the judgment:</p> <ol style="list-style-type: none"> a) The position of law is settled that the State and its Authority including instrumentalities of States have to be fair and reasonable in all its activities including those in the field of contract. b) There is a need to maintain distinction between a private landlord and MbPT when it comes to charging market rates. c) Excepting the current market rates of real estate and working out a return on such rate by reference to the market trends would tantamount to indulging into profiteering. d) The exemption from the provisions of Rent Control Law casts and obligations on the State and its instrumentalities and Authorities to comply with public policy of a ensuring a fair return of investments without charging exorbitant rates based on prevailing market price of the land. e) The only consideration which prevailed with the High Court and the Supreme Court was one of the reasonability and the need for striking the balance before taking a long leap in the direction of an upward revision of rate. <p>Accordingly, the Supreme Court moderated the market rate otherwise proposed by MbPT. In that the market rates of 1982 were applied from 1994 similar to that provided in the Rent Act. It is submitted that the proposed SOR has envisaged rates for non-cargo which are exorbitant as much as 700% of the Ready Reckoner rates, are in utter disregard to the principles laid down by the Supreme Court.</p>	<p>The rate revision proposal is as per the PGLM.</p>
(v).	<ol style="list-style-type: none"> a). It is noted that MbPT proposes to continue the way leave fee on nominal basis (para 10 of the proposal). b). Tata Power is a Telegraph Authority as per the Gazette Notification of 7th April 	<p>The party has filed a Writ Petition before Bombay high court in the matter. The matter is sub-judice.</p>

	<p>1955 (Annexure-3). Accordingly, the relevant provisions of Indian Telegraph Act and its Right of Way Rules, 2016 are applicable. In terms of these Rules, the underground utilities are not chargeable for any way leave fees except for administrative and restoration charges and in case of overhead lines, charges are permitted to be recovered only if the land beneath is unlikely to be used for any purpose. Thus, in case of HT lines through CRZ / mangroves / creek / sea / salt pan, no way leave charges is chargeable. The applicability of Indian Telegraph Act and its Row Rules, 2016 is also confirmed by the Ministry of Shipping, GOI, under clarification No.14 (i) of clarification circular (land management) No.1 of 2019-20 wherein it is specifically mentioned that <u>"...where there is a specific Central Act / Statutes which governs such Row permissions provisions of such Statutes shall override these guidelines. A case in point in Indian Telegraph Act, 1885 and Indian Telegraph Act – ROW Rules, 2016"</u>.</p> <p>The proposed schedule of rates has not provided for such cases in spite of there being specific provision made by the Ministry in the PGLM. TAMP is requested to prevail on MbPT to provide SOR for such cases.</p> <p>In this regard, attention is invited to TAMP's order at 9(xxiii) dated 16th September 2020 on MbPT's proposal for SOR for WLF from 2012-2017 as regards the applicability of SOR to Tata Power being a Telegraph Authority as stated above. This provision has been adopted by MbPT. As recorded in the order that our contentions were already examined by MbPT etc. two letters both dated 02.11.2020 have been addressed to TAMP and MbPT for appropriate action. It is submitted that we have yet to receive any revert, despite having taken up the matter with MbPT several times.</p> <p>In view of the aforesaid specific provision in PGLM issued by the Ministry and adopted by MbPT, it is our humble submission that TAMP prevails over MbPT for applying the provisions of PGLM in SOR in respect of our cases.</p>	
(vi)	<p>Comments as in (v-b) for electric cables and overhead HT lines. It is important to distinguish between commercial and</p>	<p>The party has filed a Writ Petition before Bombay high court in the matter. The matter is sub-judice.</p>

	<p>infrastructure utilities which are regulated such as power utilities as any enhancement in the cost is automatically transmitted to the customers, resulting in the increased tariff. It is therefore incumbent upon MbPT to scrupulously follow the provisions of PGLM as mentioned in para (vi-b) above.</p>	
(vii)	<p>In the mail dated 14.09.2021, TR No.109 of 2019 is not attached</p>	<p>Contention is denied.</p>
(viii)	<p>a). It is submitted that all wayleave cases of Public Utility Infrastructure being a regulated entity shall be considered as Cargo Operated for the reason stated hereinabove.</p> <p>b). It is seen that bill code number 10104105 (Berthing Pocket and Turning Circle) is not included in Cargo operated list whereas in this case Wharfage is being paid to MbPT. Further, bill code No.10104983 (Approach Channel to the Coal Berth) is treated as non-cargo operated whereas the approach channel is used by barges to carry coal from the mothership to the Coal Berth, wherein also wharfage is being paid to MbPT. Thus, the Approach Channel should also be considered as Cargo Operated as hitherto, being a wayleave. In this respect, it is further submitted that an argument has been made by MbPT that Berthing Pocket and Turning Circle is a license and therefore Cargo Operated rates cannot be applied. We have already submitted to MbPT by our letter No.BP/337/107 dated 16.03.2021 that we have absolutely no difficulty in converting the license into a way leave but have not receipt any revert. The agreement in respect of the Captive Coal Berth having expired in May 2018 (application pending with MbPT for renewal), while executing a fresh agreement, this conversion should be considered. It needs to be noted that the aforesaid wayleave / license is associated with out captive coal berth on our own land which handles imported coal to operate the plants. Being in the MbPT port limits (not ownership), MbPT has prescribed payment of wharfage together with MGT, license fee for Berthing Pocket and Turning Circle and wayleave for Approach Channel. A total of more than ~12 Cr. per annum is paid for these cases, dredging cost is additionally incurred by us. As against this, MBPT's berth hire charges are far lower in few</p>	<p>The party has filed a Writ Petition before Bombay high court in the matter. The matter is sub-judice.</p> <p>The party has not brought out all the facts in their letter dated 16.3.2021. The party will have to represent to MbPT suitably bringing out all the facts</p>

	<p>lakhs / annum – 2.16 of MbPT scale of rates (O&M, dredging charges borne by MbPT) than the existing license fee of ₹.2Cr. / annum (O&M, dredging charges borne by Tata Power) @ ready reckoner rate. When linked to market rates, this fee would increase manifold. As submitted hereinabove, these costs would be a pass through to the customers, enhancing the tariffs. It is therefore submitted that the rate for license of Berthing Pocket and Turning Circle needs to be based on the Ready Reckoner rates as hitherto.</p> <p>c). Several fundamental issues have been raised on the valuation methodology adopted by the Valuers appointed by MbPT in our submission dated 26.08.2021 on which no revert is received. In fact, we have submitted therein that in view of several discrepancies pointed out in the valuation, the same are liable to be rejected.</p> <p>d). The basis of 6% annual return is not explained</p>	<p>The comments pertain to the proposed revision of land rates. Remarks on the same have been sent to the Finance Department of MbPT by Estate Mnager's 07:08 pm email dated 14.10.2021 for examining and forwarding to TAMP.</p> <p>The 6% return is mandatory under clause No. 13 of PGLM.</p>
ix)	<p>a) We have received valuation reports only in respect of Srl. No.1 to 8 of Column 'A' through communications received during MbPT's proposal for rent revision for 2017-2022. We have not received valuation reports from Srl. No.9 to 31 of Column 'A'. It is submitted that the same may be provided forthwith so as to furnish comments on the same.</p> <p>b) TAMP has directed vide its order dated 16.09.2020 on MbPT proposal for revision of way leave from 2012 to 2017 on MbPT proposal for revision of way leave from 2012 to 2017 that while calculating the area occupied by pipeline / cable etc. the width should be restricted to the actual width of pipeline etc. it is seen from the note No.s2 & 7 of Annexure-II that the width of pipelines / optical cable is proposed to be minimum 1 mtr. / 0.5 mtr. Respectively which needs to be corrected to actual width.</p> <p>c) It is proposed in point No.4 that for unauthorized assignment/transfer of way leave permissions granted in the past due to merger, amalgamation etc. could be regularized by levy of 24-month way leave fees. This condition needs modification that where change of name</p>	<p>The valuation reports are now available on MbPT website.</p> <p>TAMP vide order dated 15.9.2021 has restored the formula.</p> <p>For authorized transfer (transfer made with Mbpt'S permission), the transfer fee is 12 months' way leave fee. For unauthorized transfer (transfer made without Mbpt'S permission), the transfer fee is 24 months' way leave fee.</p>

	<p>due to merger achieved through legal process which does not involve any transfer of assets and where the approved scheme is stamped only for nominal amount since merger is by operation of law, such transfers should be permitted by charging only administrative fees and should not be designated as unauthorized assignment / transfer.</p> <p>d) In cases where electricity utilities such as HT lines, Cables, Pipelines pass through CRZ areas, it is not correct to reduce the SOR rates only to the extent of 50%. In fact, the SOR have to be restricted only upto the land boundaries as are obvious from Ready Reckoner zone maps corresponding to the zones in Column-B of Annexure-II. None can substantiate that the SOR market rate for lands which are based on real estate transactions could also be applied to the lands below water/creek even with 50% reduction. The Ready Reckoner guidelines for NDZ and CRZ stipulate adoption of 40% and 30% fctors respectively to the Ready Reckoner rates (Annexure-7) applicable only to the land portions. Thus, for those parts under water or creek further reductions are justified and should be done. Since the land beneath the water cannot be used for any purpose, only nominal rate should be charged. If at all a higher rate is to be adopted an analogy should be drawn from the rules framed for the capital value assessment for property tax of MCGM where lands adversely affected are valued at 1% / 10% of the SOR (Ann-7 'A').</p>	<p>The party has filed a Writ Petition before Bombay High court in the matter. The matter is sub-judice</p>
<p>x).</p>	<p>a). It is submitted that all way leaves belong to public utility infrastructure shall be categorized into Cargo Operated as the expenses are passed to the customers being regulated business. Further, bill code No.10104983 (Approach Channel to the Coal Berth) is treated as non-cargo operated as submitted herein above. Thus, the Approach Channel should also be considered as Cargo Operated as hitherto, being way leave, as admitted by MbPT in this para that approach channel should be considered as Cargo Operated but surprisingly the same has been included in Non-Cargo Category List. Further it needs to be noted that the rate of increase of Ready Reckoner rates from 2017 to 2021 is only 2% (annual</p>	<p>For the approach channel, the party will have to represent to MbPT suitably. PGLM mandates that the escalation should not be less than 2%. MbPT has fixed it at 4% which is reasonable and is accordance with the standard practice and procedure followed by MbPT since 1992 onwards as per compromise proposal held by Supreme Court in Wadia judgement dated 13.1.2004. Further, in terms of rent control act, the landlord is allowed to increase annual rental by 4% in accordance with the inflation.</p>

	<p>average) as against 4% proposed by MbPT. It is therefore submitted that this rate needs to be lowered accordingly.</p> <p>b). In view of the statement mentioned herein by MbPT that conveyance of cargo through the port limit in the form of Pipeline / Approach Channel / Means of Access / any similar Right of Way should be Cargo operated justifies inclusion of Approach Channel (Bill Code No. 1014983) and Berthing Pocket and Turning Circle (Bill Code No. 10104105), where wharfage is paid to MbPT to be included as Cargo Operated. Where wharfage is paid to MbPT to be included as Cargo Operated. In this regard, it is already submitted to MbPT that the license of Berthing Pocket and Turning Circle be converted as way leave as stated above.</p>	Repeated comment (comment at para C.1.b).
xi)	<p>Several fundamental issues have been raised on the valuation methodology adopted by the Valuers appointed by MbPT in our submission dt. 26/08/2021 on which no revert is received. In fact, we have submitted therein that in view of several discrepancies pointed out in the valuation, the same (market valuation) are liable to be rejected.</p>	Contention is denied and it has already been explained that the valuation is carried out properly.
xii)	<p>As for the rates applicable for Loop length of pipelines on trestle, it is submitted that firstly, TR 257 was not attached to the mail dt. 14/09/2021. Further, in the TAMP order dt. 16/09/2020 passed on revision of way leave fee of 2012-2017, MbPT was advised to submit a well analysed proposal as its proposal did not give details of the methodology adopted to determine the existing way leave charges based on return on investment etc. and for this reason, rate for loop length on Trestle was not approved. Thus, it is submitted that this proposal of MbPT is not admissible.</p>	Well analyzed proposal is submitted.
xiii)	<p>While MbPT has stated that Water Supply Lines/Drainage & Sewage Lines/ Electricity Cable/ Overhead Line/Infrastructure Road/Telegraph Cable/ Optical Fiber Line/ Railway Lines will be dealt with on merit as provided under clarification No. 14 (i) of Clarification Circular (Land Management) No.1 of 2019-20 dt. 20/04/2019, MbPT has included Electricity Cable/Overhead Line (Annexure-8) etc. as Non-Cargo operated. These cases need to be dealt with as per the applicable statutes and should be taken out from the non-cargo operated category.</p>	Nominal way leave fee is only for government undertakings. For private parties, special way leave fee is applicable. Also, the party has filed a Writ Petition before Bombay high court in the matter. The matter is sub-judice

	It is noted that the revision of existing utility services which have been given on nominal basis will be continued at the same rate.	
xiv)	First of all, it is impermissible to effect retrospective revision from 2017 in 2021. Without prejudice, the effect of differential arrears is bound to be enormous. Thus, it is submitted that no interest be charged at all on differential arrears.	Regarding the retrospective PGLM mandates that the SOR would be refixed once in every five years by TAMP. TAMP had approved retrospective revision for the previous five years period of 2012-17 despite parties' objections. Parties are aware of the fact that the rates are revised every five years No interest is charged on the differential arrears with retrospective effect. If party fails to pay the differential arrears as per the demand notice/ invoice within the stipulated time mentioned in the demand notice/ invoice then the interest will be charged
xv)	MbPT proposal needs modification in view of the submission as above.	The proposal is per PGLM.
xvi)	We reserve our rights to adduce to our submissions as appropriate and request you to share MbPT reply when received and call us for a personal hearing before the final order is passed by TAMP.	The party has filed a Writ Petition before Bombay high court in the matter. The matter is sub-judice.
3.	Aegis Logistics Limited vide its e-mail dated 29 September 2021	
i)	MbPT has mentioned that the area occupied by pipelines other than on trestle shall be calculated as per TR 138 of 2019 (i.e width = external diameter +600mm, subject to minimum width of 1 mtr). This method was also proposed in proposal for Special Wayleave charges for 2012-2017. However, TAMP vide order dated 8 th October 2020 had instructed MbPT to charge on the actual width of the pipeline. This order is yet to be implement by MbPT for year 2012-2017. MbPT has again proposed to charge on the same method (ie width = external diameter +600mm, subject to minimum width of 1 mtr). We submit TAMP to maintain this to actual area occupied by pipelines.	TAMP vide order No. TAMP/62/2019-MbPT dated 15.9.2021 has restored the MbPT's way leave formula
ii)	Escalation of Wayleave charges at end of every 5 years is proposed to be capped at 150% of the preceding year. Considering the competition and alternatives available to importers and exporters, we request to continue only with 2% annual escalation. As adding to the costs of the Port User and making them less competitive.	Re-fixation of way leave is every five years and is subject to maximum of 150% of the way leave charges applicable for the fifth year
iii)	At present, MbPT is charging an annual escalation of 4%, which in current scenario is very high and we request to revise this to 2%. This escalation of 2% is in line with other Ports in India.	PGLM mandates that the escalation should not be less than 2%. MbPT has fixed it at 4% which is reasonable and is in accordance with the standard practice and procedure followed by MbPT since 1992 onwards as per compromise proposal held by Supreme Court

		in Wadia judgement dated 13.1.2004. Further, in terms of Rent Control Act, the landlord is allowed to increase annual rental by 4% in accordance with the inflation.
iv)	MbPT should not charge the rate increase retrospectively	PGLM mandates that the SOR would be refixed once in every five years by TAMP. TAMP had approved retrospective revision for the previous five years period of 2012-17 despite parties' objections. Parties are aware of the fact that the rates are revised every five years.
v)	Rate for non-cargo pipelines (Water line in our case) proposed based on Valuer report (M/s.Patwardhan Consultant P. Ltd) is exorbitantly high. The tank rent and methodology adopted by Valuer for Land valuation is wrong. We request that since these are utility lines way leave should be charged at nominal wayleave rate.	The valuers report has been examined by the LAC and LAC has recommended the rate prescribed therein to the Board and as such the correct principles under PGLM is followed. The water is being used for commercial purpose. Hence cannot be charged at nominal way leave.
vi)	For calculating return based on cost of trestle the life of trestle has been considered as 30 years. However, as per Government Order No. PR-24021/28/98-PG dated 19.08.1998 the life of a jetty has been fixed at 50 years. We request that this should be considered, and wayleave charges worked out accordingly.	Continuous operation and maintenance of the trestle/jetty is necessary throughout its existence and as such, there has not been any upward revision with regard to the way leave fee recoverable for Old Pir Pau and First Chemical Berth. Only 4% annual escalation to partly offset the inflation has been proposed to be continued over the way leave fee fixed in the year 1994 and effective from 1992.
vii)	The wayleave charges worked out for the trestle by Mumbai Port include the return based on cost of the trestle and value of the land below the trestle, which calculated as per the RR rate for Zone 90/149. Instead of double counting we request that the charges should be worked out only based on return of the cost of trestle.	The owner is entitled to return on investment both by way of cost of trestle and the land occupied by the trestle and the charges thus is correctly worked out.
viii)	Annual 4% escalation in wayleave charges has been ignored while working out the return based on cost of the trestle.	The annual escalation is to offset the annual inflation.
ix)	With cost of the trestle being recovered under Depreciation, Mumbai Port is double counting by considering additional 6% provision as replacement cost. Replacement after end of life is to be recovered from wayleave recovery post replacement and no future capex (after 50 years) can be loaded on present wayleave.	The contention is denied.
x)	The cost of OPP and FCB trestle has been recovered by MbPT and hence MbPT should charge for portion of the pipeline for this trestle as per Land rate and not based on return of the cost of trestle.	Continuous operation and maintenance of the the trestle/jetty is necessary throughout its existence and as such, there has not been any upward revision with regard to the way leave fee recoverable for Old Pir Pau and First Chemical Berth. Only 4% annual escalation to partly offset the inflation has been proposed to be continued over the way
xi)	Wayleave charges for pipelines laid on trestle is calculated by Port to recover investment and its return over the life of the trestle, which in this case has been considered by Port as	

	30 years. Old Pir Pau jetty has already been in operation for more than 50 years and all the cost plus returns incurred have been accordingly more than recovered. Thus wayleave charges for Pipeline laid on trestle from land to jetty should now be charged for the period under review at 50% of charges for land rate of ROW, as the said portion is on Sea.	leave fee fixed in the year 1994 and effective from 1992.																												
xii)	MbPT should regularise wayleave agreements	The request does not have any relation to the present proposal under consideration of TAMP.																												
4.	Oil & Natural Corporation Limited (ONGC) vide its e-mail dated 29 September 2021																													
i)	It is submitted that in view of the present economic interest rates, the basis of 6% return p.a. on land considering the RBI Bank rate which was 6%	The 6% return is mandatory under clause No. 13 of PCLAA to be judiciously reviewed in 2009 is presently reduced to 4.25%.																												
ii)	It is submitted that change in terms and condition to an existing valid Agreement between two parties can only be brought in effect with mutual consent of both parties. Accordingly, in view of the existing valid Agreement between ONGC & MbPT it is suggested to please consider the following modification: "Whenever there are conflicts, such specific cases will be dealt on case to case basis with LAC recommendations and with ONGC consent."	Party's views are always obtained and put up to LAC for decision.																												
5.	Hindustan Petroleum Corporation Limited (HPCL) vide its e-mail dated 29 September 2021																													
i)	Our comments specifically for the pipelines pertaining to Sewree Wadala Terminals described hereunder only, and comments for the remaining pipelines as mentioned in the SOR for 2017-2022, which are not mentioned below will be submitted separately	No remarks.																												
	<table border="1"> <thead> <tr> <th>no</th> <th>Plot No. RR no.</th> <th>Location Name</th> <th>Pipeline details</th> <th>Current rate in rupees @ 2017</th> <th>Revised rate in Rupees @ 2017</th> <th>Zone as per RR</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>2040</td> <td>SEWREE I</td> <td>236.62 sq.mtr (Area)</td> <td>47.5</td> <td>601</td> <td>11/86</td> </tr> <tr> <td>2</td> <td>2040</td> <td>SEWREE I</td> <td>150.5 mtr. (Length & 6" (Diameter)</td> <td>47.5</td> <td>601</td> <td>11/86</td> </tr> <tr> <td>3</td> <td>1663</td> <td>SEWREE II</td> <td>13.37 mtr. (Length & 6" (Diameter)</td> <td>86.50</td> <td>575</td> <td>14/101</td> </tr> </tbody> </table>	no	Plot No. RR no.	Location Name	Pipeline details	Current rate in rupees @ 2017	Revised rate in Rupees @ 2017	Zone as per RR	1	2040	SEWREE I	236.62 sq.mtr (Area)	47.5	601	11/86	2	2040	SEWREE I	150.5 mtr. (Length & 6" (Diameter)	47.5	601	11/86	3	1663	SEWREE II	13.37 mtr. (Length & 6" (Diameter)	86.50	575	14/101	
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ii)	MbPT has leased total area of 107143 sq.mtr to HPCL Sewree and Wadala Terminals vide Lease Agreement dated 11.10.1991. It is submitted that lease for land at plot no. 2040 & 1663 continued to be valid during the period of revised SOR period i.e. 2017-2022. At the outset, we deny that MBPT is entitled to seek revision of schedule of rates of Way	PGLM mandates that the SOR would be refixed once in every five years by TAMP. TAMP had approved retrospective revision for the previous five years period of 2012-17 despite parties' objections. Parties are aware of the fact that the rates are revised every five years																												

	leave/special way leave fees payable retrospectively for the period of 01.10.2017 up to 30.06.2021 for plot no 2040 & 1663.	
iii)	<p>We understand that the rates considered are based on Valuation report carried out by valuator appointed by MbPT. We submit that revised SOR for 2017-2022 which claims to be as per provisions of PGLM 2015 are at ₹.1,15,000/- per SQM. We refer and rely upon clause 13(a) of PGLM 2015 which is as follows.</p> <p>i. State Government's ready reckoner of land values in the area, if available for similar classification/activities.</p> <p>ii. Highest rate of actual relevant transactions registered in last three years in the Port's vicinity (the Vicinity of the Port is to be decided by the respective Port Trust Boards) with an appropriate annual escalation rate to be approved by the Port Trust Board.</p> <p>iii. Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board.</p> <p>iv. Rate arrives at by an approved valuer appointed for the purpose by the Port.</p> <p>v. Any other relevant factor as may be identified by the Port.</p> <p>As per said PGLM guidelines, LAC has to consider the above mentioned factors for determining the fair market value of the port land. The above guidelines are very clear and evident to do necessary assessment of "Fair Market Value" of subject plots. The LAC is relied on the valuation report of valuer which is the highest of the factors as per above clause. We have perused the valuation report of M/s. Patwardhan Consultants Pvt. Ltd. As per valuer the highest rate of actual relevant transactions registered in last three years in the port's vicinity which is one of the factor as per sub-clause (ii) quoted hereinabove.</p>	No remarks
iv)	<p>Objections to the said LAC report</p> <p>a). We state that the as per clause 13(a) (i) the LAC is to consider "State Governments' ready reckoner of land values in the area, if available for similar classification/ activities". The SDRR for the area is ₹.40,200/- per SQM considering FSI as 1. We state that as per land allotment letter dated 11.10.1991 under clause (v) while the approved FSI should not exceed 0.5, however, land occupied by HPCL for all</p>	<p>The way leave fee is based on the letting rate of land. As per the Stamp Duty Ready Reckoner published by the Govt. the minimum rate charges is for open developed land for FSI 1. As far as way leave fee is concerned if the pipe is passing above/over ground, then the way leave fee is based on full return on land value as per SDRR and if the same is underground/overhead the way is chargeable at 50% of the rate applicable to the overground wayleave permission.</p>

the above mentioned plots are having FSI of less than 0.4. Therefore, the SDRR needs to be suitably considered by LAC before formulating any revision to SoR

b). We state that the as per clause 13(a) (ii) the LAC is to consider "Highest rate of actual relevant transactions registered in last three years in the Port's vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards), with an appropriate annual escalation rate to be approved by the Port Trust Boards). It is submitted that as per report given by valuer to LAC the below mentioned transactions were considered.

Valuation is carried out by registered valuer based on valuation principles to arrive at land value based on actual registered transactions and therefore give the Fair Market Value of the land strictly in terms of the provisions of PGLM. Further in terms of PGLM, LAC examines all the five factors & the valuer report and submit recommendation for the approval of the Board by taking into account the highest of the 5 factors. Thus the method prescribed in PGLM is strictly followed.

Sr - n o.	Nature of transaction and property details	Area
1.	Sale Agreement dated 20.06.2017 in respect of Flat No. 420, floor No.4, Bussa Udyog Bhavan Industrial Co-op Society Ltd.	CST No. 238 adm. 53.64 SQM
2.	Transfer Deed dated 20.06.2017 in respect of Flat No. 118, Floor No.4, Regal Udyog Bhavan Building Industrial Premises coOp Society Limited.	CST No. 238 adm. 75.80 SQM
3.	Agreement dated 25.10.2010 in respect of Flat No. B/8, First floor, Minerva Estate Premises Co-op Housing Society Ltd. Bandar Road, Sewree Mumbai	CST No. 259/145 adm. 130.43 SQM
4.	Leave and License Agreement dated 27.04.2017 for the period 36 months in respect of Flat No.1, Ground Floor, Regal Udyog Bhavan Building Industrial Premises co-op Society Limited	CST No. 238 adm. 56.54 SQM
5.	Leave and License Agreement dated 24.05.2017 for the period 36 months in respect of Shop No. C-28, Third Floor, Acme Industrial Estate C.L.L., Minerva Estates, Sewree East, Mumbai	CST No. 259/145 adm. 92.90 SQM

Upon perusal of aforesaid transactions, we submit that "relevant Transaction" shall always mean and include comparable properties or similar properties, and hence the reliance placed by LAC on above transactions are incorrect and consequently entire assessment becomes defective and incorrect for the following reasons:

(i). That the said transactions pertains to constructed facilities occupying FSI>1 therefore cannot be referred to as these exist in densely populated and developed areas whereas these pipelines are located in an uninhabited areas. Therefore, there being no similarities on the referred plots and lease plots with pipelines, the rationale adopted by LAC is not only illogical but also not in accordance with law.

<p>(ii). Moreover the nature of transactions in the said transacted area are in the form of leave and license agreements or sale deeds, whereas our Corporation had been allotted plots having these pipelines are on long leases by MbPT.</p> <p>c). We state that as per clause 13(a)(iii) the LAC to consider "Highest Accepted tender-cum-auction rate of Port land for similar transactions, update on the basis of the annual escalation rate approved by the Port Trust Board." As stated in the SOR there is no transaction carried out by MbPT and hence there is no submission is made under the said provision.</p> <p>d). We state that as per clause 13(a)(iv) the Lac to consider "Rate arrived at by an approved valuer appointed for the purpose by the Port." As stated in the LAC report that the valuer M/s Pathwardhan Consultants have arrived at rate of ₹.1,15,000/- per SQM based average of the above transacted areas carried our (@ ₹.14000/ SQFT) and arrived at ₹.57,500/- per SQMT considering restricted usage of land by HPCL of 0.5 FSI. However, as we have pointed out earlier the areas transacted earlier cannot be compared or used for reference for determination of SoR for HPCL allotted lands. Further in the valuation report of M/s. Pathwardhan Consultants they have arrived at ₹.45,506/- per SQM based on certain assumptions. We wish to advise that the basis of these assumptions are incorrect as the cost of operating the facilities is considered as 30% which is very low in comparison with other facilities of HPCL. There is no basis provided for justifying the 30% operating cost.</p> <p>(e). We state that as per clause 13(a)(v) the LAC to consider " Any other relevant factor as may be identified by the Port." It is to be noted that HPCL is to be considered under public utility services engaged in supply and marketing of essential commodities under the Essential Commodities under the Essential Commodities Act. Moreover, as Mumbai being densely populated and the product being handled by the said terminal are not only highly hazardous</p>	<p>At the outset this is to place on record that HPCL and all the way leave holders have accepted the way leave revision carried out in the past (2009) based on 6% return on land value as per Stamp Duty Ready Reckoner. Further the Valuation is carried out by registered valuer based on valuation principles to arrive at land value based on actual registered transactions and therefore</p>
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	<p>but also extremely flammable therefore it is necessary that our depots/terminals are located at a less populated area to avoid any untoward accident. This Factor should have been considered by LAC before revision of SoR as land being under the ownership of MbPT forms part of land under the ownership of State.</p>	<p>give the Fair Market Value of the land strictly in terms of the provisions of PGLM. Further in terms of PGLM, LAC examines all the five factors & the valuer report and submit recommendation for the approval of the Board by taking into account the highest of the 5 factors. Thus the method prescribed in PGLM is strictly followed.</p>
v)	<p>The facilities of HPCL are in existence and in operation since more than 90 years at the plots allotted to us and not a fresh incumbent planning to set up facilities.</p>	<p>The way leave chargeable does not have any relation to the period of existence of a facility and the terms applicable for the same are totally different from the leasing principles.</p>
vi)	<p>It is imperative that the Ready Reckoner Guideline factors affect valuation and should be read along with Ready Reckoner Value to arrive at proper valuation. The same are not considered, which resulted in erroneous calculation of calculation as the SDRR for FSI 1 was considered whereas the FSI being occupied by HPCL is less than 0.4 (approved is maximum of 0.5). Accordingly, due to application of incomplete guidelines of SDRR (Stamp Duty Ready Reckoner) the method used to ascertain the valuation of the immovable property is incorrect and incomplete. Hence, it is submitted that the assessment of the 'SOR' for the period 2017 to 2022 is erroneous and we reserve our right and contentions to produce our counter valuation report mentioning the discrepancy in the method of calculation.</p>	<p>The way leave fee chargeable is for the pipelines existing beyond the boundaries of the letting and laid on MbPT land. As per policies in existence and as per PGLM the way leave rates are to be revised every five years .</p>
vii)	<p>Now, having said the above with regard to the LAC report and as to why the same should be rejected by TAMP, we put before your additional points for consideration</p> <p>a). With regard to plots as mentioned in S.No. 1-3 of the above-mentioned table, we state that the rates for the allotted plots were to be governed by the provisions of clause iii of land allotment letter dated 11.10.01991 till the validity of lease period i.e. till 30.06.2021.</p> <p>b). That MbPT in there submission for revised SoR has not explained/clarified the basis for considering 6% land rental value and 4% escalation on annual basis.</p> <p>It is worthy to note we are the enterprise of Government of India, involved in the business of refining and marketing of Petroleum products in the interest of Public and Nation. It is also notable fact MbPT is also one of state instrumentalities and their actions should be fair, transparent and</p>	<p>The revision of way leave fees is always based on the latest land values/lettings rate and do not have any relating to the existing rentals of leases. The 6% return land is the minimum prescribed under PGLM and 4% annual escalation has been applied to the way leaves since 1992 to partly offset the inflation and as such the SoR needs to be approved and notified.</p>

	reasonable, however, in the instant case same is grossly not followed by MbPT.	
viii)	Strictly without prejudice to and in the alternative to the above, it is most humbly submitted that undoubtedly our acts, performs and discharges its duties, powers and functions directly under the superintendence of Ministry of Petroleum and Natural Gas. We also submit that MbPT too acts, performs and discharges its duties, powers and functions directly under the superintendence of Ministry of Major Port. Thus, both of us are the Central Government Department and/or an extended arm of Central Ministry and hence, issue has to be settled amicably.	MbPT has to adhere to the provisions of cabinet approved PGLM.
ix)	Without entering into the legality of such claim to revise the schedule of rates, it must be pointed out here only that the same would be expressly barred by law of Limitation.	The contention is denied, the landowner cannot be denied its right to rightful revision of SoR strictly in accordance with the provisions of PGLM, PGLM mandates that the SoR would be refixed once in every five years by TAMP.
x)	The principles of estoppel would also come into play where under MbPT is estopped from seeking any revision to the schedule of rates retrospectively, having accepted the amount duly and diligently paid by HPCL during the said subject period and even thereafter from month to month till date.	TAMP has been mandated to approved the revisions in respect of MbPT with effect from 01.10.2012 and accordingly in the recent past has approved retrospective revision for the previous five years period of 2012-17. Parties are aware of the fact that the rates are revised every five years.
xi)	In the absence of any enabling provision either as an by way of an agreement or understanding with HPCL or under any law in force, MbPT is precluded from proceeding with the exercise by virtue of the present notice to invite comments on proposed revision of rates.	The exercise of inviting objections is the process followed by TAMP.
xii)	In any event, the proposal to revise Way leave / Special way leave charges can only be done prospectively i.e. for future period. MbPT in the instant case has accepted the terms of the lease and have continued in light thereof to honor the obligations set out therein to be performed the parties. In effect, the terms and condition of the original lease have been continued although on revised terms (with reference to the rentals).	The contention do not have any relevant to the revision of SoR related to way leave.
xiii)	In the instant cases i.e. the leases of plots having these pipelines in question although have expired by efflux of time / expiry of term, the principle of promissory estoppel entitles HPCL to occupy and continue in the lease premises on payment of the rent.	
xiv)	Although, MbPT has never finalized the rates beyond the original period of lease, non-issuance of any demand notice and / or any proposal of what so ever nature for revision of Way leave / Special way leave charges for	

	the subject period, and during subsistence of the said period, now does not give any right to MbPT to retrospectively finalize the rates and Way leave charges.	
xv).	In view of the actions and / or interactions on the part of MbPT during the relevant period, to not seek revision of charges during the period, to now demand revised rates for the period which has passed. It can only be done with reference to future period and that too on renewed terms.	The Contention is denied.
xvi).	The Indian Contract Act, 1872 and the provision there under cannot be ignored and overlooked by MbPT. In the absence of express agreement by and between the parties the proposal for revision is ill founded and without any basis. The internal notes, circulars or notifications issued by MbPT, would not be binding on HPCL, more so if the same are contrary or inconsistent with the prevalent law.	The contentions are denied.
xvii)	Hence the demand raised vide notice by MbPT is contrary to the settled principles of law, opposed to equity and are arbitrary and unreasonable and therefore being beyond the purview of law, not tenable.	
xviii)	The express terms of the lease agreement also do not contemplate such revision	The way leave has not relation to the terms of lease.
xix)	Needless to state that the entire exercise sought to be carried out belatedly by MBPT is not in line with any agreement or understanding arrived at between the parties, therefore the same is not tenable.	The revision is based on a statutory provision of PGLM 2015.
xx)	Apart from the ground of maintainability of SOR Rates as set out herein above, we wish to provide brief comments without prejudice as under: a) There is not basis, rational or justification for the arbitrary proposed revision of schedule of rates retrospectively. b) The instances or nature of transaction relied upon cannot be considered for reasons detailed herein above. c) The valuation reports are neither realistic nor based on through research. An exorbitant rate has been determined erroneously by MBPT in placing reliance on such reports. In the absence of any like, comparable land instances and reports of valuation providing realistic values, the same cannot be even considered. Hence, we strongly object to such documents (valuation reports and instances)	The revision is based on a statutory provision of PGLM 2015. The contention is denied, the landowner cannot be denied its right to rightful revision of SoR strictly in accordance with the provisions of PGLM, PGLM mandates that the SOR would be refixed once in every five years by TAMP. TAMP has been mandated to approved the revisions in respect of MbPT with effect from 01.10.2012 and accordingly in the recent past has approved retrospective revision for the previous five years period of 2012-17. Parties are aware of the fact that the rates are revised every five years. The proposed SOR needs to be approved by TAMP

	<p>being taken account of in determining lease rental rates.</p> <p>d) Bare perusal of the notice reveals that MBPT is proceeding with predetermined intention to revise the schedule of rates and comments have been invited only with a view to record that the rates have been determined after due notice to all concerned.</p> <p>e) The proposed rates are not only exorbitant but also without rational or basis and therefore cannot be accepted.</p>	
xxi)	It is an undisputed fact that no demand was ever raised by MBPT for the subject period. Hence, it is not open now to demand. Not only such demand would be contrary to law but also unjust and unfair.	
xxii)	We therefore request that the notice/proposal to revise SoR for the period of 2017-2022 be dropped/withdrawn with immediate effect.	
6.	All India Liquid Bulk Importers & Exporters Association (AILBIEA) vide its e-mail dated 29 September 2021	
i).	The port charges/vessel waiting are very low in neighbouring Ports of JNPT, Hazira, Kandla etc as compared to Mumbai Port. This itself has resulted in little cargo diversion to other Ports.	No remarks
ii)	The trestle of old pirpau and first chemical berth are very old and the cost recovered by Port, hence they should not increase any charges on the same rather make it more competitive. The escalation should be revised to 2% which is in line with other Ports.	1) Though old, the trestle are still in operation and hence charges need to be recovered and increased periodically. PGLM mandates that the escalation should not be less than 2%. MbPT has fixed it at 4% which is reasonable and is accordance with the standard practice and procedure followed by MbPT since 1992 onwards as per compromise proposal held by Supreme Court in Wadia judgement dated 13.1.2004. Further, in terms of rent control act, the landlord is allowed to increase annual rental by 4% in accordance with the inflation.
iii)	Port should encourage users by providing way leave for utility lines for free of cost. As this lines help in carrying out safe and efficient vessel unloading operations.	Any organization needs revenue to run the organization. Way leave is one of the source of revenue for the port and hence cannot be given free of cost
iv).	There should not be retrospective increase in charges.	PGLM mandates that the SoR would be refixed once in every five years by TAMP. TAMP had approved retrospective revision for the previous five years' period of 2012-17 despite party's objections. Parties are aware of the fact that the rates are revised every five years.
v).	Escalation cap of 150% at the end of 5 years is very high. This should be capped to the annual escalation rate of 2%.	Refixation of way leave is every five years subject to maximum of 150% of the way leave charges applicable for the fifth year.

7.	Ravindra H. Joshi Associates, Advocates on behalf of Reliance Industries Limited (RIL) vide its e-mail dated 29.09.2021	
i).	My client state that they have laid pipeline from Aegis Terminal to Phir Pau jetty (1100 mtrs on-shore) and from Pir Pau Jetty for 5.4 Kilometers (off shore) towards Shivaji Nagar, Uran. The same has been laid for carrying propane gas to RIL's Nagothane plant. The diameter of pipeline is 100 mm only.	It is to point out that MbPT has not granted any Way Leave to Reliance Industries Limited. The party is a third party and it does not have any locus standi with MbPT. The remarks are without prejudice to MbPT's rights and contention in the matter.
ii).	My clients have perused the relevant attachments to your e-mail. My clients hereby object to the Proposal of Mumbai Port Trust ("MBPT") seeking revision in rates mentioned in proposal for revision of SoR for way leave / Special Way leave fees for the period 1.10.2017 to 30.09.2022 on the basis that same are arbitrary. Unreasonably high and without any legal basis and are also to be applied retrospectively. The Schedule of Rates proposed for 01.10.2017 to 30.09.2022 are not acceptable to my clients.	It is to point out that MbPT has not granted any Way Leave to Reliance Industries Limited. The party is a third party and it does not have any locus standi with MbPT. The remarks are without prejudice to MbPT's rights and contention in the matter. Party has not mentioned as to how the proposal is arbitrary, unreasonably high and without any legal basis. PGLM mandates that the SOR would be refixed once in every five years by TAMP; TAMP had approved retrospective revision for the previous five years period of 2012-17 despite parties' objections; Parties are aware of the fact that the rates are revised every five years.
iii).	My clients hereby submit that Way leave Charges for offshore (submerged) pipeline should be restored as before at the rate of lump sum ₹.10/- per month. MbPT should not charge Right of User on 1 meter width and the same should be on the basis of diameter of the pipeline.	It is to point out that MbPT has not granted any Way Leave to Reliance Industries Limited. The party is a third party and it does not have any locus standi with MbPT. The remarks are without prejudice to MbPT's rights and contention in the matter. Rates have been revised from time to time and the party has paid the charges at revised rates from time to time. The present proposed rate revision is as per PGLM. TAMP vide order No TAMP/62/2019-MBPT dated 15.9.2021 has restored the MBPT's way leave formula.
8.	Bharat Petroleum Corporation Limited (BPCL), Wadilube Installations, vide its e-mail dated 29 September 2021	
i)	LOBS P/L from BPCL Mumbai Refinery to Wadilube (9770.46 M 300MM DIA) and HUME Fire water P/L BETN BS4 & LOBP(75m) ,Wadilube.	These are not cargo operated pipelines. These are non-cargo operated pipelines. Rates for non-cargo operated pipelines are based on highest of the five factors as per the PGLM.
ii).	Wadilube Plant is a manufacturing plant and BPCL is operating in highly competitive market. Such high increase of way leave / special way leave of pipelines will increase input cost of our products and same shall be unavailable for our business. Hence you are requested to review the proposed increase in rent and keep the rental same as current rate with same terms and conditions.	No remarks.

iii).	MbPT should charge way leave on actual area of pipeline (ie based on actual diameter and length of pipeline) rather than fixing a minimum width of 1 m on land. For underground pipeline 50% of such area should be considered.	For underground pipeline the rate is 50%.																								
9.	GAIL (India) Limited vide its letter dated 27 September 2021																									
i).	The proposed period for fixation of schedule of rates for way leave / special way leave fees is from 01.10.2017. Hence once approved, MbPT shall be charging GAIL special way leave fees from 01.10.2017. However, it is to be noted that are no such provisions for GAIL (India) Limited to charge our customer from back date. Hence, it will additional expenditure to GAIL which cannot be passed on to the end users.	The retrospective PGLM mandates that the SOR would be refixed once in every five years by TAMP. TAMP had approved retrospective revision for the previous five years period of 2012-17 despite parties' objections. Parties are aware of the fact that the rates are revised every five years.																								
ii).	PNGRB (Petroleum and Natural Gas Regulatory Board) controls and decides natural gas prices keeping in view of expenditure of all operators, supplier, and distributors in the sector. This additional expenditure was not taken into consideration during natural gas price fixation for period 2017 to 2021. Hence, it is recommended to consider effective date for revision from 01.10.2021 instead of 01.10.2017	Revision is based on PGLM. The retrospective PGLM mandates that the SOR would be refixed once in every five years by TAMP. TAMP had approved retrospective revision for the previous five years period of 2012-17 despite parties' objections. Parties are aware of the fact that the rates are revised every five years																								
10.	Hindustan Petroleum Corporation Limited, Product supply and Logistic Division (HPCL-PS &L), vide its letter dated 4 October 2021																									
i).	<p>We are submitting our comments specifically for the Pipelines pertaining to lube oil as described below:</p> <table border="1"> <thead> <tr> <th>Code</th> <th>RR/Plot no</th> <th>Name</th> <th>Current rate in Rs/Sqm/ Month @ 2017</th> <th>Revised rate in Rs/Sqm/ Month @ 2017</th> <th>RR Zone where Special Way Leave granted.</th> </tr> </thead> <tbody> <tr> <td>10104956</td> <td>300 mm dia Lube oil p/l</td> <td>HPCL (Area 2681.50 m RCC trestle & 256.79 sqm.land)</td> <td>39.88</td> <td>97</td> <td>90/419</td> </tr> <tr> <td>10104940</td> <td>300 mm Lube oil p/l</td> <td>HPCL (Area — 10638 sqm)</td> <td>39.88</td> <td>97</td> <td>90/419</td> </tr> <tr> <td>20501992</td> <td>Spl.wl.12 dia Lube oil pit.</td> <td>HPCL Ltd (Area 3460 sqm)</td> <td>37.64</td> <td>156.5</td> <td>11/85</td> </tr> </tbody> </table> <p>At the outset, we deny that MBPT is entitled to seek revision of schedule of rates of Way leave/Special way leave fees payable retrospectively for the period of</p>	Code	RR/Plot no	Name	Current rate in Rs/Sqm/ Month @ 2017	Revised rate in Rs/Sqm/ Month @ 2017	RR Zone where Special Way Leave granted.	10104956	300 mm dia Lube oil p/l	HPCL (Area 2681.50 m RCC trestle & 256.79 sqm.land)	39.88	97	90/419	10104940	300 mm Lube oil p/l	HPCL (Area — 10638 sqm)	39.88	97	90/419	20501992	Spl.wl.12 dia Lube oil pit.	HPCL Ltd (Area 3460 sqm)	37.64	156.5	11/85	<p>The retrospective PGLM mandates that the SOR would be refixed once in every five years by TAMP. TAMP had approved retrospective revision for the previous five years period of 2012-17 despite parties' objections. Parties are aware of the fact that the rates are revised every five years</p>
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	01.10.2017 up to 30.09.2021 for above mentioned pipelines.	
ii)	It is worthy to note we are the enterprise of Government of India, involved in the business of refining and marketing of Petroleum products in the interest of Public and Nation. It is also notable fact that MBPT is also one of state instrumentalities and their actions should be fair, transparent and reasonable. Strictly without prejudice to and in the alternative to the above, it is most humbly submitted that undoubtedly our acts, performs and discharges its duties, powers and functions directly under the superintendence of Ministry of Petroleum and Natural Gas. We also submit that MBPT too acts, performs and discharges its duties, powers and functions directly under the superintendence of Ministry of Major Port. Thus, both of us are the Central Government Department and/or an extended arm of Central Ministry and hence, issue has to be settled amicably.	Revision of SoR is based on PGLM.
iii)	The principles of estoppel would also come into play where under MBPT is estopped from seeking any revision to the schedule of rates retrospectively, having accepted the amount duly and diligently paid by HPCL during the said subject period and even thereafter from month to month till date. Without entering into the legality of such claim to revise the schedule of rates, it must be pointed out here that the same would be expressly barred by law of Limitation.	Contention is denied.
iv)	In the absence of any enabling provision either as an by way of an agreement or understanding with HPCL or under any law in force, MBPT is precluded from proceeding with the exercise by virtue of the present notice to invite comments on proposed revision of rates. In any event, the proposal to revise Way leave/Special way leave charges can only be done prospectively i.e. for future period. MBPT in the instant case has accepted the terms of the lease and have continued in light thereof to honor the obligations set out therein to be performed the parties. In effect, the terms and condition of the original lease have been continued although on revised terms (with reference to the rentals).	The PGLM mandates that the SOR would be refixed once in every five years by TAMP. TAMP had approved retrospective revision for the previous five years period of 2012-17 despite parties' objections. Parties are aware of the fact that the rates are revised every five years.

v)	<p>Although, MBPT has never finalized the rates beyond the original period of lease, non-issuance of any demand notice and/or any proposal of what so ever nature for revision of Way leave/Special way leave charges for the subject period, and during subsistence of the said period, now does not give any right to MBPT to retrospectively finalize the rates and Way leave charges</p>	<p>The retrospective PGLM mandates that the SOR would be refixed once in every five years by TAMP. TAMP had approved retrospective revision for the previous five years period of 2012-17 despite parties' objections. Parties are aware of the fact that the rates are revised every five years</p>
vi)	<p>In view of the actions and/or inactions on the part of MBPT during the relevant period, to not seek revision of charges during the period, to now demand revised rates for the period which has passed. It can only be done with reference to future period and that too on renewed terms.</p>	
vii).	<p>The Indian Contract Act, 1872 and the provision there under cannot be ignored and overlooked by MbPT. In the absence of express agreement by and between the parties the proposal for revision is ill founded and without any basis. The internal notes, circulars or notifications issued by MBPT, would not be binding on HPCL, more so if the same are contrary or inconsistent with any prevalent law. Hence , the entire exercise sought to be carried out belatedly by MBPT is not in line with any agreement or understanding arrived at between the parties and the demand raised vide notice by MBPT is contrary to the settled principles of law, opposed to equity and are arbitrary and unreasonable and therefore being beyond the purview of law, not tenable.</p>	<p>The contentions are denied.</p>
viii)	<p>Apart from the grounds of maintainability of SOR Rates as setout herein above, we wish to provide brief comments without prejudice as under:</p> <ol style="list-style-type: none"> a) The proposed rates are not only exorbitant but also without rational justification and proposed to be charged retrospectively, therefore cannot be accepted. b) The instances or nature of transaction relied upon cannot be considered for reason detailed herein above. c) The valuation reports are neither realistic nor based on through research. An exorbitant rate has been determined erroneously by MBPT in placing reliance on such reports. In the absence of any like, comparable land instances and reports of valuation providing realistic values, the same should not be considered. Hence we strongly object to 	<p>The revision is based on a statutory provision of PGLM 2015. The contention is denied, the landowner cannot be denied its right to rightful revision of SoR strictly in accordance with the provisions of PGLM, PGLM mandates that the SOR would be refixed once in every five years by TAMP. TAMP has been mandated to approve the revisions in respect of MbPT with effect from 01.10.2012 and accordingly in the recent past has approved retrospective revision for the previous five years period of 2012-17. Parties are aware of the fact that the rates are revised every five years. The proposed SOR needs to be approved by TAMP. PGLM mandates that the escalation should not be less than 2%. MbPT has fixed it at 4% which is reasonable and is accordance with the standard practice and procedure followed by MbPT since 1992 onwards as per</p>

	<p>such documents (valuation reports and instances) being taken account of in determining lease rental rates.</p> <p>d) Perusal of the notice reveals that MBPT is proceeding with predetermined intention to revise the schedule of rates and comments have been invited only with a view to record that the rates have been determined after due notice to all concerned.</p> <p>e) It is an undisputed fact that no demand was ever raised by MBPT for the subject period. Hence, it is not open now to demand. Not only such demand would be contrary to law but also unjust and unfair.</p> <p>f) TAMP vide order dated 8th October 2020 had instructed MBPT to charge on the actual width of the pipeline but this order is yet to be implemented by MbPT. We understand that MbPT has again proposed to charge on the same method (ie width = external diameter + 600 m, subject to minimum width of 1 mtr). We submit TAMP to maintain this to actual area occupied by pipelines.</p> <p>g) We request you to consider 2% annual escalation in line with other ports, instead of 4% annual escalation being charged now.</p> <p>h) MbPT should not charge the rate increase retrospectively as retrospective revision will jeopardize our financials and will increase our burden, which we cannot pass to customers on retrospective basis.</p> <p>i) We understand that way leave charges for pipelines laid on trestle is calculated by port to recover investment and its return over the life of the trestle, which in this case has been considered by Port as 30 years. Old Pir Pau jetty is already in operation for more than 50 years and all the cost plus returns incurred have been fully recovered. Hence, no charges should be levied to recover the cost of trestle.</p>	<p>compromise proposal held by Supreme Court in Wadia judgement dated 13.1.2004. Further, in terms of rent control act, the landlord is allowed to increase annual rental by 4% in accordance with the inflation. TAMP vide order No TAMP/62/2019-MBPT dated 15.9.2021 has restored the MBPT's way leave formula of minimum width of 1mtr.</p>
ix).	We further request that the notice/ proposal to revise SoR for the period of 2017- 2022 be dropped/ withdrawn with immediate effect.	Contention is denied.

2. A joint hearing on the case in reference was held on 14 October 2021 at 3.30 p.m. through Video Conferencing. At the joint hearing, MBPT made a brief power point presentation of its proposal. The MBPT and the users/ user organisations have made the following submissions during the joint hearing:

Mumbai Port Trust (MBPT)

- (i). MBPT grants permission for Right of Way, without any allotment of land and any right of the land, to the applicant to lay a pipe/ cable on payment of some fees either Nominal or Special, where no tenancy right is created.
- (ii). Special way leave is granted for commercial and beneficial use of the Port's land for any such right of way like laying of pipelines for crude oil, chemical, vegetable oil, gas or optical fiber cable, railway tracks, electric cables, transmission lines etc. by charging some special way leave fees over a period of time.
- (iii). The proposal of MBPT for revision of way leave charges covers about 152 pipelines. Out of which, 113 pipelines are cargo pipelines and the balance 39 pipelines are non-cargo pipelines. Cargo pipelines connect jetty to storage tank or from one tank to another tank. All other pipelines are treated as Non-cargo pipelines.
- (iv). The way leave charges for cargo pipelines have been proposed based on the market value based on Ready Reckoner of 2017 and is proposed to be escalated by 4% per annum. The way leave charged for non-cargo pipelines have been proposed based on highest of the market value determined based on the five factors, as stipulated in the Land Policy Guidelines.
- (v). Overground pipelines shall be charged the full rates and the underground pipelines shall be charged at 50% of the rates.
- (vi). All conditionalities governing the way leave charges as approved by TAMP in September 2020 for the period 2012 to 2017 have been incorporated in the Schedule.
- (vii). As regards the rates for Trestle for the period 2012-2017 and 2017-2022, it was indicated in the body of the subject proposal sent to TAMP. However, inadvertently, it was not included in the proposed Scale of Rates. We will forward a separate proposal.
[TAMP: The new proposal will be uploaded by MBPT in its website and intimated to the users. The users can give their comments within 7 working days. MBPT may respond to the comments of users on the Trestle aspect.]

Aegis Logistics

- (i). For calculating return based on cost of trestle the life of trestle has been considered as 30 years. However, as per Government Order of 1998 the life of a jetty has been fixed at 50 years. This should be considered and wayleave charges should be reworked.
- (ii). Rate for non-cargo pipelines has proposed based on Valuer report. When the RR for 90/149 area is ₹.19500/- per sq.m, Valuer has considered the market value at ₹.58000/- per sq.m. This is exorbitantly high.
- (iii). Process adopted by Valuer is incorrect and not accurate and as such cannot be taken as true market value of land. Only RR rates needs to be considered.
- (iv). We have already given our written submissions, which may be considered.

TATA Power

- (i). We have also given our written submissions, which may be considered.
- (ii). We understand that MBPT has given its comments on our comments to TAMP. We request TAMP to share a copy of the MBPT's comments, to enable us counter their submissions.
[TAMP: As per the practice followed by TAMP, the users are given an opportunity to respond on the proposal of the port. Thereafter, the port is given an opportunity to make its submissions on the user's comments. Based on the user's comments and comments of port thereon, the authority takes its decision. If we keep on forwarding each other's comments to each other, it will be a never ending exercise. We need to put a full stop to this process.]

- (iii). We understand this aspect. But we again request TAMP to share a copy of the MBPT's comments, to enable us counter their submissions.
[TAMP: You can write to us. The matter can be taken up.]
- (iv). As per the relevant provisions of Indian Telegraph Act and the Right of Way Rules, 2016, the underground utilities are not chargeable for any way leave fees except for administrative and restoration charges. This may be made applicable in our case.
- (v). The agreement in respect of the Captive Coal Berth has expired in May 2018. While executing a fresh agreement, the conversion of the license into a way leave should be considered.
- (vi). Approach Channel to the Coal Berth is treated as non-cargo operated whereas the approach channel is used by barges to carry coal from the mothership to the Coal Berth, wherein also wharfage is being paid to MbPT. Thus, the Approach Channel should also be considered as Cargo Operated as being a wayleave.

ONGC

- (i). The 6% return p.a. on land value is very high and needs to be reviewed.

HPCL

- (i). We have given our comments. The same may be considered.

BPCL

- (i). We have also given our comments, which may be considered.
- (ii). The market value of land determined by the Valuer is very high. The Island is has poor road connectivity. Sometimes, during heavy rainfall, the Island remains cut off from main land for days together. It is found difficult to commute. The Valuation needs a review.

MBPT

- (i). The Valuer has discounted the market rates very heavily taking into account the prevailing factors. Moreover, the Valuer rates have been considered only for non cargo pipelines.
- (ii). Out of MBPT's land estate, about 8 hectares of land is occupied by pipelines. We have prescribed charges for buffer area of pipelines keeping in view the sensitive cargo that is carried through pipelines.

3. The additional comments received from Tata Power Company Limited (TPCL) vide its e-mail dated 18 October 2021 and reply of MBPT thereon vide its e-mail dated 22 October 2021 is tabulated below :

Additional Comments from TPCL vide letter dated 18.10.2021	Comments of MBPT
<p>1. That our submission to apply the provisions of Indian Telegraph Act 1885 (ITA) and ITA right of way rules 2016 (IT ROWR 2016) , was already heard by MbPT way back in 2003 and negated by TR 73 of 2003 is only the half-truth. IT ROWR 2016 was notified by the Central Govt. in 2016 which made the implicit provisions of ITA explicit that WLF is not chargeable to underground electric cables and HT overhead lines if the land beneath is not adversely affected (as in case of HT lines passing over/through creek and mangroves). In view of this subsequent development, post MbPT's decision in 2003, we have made several representations to MbPT for giving effect to it. However, we haven't received any revert till date.</p>	<p>1. The party has filed a Writ Petition before Bombay High Court in the matter. The matter is sub-judice.</p>

As these Rules have been notified only in 2016, it cannot be MbPT's case that that our submission is already replied. As PGLM has specific provisions to adopt ITA & ITA ROW Rules, it is our submission once again that these provision should be made applicable to our WL cases,

We had made a detailed submission on MbPT's contention in our letters both dated 2nd November 2020 (copy attached) addressed to both TAMP and MbPT. While TAMP has referred our letter to MbPT, we have yet to receive any revert from MbPT.

2. In para 7 of TR 109 of 2019, MbPT Board has decided to review the cases of conflict including the cases of TATA's. clearly, there being an exception carved out, MbPT should consider them not only in the aforesaid cases at point 1) Above but in all other cases, by treating the other cases as cargo operated as any additional expenditure has an adverse effect on the electricity tariff being pass through to the consumers.

3. A specific case where non cargo operated rate is wrongly applied is that of " Approach Channel" to the captive coal Berth . In the agreement of May 2008 entered with MbPT to operate the captive Berth, it was considered as a WL and charged as such but now proposed as non-cargo operated. This appears to be a clerical error and should be corrected. Particularly when we are using it to transport coal and paying wharfage to MbPT.

4. Another specific case is that of "Berthing Pocket and Turning Circle" of Captive Berth. This is used by barges which transport coal to dock and unload it onto the berth. This was considered as license. As it is specifically used for transport of cargo & wharfage being paid to MbPT, cargo operated rate should be applied in consonance with Para 7 of TR 109/2019.

2.The party has filed a Writ Petition before Bombay High Court in the matte for three cases'. The matter is sub-judice. For all other cases, the rate revision proposal is as per the PGLM.

3.TAMP constituted under section 49 of MAJOR PORTS ACT 1963 which define the role of TAMP for fixation of tariff including SoR for Major Port land in terms of PGLM 2015. Accordingly, SoR for different RR zones has been prepared on the basis of highest of the five factors derived from Valuer's report, recommended by LAC and approved by Board of Trustees of Port of Mumbai. Further it is stated that clause No. 13 of PGLM have laid down working methodology for computation of SoR based on highest of the five factors derived from Valuer's report. The same is followed by MbPT while working of SoR proposal, for the period from 1.10.2017 to 30.9. 2022. However, the party will have to represent suitably to MbPT.

4. This case is allotment of water area under port limit on license basis and not a Way Leave. Therefore comments is not relevant to the subject proposal i.e. SoR of Way Leave rate for the period from 1.10.2017 to 30.9.2022. Therefore, the contention of TPCL should not be accepted.

However, it is to inform that the Civil Engineering Department of MbPT had granted the Permission to the party for construction of captive berth at Tromby to handle coal. In terms of MbPT's Trustees Resolution No 134 of 2006, sanction was

	<p>accorded to the setting up of the captive coal berth for unloading coal from barges at Trombay by TATA power company for 10 years. The Civil Engineering Department of MbPT conveyed the terms and conditions and TPCL had accepted the same. The period of 10 years commenced from 1.6.2008 to 31.5.2018.</p> <p>One-year extension was granted for the period from 1.6.2018 to 31.5.2019 by Civil Engineering Department of MbPT. During all this period and till date, TPCL is paying the license fee as per the terms and conditions of the license.</p>
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4. The comments received from Indian Chemical Council (ICC) vide its e-mail dated 15 November 2021, after the case is finalized, is as follows :

- (i). Our members are using MbPT for import of raw materials for their plants in Maharashtra, Gujarat etc. These importers also operate in nearby/other ports viz. JNPT, Hazira, Kandla.
- (ii). The cost of vessel related charges in MbPT are very high, so we request TAMP and MbPT to review the same.
- (iii). Non-cargo utility lines need to be charged a nominal way leave against what is proposed by MbPT
- (iv). The land and way leave charges are with annual escalation of 4%, the other ports in the country are having an annual escalation of 2%.
- (v). The increase in charges is proposed retrospectively, which in our view needs to be reviewed especially in this time of COVID-19.
- (vi). The trestle of Old PirPau is more than 30 years old, hence the cost towards this infrastructure is already recovered by MbPT. We request for a discount to be offered on the SOR in order to support business.
- (vii). Escalation cap of 150% at the end of 5 years is very high. This should be capped to the annual escalation rate of 2%.
- (viii). The assumptions considered for this revision of SOR based on state governments Ready Reckoner is incorrect.
- (ix). Any increase in SOR based on incorrect representation to TAMP will not be appropriate to the trade and our members.
- (x). Hence, Tariff Authority for Major Ports is requested to give our members an opportunity to represent and explain their cases prior to passing of any order on this issue.

(The MBPT, while responding to the comments of other users has already addressed the points made by ICC).
