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TARIFF AUTHORITY FOR MAJOR PORTS

G. No.258 **New Delhi, 12th October, 2010**

NOTIFICATION

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

(Arvind Kumar)
Member

Tariff Authority for Major Ports
Case No. TAMP/10/2010-BPCL

Bharat Petroleum Corporation Limited ----- Applicant

O R D E R
(Passed on 3rd day of September 2010)

This case relates to a proposal received from the Bharat Petroleum Corporation Limited for revision of rates for operation of the Liquid Cargo jetty of JNPT operated by it on BOT basis.

2.1. This Authority vide Order No. TAMP/26/2006-BPCL (JNPT) dated 7 August 2007 notified the Scale of Rates for the services rendered at the Liquid Cargo jetty of Jawaharlal Nehru Port Trust operated by the Bharat Petroleum Corporation Limited on BOT basis. The validity of the Scale of Rates expired on 31 March 2010, which has been subsequently extended upto 30 September 2010 vide Order dated 31 March 2010.

2.2. By letter No. BPC/JNPT/TAMP dated 21 January 2010, BPCL submitted a proposal for revision in tariff for wharfage and various other services.

3.1. The year-wise actual and estimate of traffic as furnished by BPCL in its proposal dated 21 January 2010 are as follows:

Year	Traffic (In MT)
2006-07	3,243,288
2007-08	30,72,880
2008-09	57,02,836
2009-10 (estimate)	54,83,234
2010-11 (estimate)	53,63,500
2011-12 (estimate)	54,60,500
2012-13 (estimate)	55,55,500

3.2. The estimated financial position at the existing and proposed level of tariff as depicted in the cost statement furnished by BPCL is as follows:

Year	**Income (Rs. In Lakhs)**		**Net Surplus / Deficit (Rs. In Lakhs) before ROCE**		**Net Surplus / Deficit as a percentage of operating income after ROCE**	
	Existing	**Proposed**	**Existing**	**Proposed**	**Existing**	**Proposed**
2010-11	2941.12	4571.31	89.87	1257.38	-57.90	-11.71
2011-12	3077.71	4783.62	56.13	1271.60	-56.04	-10.64
2012-13	3159.91	4910.78	24.69	1270.29	-51.15	-7.55

3.3. The financial position depicted in para 3.4 above is after accounting the royalty payment as a pass through. The estimated royalty considered at existing tariff is Rs. 1188.41 lakhs, Rs. 1256.25 lakhs and Rs. 1301.43 lakhs respectively for 2010-11, 2011-12 and 2012-13 and at the proposed tariff it is Rs. 1651.09 lakhs, Rs. 1746.70 lakhs and Rs. 1806.70 lakhs respectively.

3.4. BPCL sought an across the board increase of 55.03% over the existing rates. It also proposed to introduce three new tariff items viz., Vessel Idling Charges, Penalty for Low Flow rate and Penalty for Leakages at Jetty.

4. The proposal of BPCL was registered as a tariff case on 29 January 2010. In accordance with the consultative procedure prescribed, the proposal was circulated amongst JNPT and various user organisations for comments. The comments of the user bodies, as and when received, were forwarded to BPCL as feed back information. The BPCL has responded to the comments furnished by the users on its proposal.

5. Based on the preliminary scrutiny of the proposal, BPCL was requested to furnish the following information / clarifications vide our letter dated 24 February 2010. BPCL's reply thereto was received on 6 May 2010. The details called for and the replies received from BPCL are juxtaposed below:-

Sr. No.	Queries Raised by TAMP	Reply furnished by BPCL
1	**GENERAL**	
(i)	At the time of last revision of the scale of rates in August 2007 review of tariff was based on the projections for 2007-08, 2008-09 and 2009-10. Kindly furnish an analysis of variations of actual physical and financial performance with reference to the projections relied upon, duly explaining the reasons for such variations.	Installation of crude loading arm and pipeline was in progress throughout 2007 - 08. There were shut downs at liquid berth for erection of loading arms and fabrication of pipelines. Crude loading facility was commissioned this year. The commissioning was delayed due to various restrictions at the jetty in fabrication works and safety precautions. Coastal movement of SKO was estimated keeping in mind future plans to bring SKO from Jamnagar, Vadinar. However, this could not be materialized due to subsidy issues such as pricing difference. Hence SKO movement was very less compared to the projected one. There was increase in throughput handled due to crude loading during 2008-09 and 2009-10. Crude was loaded at higher flow rate. Hence Huge quantities were loaded in short time. Similarly HSD throughput has increased due to increased market requirement.
(ii)	The proposal submitted by BPCL does not contain anything about productivity enhancement measures. BPCL is requested to refer to clause 6.8 of the revised tariff guidelines and indicate benchmark levels of productivity and	BPCL berth has the following facilities: 1.berth-used by all cargo owners. 2. Loading arm-used by petroleum products excluding crude oil and base oil.

	propose incentive for better performance at the liquid cargo berth and disincentives for performance below benchmark levels. The productivity benchmarks and parameters should be included in the Scale of Rates as conditionalities governing the tariff items.	3. Pipeline users are less than 5% of POL users (mostly BPCL and IOC). All other users have their own pipelines extending to the water front at berth. BPCL does not influence the discharge rates for cargo which is dependent on ship pumping rates, pipeline diameter and storage capacity. BPCL also does not influence the loading rate for cargo since shore pumps are operated by the respective storage tank owners. Berth availability is governed by queuing and discharge rates at berth which are not under BPCL control. BPCL cannot guarantee berth availability since it does not have control over pricing for berth occupancy. Under the circumstances, the best measure of efficiency is the capacity utilization. We have achieved 97 to 103% during the period of the last 3 years.
(iii)	The tariff guidelines permit a general flexibility to reduce the rates at the discretion of the operator mainly on commercial consideration. Such reduction if any effected by BPCL during the last three years of its operation and proposed to be effected in the future may be listed out and the consequential effect of such concession granted / to be granted on growth of traffic may be analyzed item wise.	BPCL does not have discretionary pricing policies and adheres to the published tariff for all cargoes irrespective of ownership, subject to statutory guidelines whichever applicable.
(iv)	Kindly state whether the concession agreement entered into by BPCL with JNPT has quantified the minimum investment obligation and whether the actual investment considered in the cost statements is more than the minimum investment obligation. If the actual investment is more than the minimum investment obligation, please provide the reasons therefor.	No minimum investment obligations are specified in the concession agreement. However, the letter of award dated 11 May 1998 from JNPT addressed to BPCL requires BPCL to design the facility "not merely as a dedicated oil berth but as a general purpose berth so that it is amenable to be used as a container /general cargo berth." Accordingly design loads for the berth were modified impacting the capital costs for construction of the berth. The impact of this cannot be justified.
(v)	As emerged at the last proceedings, the liquid cargo berth has been constructed by BPCL at a huge cost as per the conditions laid down by JNPT in the BOT agreement also to cater to bigger vessels carrying containers. BPCL is	The Liquid Cargo Jetty has been constructed by BPCL as per stipulated guidelines laid down by JNPT. We have considered only reasonable portion of capital employed for tariff proposal.

<table>
<tr><td></td><td>requested to confirm that only a reasonable portion of capital employed, which would be relevant for handling of about 5.5 million tonnes of liquid cargo, has been considered in its tariff proposal</td><td></td></tr>
<tr><td>(vi)</td><td>BPCL is requested to submit the annual accounts pertaining to the liquid cargo berth for the last three years as specified in the check list of documents for filing tariff proposals by private terminals.</td><td>No separate annual accounts are prepared for the liquid cargo jetty at BPCL. All revenue and capital transactions pertaining to the jetty are recorded in a separate cost centre in the accounting system. Hence all items pertaining to that cost centre have been extracted and the statements duly prepared. These statements have been certified by a practicing Chartered Accountant. The said certificate is furnished.</td></tr>
<tr><td>2</td><td><u>CAPACITY</u>

In Form 2 A, the assessed capacity of the jetty is shown as 55,00,000 tonnes for all the years from 2007 – 2008 to 2012-13. Kindly state whether the “assessed capacity” is the “designed capacity”. BPCL is requested to provide detailed working of the designed capacity computation of the liquid cargo berth. Needless to state that the capacity should be calculated with reference to the designed parameters of the facility created / to be created. BPCL is also requested to furnish justification for each of the parameters assumed. The tariff guidelines of 2008 provide the methodology for determining standard capacity.</td><td>Design capacity has been based on assumptions relating to tanker configuration for handling of FO, SKO, HSD and Naphtha in the following manner with full unloading and ullage availability
FO and SKO assumed to be handled in 25000 DWT tankers carrying 22,500 MT
HSD and Naphtha assumed to be handled in 40000 DWT tankers carrying 36,000 MT
On completion of construction in 2001-02, the design throughput of the jetty as per the estimates of Engineers India Ltd is 5.5 M Tonnes, assuming service time per vessel of 34 hrs.
<table>
<tr><td rowspan="2">Year</td><td colspan="3">Throughput TMT</td><td colspan="2">Tanker calls</td></tr>
<tr><td>Proj Total</td><td>In 40000 DWT tankers</td><td>In 25000 DWT tankers</td><td>40000 DWT</td><td>25000 DWT</td></tr>
<tr><td>1999-00</td><td>3469</td><td>2306</td><td>1163</td><td>64</td><td>51</td></tr>
<tr><td>2001-02</td><td>3069</td><td>1895</td><td>1174</td><td>53</td><td>52</td></tr>
<tr><td>2006-07</td><td>6582</td><td>4349</td><td>2233</td><td>120</td><td>99</td></tr>
</table>
As can be seen the throughput calculations are influenced based on assumptions relating to traffic in terms of number of vessels. Changes in the actual vessel traffic characteristics, (which is the reality) vis-à-vis the assumptions impact the throughput of the facility.</td></tr>
<tr><td>3</td><td><u>TRAFFIC</u></td><td></td></tr>
<tr><td>(i)</td><td>The throughput of the year 2009-10 has been estimated at 5.483 Million Tonnes (MT) as against the throughput of 5.702 M.T. of 2008-09. BPCL is requested to clarify why throughput in 2009-10 is</td><td>Naphtha coastal movement has been estimated to reduce due to expiry of agreement between HPC/RCF.

Edible oil imports are expected to be</td></tr>
</table>

	lower by 3.84% as compared to the previous year. The throughput for 2010-11, 2011-12 and 2012-13 has been estimated at 5.363 M.T., 5.460 M.T. and 5.555 M.T. respectively. Although BPCL has furnished the basis with which item-wise traffic estimation has been carried out, it is requested to elaborate how the throughput is estimated to decrease by 2.18 % in 2010-11 as compared to that of 2009 – 10 and thereafter to increase by 1.8 % in 2011-12 and 1.74 % in 2012-13 over the previous years.	handled more at Kandla due to availability of refining / processing facilities in Gujarat. The jetty is ageing, as it was constructed between 1998 – 2002. The facilities are worn out, corroded and breaking down frequently inspite of routine preventive maintenance. In the year 2010-11, we have planned major overhaul of the main facilities. We also have planned revamping of fire fighting facilities. These works will require partial / full shutdown of facilities /jetty. These engineering works will hamper vessel berthing and hence throughput will decrease in the first year i.e. 2010-11. Jetty is at present being utilised between 97 – 100% and there is no scope for increase in throughput.
(ii)	The estimated throughput to be handled at Liquid Terminal during 2009-10 has been furnished. Since the year is nearly coming to a close, kindly furnish the actual traffic till date handled during 2009-10 with the cargo break up.	Throughput achieved till March 2010 is 6.49 MMT. Product wise details are furnished.
(iii)	1,16,821 tonnes and 1,58,712 tonnes of base oil were handled by foreign going vessels in 2007 – 08 and 2008 – 09. The quantity of base oil estimated to handle in 2009-10 is 70,000 tonnes and for the next three years 80,000 tonnes per annum. The reasons for estimating low throughput in this commodity may please be ascertained and intimated.	Due to commissioning of more refineries in Gujarat and pattern of crude being processed in the existing refineries, availability of indigenous base oil has increased. The indigenous base oil is being transported through bulk lorries inland. Due to this the import of base oil has reduced drastically.
(iv)	5,62,051 tonnes and 5,61,559 tonnes of Naphtha were handled by coastal vessels in 2007 – 08 and 2008 – 09. The coastal quantity of Naphtha estimated to be handled in 2009-10 is only 1,00,000 tonnes. For the following three years it is estimated at 50,000 tonnes per annum. The reasons for estimating low throughput may please be intimated.	Due to increase in prices in international market, coastal Naphtha movement has reduced drastically.
(v)	BPCL has not projected to handle HFHSD, XYLENE and PX (all coastal) and HSD, Motor Spirit and Caustic Soda (all foreign going) during 2010-11 to 2012-13. Kindly state the reasons therefore.	Due to increase in refining capacity in India petroleum products are hardly imported now days. HSD, Motor spirit indigenous availability has increased. Hence coastal cargo handling is not projected. Xylene and PX are generally imported, hence only their foreign movement is projected.

4.	**<u>OPERATING INCOME</u>**	
(i)	Three new rates viz. Vessel Idling Charges, Penalty for Low Flow Rate and Penalty for Leakages at Jetty have been proposed to be introduced. It is not indicated from whom these charges are proposed to be recovered. Further, full justification for introduction of these rates with cost details may be furnished. The yearly income expected to be generated under these heads, if the performance of the past 3 years continues unchanged in future, may also be furnished.	We propose to levy these charges to consignee. The penalties on low flow rate and leakages are measure of deterrent rather than income and hence the expected yearly income under this head can not be estimated. Low flow rate of the vessels affects our business as volumes are reduced. We have calculated low flow rate based on different grades of cargos and estimated flow rates. Vessels are idled at the jetty due to various reasons which results into idling of our jetty and hampers throughput operations The proposed rates for Vessel Idling charges have been arrived at as under: Many a time it is observed that operation is stopped due to various reasons pertaining to tankfarm tankers which cause loss of time and revenue to BPCL. After berthing of vessel at jetty initially 04 hrs are allowed to start the operation and 04 hours after completion of tanker operation. Many time vessels do not get ready in 04 hrs, or even if ready do not get pilot for sailing, causing loss of time/ revenue to BPCL. The tanker waiting for tides for berthing/ sailing will be considered under above case. Vessel idling charges are proposed to minimize the idling of tankers at berth and increase tanker tank farm efficiency to reduce turn around time. A) Total revenue generation in Year 2008-09 - Rs. 333867497/- (B) Total berth occupancy in Year 2008-08 - 74.03% -12985 Hrs. (C) Total operation time in Year 2008-08 – 10220 Hrs. (D) Revenue generation/ Hrs - Rs. 32668

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Any stoppage of operation will cause BPCL to loss opportunity of earning Rs. 30,000/- per hour.
The proposed penalty for low flow rates for have been arrived at as under:
Many time it is observed that there are restrictions on flowrate either from tanker side or from tank farm side due to reasons like No Ullage in tanks, deteriorated conditions of pipeline, restriction from vessel side.
Flowrate Proposed for Different cargos is as under:
<table>
<tr><th>Sr. No</th><th>Products</th><th>Min. Flowrate KL/Hr</th></tr>
<tr><td>1</td><td>Petroleum Class A/ B cargo</td><td>800</td></tr>
<tr><td>2</td><td>Petroleum Class C & Blakhsk Oil</td><td>500</td></tr>
<tr><td>3</td><td>Class A/B/C Chemicals, Acids</td><td>250</td></tr>
<tr><td>4</td><td>Edible Oil</td><td>300</td></tr>
<tr><td>5</td><td>Base Oil/ Mollasses</td><td>150</td></tr>
<tr><td></td><td></td><td></td></tr>
</table>
The penalty proposed is as Under
<table>
<tr><th>Cargo handling through pipelines</th><th>Rates</th></tr>
<tr><td>Flow rate Min or above.</td><td>100% wharfage rate</td></tr>
<tr><td>Flowrate = 90% of Min</td><td>105% wharfage rate</td></tr>
<tr><td>Flowrate = 80% of Min</td><td>110% of proposed rate</td></tr>
<tr><td>Flowrate < 60% of Min</td><td>125% of proposed rate</td></tr>
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In respect of Penalty for leakage we would accept the rates, as per TAMP decision.
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<td>(ii)</td>
<td>BPCL has proposed an increase of 55% in the current rates in respect of all the services being rendered. BPCL is requested to justify the proposed increase with cost details in respect of each of the services.</td>
<td>BPCL has proposed 55% increase in current rates in respect of all the cargo handled, wharfage management services and loading arm services. It would clarify that regarding other services like Pipeline charges, Compressor charges, Nitrogen charges, Hard and Soft Pigging, Vaporiser charges and Bunkering charges, it consider only cost price of the material and nominal charges. In fact even after the proposed tariff increase the terminal facility will continue to have a substantial deficit in ROCE.</td>
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<td>(iii)</td>
<td>The details of preferential treatment, if any, offered in the matter of berthing of BPCL's own ships and that of the oil industry as permitted under the license agreement and additional charges, if any, levied therefor may please be furnished.</td>
<td>
Preferential berthing i.e. priority berthing is allotted by JNPT to PSU vessels. JNPT levies priority charges @ 75 % of berth hire charges to PSU vessels except ONGC.
Recently JNPT has revised priority norms which have resulted into delay of
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		berthing of our own vessels.
(iv)	Under proposed tariff, BPCL has estimated income of Rs. 284.63 lakhs, Rs. 142.31 lakhs and Rs. 106.74 lakhs for the years 2010-11 to 2012-13 for handling HSD. No income, however, has been estimated for handling this commodity under existing tariff.	Under existing tariff, HSD cargo income has been added in the head HFHSD/AFS amounting of Rs. 183.60 lakhs, Rs 91.80 lakhs, Rs. 68.85 lakhs for the years 2010-11 to 2012-2013.
(v)	BPCL has projected for the year 2010-11 a decrease in throughput by 2.18 % as compared to the previous year. However, the decrease in operating income projected for the corresponding period is 11.84% (from Rs. 3336.21 lakhs to Rs. 2941.12 lakhs). Kindly elucidate.	Though the volumes decrease is just 2.18% the decrease in income is 11.84 % because of the variation in rates for different products.
5	**OPERATING COST**	
(i)	As per the licence agreement, the repairing of the terminal during the license period has to be carried out by BPCL. The cost sheet furnished does not reveal separately the expenditure incurred on repairing the terminal. The repairing expenditure, if any, incurred in the past three years and estimated to be incurred in the next three years may be indicated	These expenses have been shown under Operating costs and sub head “Equipment Running Costs” for all the 3 years. Estimated costs for the next 3 years (2010-11 to 2012-13) is Rs. Lakhs 273.66 , 295.55 , 319.20 respectively
(ii)	At the time of last tariff revision, BPCL had shown expenditure incurred on pipeline way leave charges and on environment management. These costs are not indicated separately in the cost statements now submitted. BPCL is requested to state whether these costs are no longer to be incurred. If they have been included under any other head, the details thereof may be furnished	Way leave charges are not mentioned separately this time. These charges are being paid regularly to JNPT as rentals and the expenses have been shown under head Management & Administration overhead. The expenditure on this account is approx. Rs. 27 lakhs every year with an escalation of 4% every year. Environmental Monitoring Charges have been booked under Direct Operating expenses. The expenditure on this account is Rs. 6 Lakhs every year.
(iii)	BPCL has shown the royalty payment made to JNPT of Rs.629.76 lakhs, Rs.1264.46 lakhs, and Rs.1425.87 lakhs as expenditure for the years 2007-08 to 2009-10. Royalty payment to be made to JNPT for the years 2010-11 to 2012 -13 has been estimated at Rs. 1188.41 lakhs, Rs.1256.25 lakhs and Rs.1301.43 lakhs under the existing tariff level. As per clause 2.8.1 of the revised tariff guidelines where the bidding process was finalized before 29 July 2003, the tariff computation will take into account royalty payment as cost for tariff fixation in such a manner as to avoid likely loss	The Licence Agreement for the terminal has been signed prior to July 2003. BPCL as a terminal operator is not generating sufficient surpluses from operations of the terminal at the existing tariff levels. Even at the revised tariff levels the surpluses would be less than the allowed ROCE assuming that the revenue share is treated as a cost for tariff fixation purposes. If such revenue share were not to be allowed as a cost for tariff fixation purposes then the losses on account of such revenue share would be the equivalent amounts of royalty payable for such period that

	to the operator on account of the royalty payment not being taken into account, subject to maximum of the amount quoted by the next lowest bidder. At the time of the last tariff revision it has come to notice that the agreement BPCL has entered into with JNPT prior to 29 July 2003 was on a nomination basis. In this connection BPCL is requested to refer to this office letter No. TAMP/26/2006-(BPCL) JNPT dated 10 May 2007 wherein it has been made clear that without the clarification of the Ministry of Shipping, Road Transport and Highways, it will not be possible for this Authority to include the royalty payment as a pass through.	the revenue share is not allowed and will result in increase in the extent of deficit in relation to the allowed ROCE. The clause 2.8.1 clearly states that the tariff computation should take into account royalty payment as cost for tariff fixation in such a manner as to avoid likely loss to the operator on account of the royalty. On the basis of this principle, royalty should be considered as a cost incurred and should be included in tariff computation. We once again submit that the clarification from the Ministry of Shipping, Road Transport & Highways may be obtained at the earliest. Otherwise, not considering the royalty will be undue benefit to the private users of the terminals. It is worthwhile to note here that the expected revenue from private users will consist of 38.65% of total revenue. Till the time the proposal is under consideration at Ministry of Shipping, Road Transport & Highways, the royalty should be considered as a part of the cost.
(iv)	The break up of the management and administration expenditure may please be furnished. The expenditure under this head has gone up to Rs. 286.97 lakhs in 2009-10 from Rs. 145.28 lakhs of the previous year. For the years 2010-11 to 2012-13, the expenditure has been projected at Rs. 314.94 lakhs (an increase of 9.75% over the previous year), Rs.340.13 lakhs ((an increase of 8.00% over the previous year) and Rs. 367.34 lakhs (an increase of 8.00% over the previous year) respectively. The basis adopted for estimating the expenditure for the ensuing three years may be furnished. BPCL is informed that the expenditure projections should be in line with the traffic adjusted for price fluctuation with reference to current movement of WPI vide clause 2.5.1 of the revised tariff guidelines. The rate applicable for the year 2009-10 is 5.8%. Kindly carry out the requisite amendment to the expenditure projections.	Management and Administrative overheads comprise of expenses such as employee costs, administrative expenses such as travel, rent, electricity, communication costs etc. These are incurred for the overall management of the jetty and hence have been included as Management and Administrative overheads. Projections for these expenses have been assumed @ 8% yearly. The basis adopted for estimating the expenditure is as follows. a) Pay revision of employees. b) Increase of staff at the site office. c) Increase in inflation factor. d) Increase in economic scenario due to revision in PSU scales. Other benefits are also getting revised which are based on the basic. These revisions will add on to the Management overheads. The inflation at the Wholesale Price Index (WPI) level is now 8.56%.

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<tr><td></td><td></td><td></td></tr>
<tr><td>(v)</td><td>The break up of the other expenses also may please be furnished. The expenditure under this head has increased from Rs. 48.35 lakhs to Rs. 50.91 lakhs in 2009 - 10. For the years 2010-11 to 2012-13, the expenditure has been estimated at Rs. 56.99 lakhs (an increase of 11.94 %over the previous year), Rs. 61.38 lakhs ((an increase of 7.7 % over the previous year) and Rs. 66.14 lakhs (an increase of 7.75 % over the previous year) respectively. The expenditure projections may please be restricted at 5.8% as indicated in para (iv) above.</td><td>The break up of the other operating expenses is as follows:
Rs. In lakhs
<table>
<tr><th></th><th>2009-10</th><th>2010-11</th><th>2011-12</th><th>2012-13</th></tr>
<tr><td>CISF/SECURITY EXPENSES</td><td>47.93</td><td>51.76</td><td>55.90</td><td>60.37</td></tr>
<tr><td>FIRE FIGHTING EXPENSES</td><td>0.33</td><td>0.35</td><td>0.38</td><td>0.41</td></tr>
<tr><td>SAFETY EXPENSES</td><td>1.73</td><td>1.87</td><td>2.02</td><td>2.18</td></tr>
<tr><td>SURVEY/AGENCEY FEE</td><td>0.30</td><td>0.32</td><td>0.35</td><td>0.38</td></tr>
<tr><td>PROTECTIVE CLOTHING</td><td>0.63</td><td>0.68</td><td>0.73</td><td>0.79</td></tr>
<tr><td>Operating Expenditure</td><td></td><td>2.00</td><td>2.00</td><td>2.00</td></tr>
<tr><td>Total Expnd.</td><td>50.91</td><td>56.99</td><td>61.38</td><td>66.14</td></tr>
</table>
These expenses are mainly related to the safety and security of the jetty. Even DGR sponsored security provided by us revises rates half yearly by more than 10% as per statutory guidelines. Fire fighting expenses also can not be restricted to just 8%, to provide the fire protection to the jetty</td></tr>
<tr><td>(vi)</td><td>The operating and direct labour expenditure for the year 2009 – 10 is considered at Rs. 143.49 lakhs. The expenditure projected for the next three years is Rs. 161.57 lakhs, Rs. 173.53 lakhs and Rs. 186.45 lakhs. It is not clear why for 2010-11, the expenditure has been projected by 12.60% over the previous year especially when the projected traffic has been lowered by 2.18%. Kindly carry out the requisite corrections for all the three years as stipulated under clause 2.5.1 of the guidelines.</td><td>Operating & Direct labour cost consists of Environmental monitoring charges, own use expenses of diesel generator sets and fire water pumps and third party payments. These charges also include newly proposed charges for providing hoses and labour to connect the hoses. This is an additional cost which we have proposed. We have already obtained Capex approval for providing marine hoses.</td></tr>
<tr><td>(vii)</td><td>The equipment running cost for the year 2009 – 10 is considered at Rs. 252.68 lakhs. The expenditure projected for the next three years is Rs. 273.66 lakhs, Rs. 295.55 lakhs and Rs. 319.20 lakhs. Kindly explain why for 2010-11 to 2012-13, this expenditure has been projected incrementally by around 8.00% over the previous years. BPCL is advised to restrict the expenditure projections for all the three years as per clause 2.5.1 of</td><td>As stated earlier in this reply, the jetty facilities are ageing. There are frequent breakdowns or partial shutdowns. Due to corrosive nature of atmosphere the wear and tear of parts and corroding of metals causes increase in maintenance requirements. We have planned major maintenance works on facilities like loading arms, control panels etc. This will increase the cost of repairs & maintenance shown under the head</td></tr>
</table>

	the guidelines.	equipment running cost.
(viii)	Lease Agreement states that BPCL has to pay the lease rental for 20 hectares of area required for siting tank farm area and pipeline routing. No expenditure, however, has been shown as incurred by BPCL towards lease rental. BPCL is requested to confirm that no lease rental charges are payable to JNPT in the ensuing three years.	We did not take over the plot offered by the JNPT. Hence JNPT has recently dropped the claim of lease rental dues. We confirm that no lease rental charges are payable to JNPT.
(ix)	The insurance expenditure incurred during 2007-08, 2008-09 and 2009-10 is Rs. 16.05 lakhs, Rs. 10.08 lakhs and Rs. 13.49 lakhs The reasons for the wide fluctuations in this expenditure may please be explained. The expenditure projection for the next three years ranges between 11.89 lakhs and Rs. 12.36 lakhs. A copy of the agreement entered with the insurance company (ies) may be furnished	We enclose herewith a copy of Insurance policy cover note The policy is consolidated for all the locations. Insurance premium is taken as 0.1 % of the value of fixed assets. As the cost of fixed assets is increasing, the premium amount is also increasing.
(x)	The license agreement makes it obligatory on the part of BPCL to operate all associated facilities and cargo handling equipment at the terminal and also the facilities and equipment at the Tank Farm Area including handling and storage of Class A, Class B and Class C liquids. The expenditure, if any, incurred by BPCL in the infrastructure development of the Tank Farm Area and the recurring expenditure, if any, thereon may be furnished. The income received/receivable by BPCL from the services provided at the Tank Farm Area also may be furnished	BPCL has not put up any Tank farm so far, and therefore no income has been received
(xi)	If for any services BPCL has entered into any outsourcing arrangements, kindly furnish details thereof along with the copies of the agreements entered into. It may also be certified that such service providers were selected based on competitive tendering.	We have entered into an agreement with IOT Infrastructure & Energy Ltd for operations and maintenance of the jetty as it is a joint venture of IOC. All other activities are governed and controlled by BPCL. A copy of the agreement is furnished.
(xii)	As per the license agreement BPCL has to share the expenditure on deployment of CISF staff with JNPT at a predetermined ratio and additional security arrangements, if so required, can be made by BPCL at its cost. BPCL has not furnished the expenditure on this count separately in the cost statements. The details of expenditure, if any, incurred may be furnished along with the deployment details of security personnel. At the time of last tariff revision it had come to light that there existed a dispute between BPCL and JNPT on the	Annual CISF expenditure is incurred by JNPT for providing security at the gates, jetty and sea front. JNPT at present is distributing these expenses amongst the jetty operators based on water front. There is dispute on this formula as the licence agreement does not mention water front as a basis. As per Licence Agreement, CISF charges should be billed on the actual deployment of security guards. We have requested for the review of charges. JNPT raises the demand regularly every year. The

	quantum of this expenditure to be borne by BPCL. BPCL is requested to inform whether the issue has since been resolved.	dispute is not yet resolved.
6.	**CAPITAL EMPLOYED**	
(i)	The fixed assets have been shown under 4 categories, viz., (i) plant and machinery, (ii) buildings, sheds and other structures (iii) information technology and (iv) furniture and fixtures. As per the license agreement, BPCL is expected to undertake the requisite initial capital dredging. BPCL is requested to state whether it undertook any initial capital dredging and if so, the cost thereof and the category under which the expenditure has been grouped	Initial Capital Dredging at the cost of Rs.28 crores has been undertaken by BPCL. It has been grouped under "Building" category, sub group "Jetty & Approach Trestle"
(ii)	Kindly confirm that only those assets which have been fully commissioned and in use have been included in the net block and work in progress and the assets which have been disposed off or decommissioned have been excluded from the net block.	BPCL confirms that only those assets which have been fully commissioned and to be commissioned are in use have been included in the net block.
(iii)	No working capital has been assumed by BPCL in the cost statements. BPCL is advised that clause 2.9.9 of the revised tariff guidelines specifies the limit upto which balances of sundry debtors, inventory and cash balances can be considered for computing working capital and return thereon. BPCL is advised to review its workings afresh, if it so desires.	A review of the operations of the jetty indicates that no working capital is required by the facility as all dealings are done without any credit period. Accordingly we have assumed nil working capital requirements for the facility.
(iv)	In compliance with the license agreement, BPCL has made an initial payment of Rs. 5 crores to JNPT at the time of commissioning of the jetty. As per the guidelines, the upfront payment is required to be amortized over the concession period of 30 years. In this respect, BPCL is requested to carry out necessary corrections in the cost statements after referring para 11 (vii) of this Authority's Order dated 7 August 2007 in Case No. TAMP/26/2006-BPCL (JNPT).	BPCL has not paid any upfront payment to JNPT. However BPCL has given Bank Guarantee of Rs 5 Crore to JNPT which need not to be amortised
(v)	BPCL has proposed to add assets worth Rs. 14 lakhs, Rs. 3073 lakhs and Rs. 800 lakhs respectively during 2009-10, 2010-11 and 2011-12. Please confirm whether the additions proposed are in accordance with the License Agreement entered into with JNPT. Also kindly confirm that the level of investment made is in line with the License Agreement. Further, evidence of action	The License Agreement with JNPT does not stipulate any levels of investment. The proposed investments are normal capital expenditure associated with the jetty facilities. For the addition of assets of Rs. 14 lakhs we have already obtained sanction from our HQ and Purchase Orders are placed on vendors. We

	taken to procure these assets may be furnished. A detailed note may also be furnished as to how these proposed additions will add to capacity and / or reduce unit cost of handling.	enclose copies of some of a report from our system which indicates the sanction references. For other proposals we have initiated the process of approval. Proposals for the year 2010-11 are submitted to HQ for approvals. Copies of estimates and feasibility reports prepared are furnished.
(vi)	The capital employed has been shown in form 4-A as Rs. 11204.38 lakhs, Rs.11129.57 lakhs and Rs.10255.43 lakhs for the years 2010-11 to 2012-13 respectively both under existing rate and under proposed rate. The capital employed for the corresponding years and allocated to various activities like (i) Wharfage and facility management, (ii) Loading arm and wharfage management, (iii) Pipeline compressor, Vapourizer, Pigging and (iv) Water, Bunkering and others aggregate to Rs. 11065.00 lakhs, Rs.10990.19 lakhs and Rs. 10728.89 lakhs respectively under the existing tariff scenario. Under the proposed tariff scenario, the capital employed shown for the same years aggregate to Rs. 11204.39 lakhs, Rs. 10423.49 lakhs and Rs. 10868.27 lakhs respectively. BPCL is, therefore, requested to furnish activity-wise statements where the totals tally with the capital employed furnished in the main statement.	The capital employed has been allocated to each activity. We enclose details of the proposed capital employed along with the justification and feasibility.
(vii)	BPCL has considered ROCE at 16% on the entire capital employed. As per the revised tariff guidelines, the terminal operator is entitled for a return of 16% per annum on business assets, 7.40 % on business related assets and nil % on social obligation assets. BPCL is requested to confirm that the entire capital employed falls under business assets. If it consists other than business assets, BPCL is advised to prepare the cost statements afresh adhering to the guidelines stated herein.	We confirm all these capital investments proposed is for developing or replacing existing business assets only.
(viii)	As per Form 4-B, six projects aggregating investments of Rs. 2891 lakhs are to be commissioned in 2010-11 and another three projects aggregating investments of Rs. 740 lakhs in 2011-12. Please state whether the requisite investment decisions have already been taken and whether the	We confirm that these facilities will be commissioned in 2010-11 and 2011-12 as projected. As majority of the capital employed towards replacement of existing facility / equipment , there would be hardly any capacity addition. Addition of LPG facility will not add to the capacity as LPG vessels will occupy

	work on all these projects is in progress. Kindly confirm that these facilities will be commissioned in 2010-11 and 2011-12 as projected. Reduction in unit operating cost/ improvement in operational efficiency, if any, achieved on account of the proposed additions to the gross block may be indicated.	the jetty in lieu of other vessel.
(ix)	Clause 2.9.6 of the revised tariff guidelines stipulates that project/feasibility report relied upon by Government, financial institutions etc will be relied upon for assessment of reasonableness of fresh investments made/proposed for creation of capacity. Please furnish copies of such projects / feasibility reports.	Investment decision has been taken. However, these expenses are proposed by phasing over next 3 years. A copy of the feasibility report has been submitted.
7.	<u>Miscellaneous</u>	
(i)	In Form 7, BPCL has furnished the details pertaining to the actuals – viz a viz estimates for the years 2006 – 07 to 2008 – 09. To verify the details contained therein such as traffic handled, cargo handling income, operating and other overhead expenses, depreciation, capital employed etc, BPCL is requested to submit the relevant years audited annual accounts and performance reports pertaining to the liquid cargo jetty.	Bharat Petroleum Corp Ltd, a Public Sector Undertaking company, does not prepare location wise annual Accounts and performance reports. We have prepared the cost performance statements based on our internal SAP system generated reports which are compiled and certified by the Chartered Accountant. The said certificate is furnished.
(ii)	As per Form 7, the traffic of 2007-08, operating surplus of 2006-07 and 2008-09, operating income and operating costs of 2008 – 09 and net surplus of 2006 – 07 and 2008 – 09 have increased by more than 20 %. The reason for such variations may please be explained	In 2006-07, operating surplus increased by 260 % . Main contributory factor to this was • Expected salary revision did not take place in this year. • Throughput& income performance better than estimated due to commencement of crude loading. • Due to various constraints, much expenditure could not be undertaken. Installation of crude loading arm and pipeline was in progress throughout 2007 – 08. There were shutdowns at liquid berth I for erection of loading arms and fabrication of pipelines. Crude loading facility was commissioned this year. The commissioning was delayed due to various restriction at the jetty in fabrication works and safety precautions. Coastal movement of SKO was estimated keeping in mind future plans to bring SKO from Jamnagar, Vadinar.

		However this could not be materialised due to subsidy issues as well as pricing difference. Hence SKO movement was very less compared to the projected one. In 2008-09, operating surplus (loss) reduced by 56.87 % . Main contributory factor to this was throughput & income performance better than estimated due to commencement of crude loading.
8.	SCALE OF RATES	
(i)	BPCL has formulated its proposal by considering an across the board increase of 55% over the existing tariff. The additional services/facilities proposed to be provided to the users and the benefit of productivity improvements accruing to users justifying this hike may be listed out	The hike in tariff is to provide sufficient surpluses to sustain and maintain the level of services being provided as also to improve safety and environmental measures.
(ii)	BPCL is requested to submit a draft Scale of Rates along with the conditionalities governing application of such charges	Yet to be provided.

6. As the financial year 2009-10 was already completed, BPCL was requested vide our letter dated 25 May 2010 to update the cost statements with actuals for the year 2009-10 and to review the estimates for the years 2010-11, 2011-12 and 2012-13 based on the actuals for the year 2009-10. It was also requested to furnish a copy of the audited annual accounts for the year 2008-09 and the draft annual accounts for the year 2009-10.

7.1. A joint hearing in this case was scheduled to be held on 2 June 2010. On that day one proposal of JNPT was also scheduled to be heard. However, at the request of JNPT, the hearings scheduled on 2 June 2010 were cancelled. The joint hearing was subsequently held on 15 June 2010 in the office of this Authority. BPCL, JNPT and the concerned users made their submissions thereat.

7.2. At the joint hearing, JNPT was advised to furnish its comments on the proposal of BPCL within one week. JNPT was also advised to furnish its specific comments on the assessed capacity of the liquid jetty with reference to the facility currently available at the Jetty, restricted capacity due to the repairs proposed to be undertaken by BPCL, traffic forecast and the plea of BPCL to consider revenue share as an item of cost in the traffic computation. By letter dated 17 June 2010, the port was advised to furnish these details by 22 June 2010.

7.3. By letter dated 17 June 2010, Mumbai and Nhava Sheva Ship-Agents Association (MANSA) was advised to furnish its comments on the proposal of BPCL. MANSA by letter dated 21 June 2010 furnished its comments. A copy of MANSA's comments was forwarded to BPCL for remarks and BPCL responded thereto vide letter dated 23 June 2010.

7.4. By letter dated 17 June 2010, BPCL was once again advised to furnish the updated cost statements alongwith a copy of the audited annual accounts for the year 2008-09 and the draft annual accounts for the year 2009-10 by 30 June 2010. BPCL was also requested to indicate the details of the various capital expenditure projects to be undertaken by it in next three years alongwith the progress and the current status of individual works. By letter dated 13 July 2010 BPCL submitted a revised proposal which contains the details of capital expenditure to be undertaken during 2010-11 and 2011 - 12. It also furnished a statement of income and expenditure and fixed assets as on 31 March 2010 certified by a firm of Chartered Accountants.

7.5. A comparison between the Original proposal dated 21 January 2010 and the revised proposal dated 13 July 2010 of BPCL is summarized below:

Sl. No.	Particulars	As given by BPCL in original proposal filed in January 2010			As given by BPCLin its revised proposal filed in July 2010		
		2010-11	**2011-12**	**2012-13**	**2010-11**	**2011-12**	**2012-13**
1.	Traffic (in MT)	5363500	5460500	5555500	5485000	5600000	6000000
2.	Operating Income at existing level of tariff (Rs. In lakhs)	2941.12	3077.71	3159.91	2917.34	3009.04	3295.87
3.	Net Deficit(-) (Rs. in lakhs)	-1702.83	-1724.60	-1616.18	-1637.07	-1626.66	-1347.71
6.	Net Deficit(-) as % of operating income	-57.90%	-56.04%	-51.15%	-56.12%	-54.06%	-40.89%
7.	Average net surplus / deficit as a percentage of operating income	-55.03%			-50.36%		

8.1. JNPT vide letter dated 1 July 2010 offered its comments on the proposal. Although a copy of it was forwarded to BPCL for remarks, BPCL has not furnished any reply. The comments offered by JNPT on BPCL's proposal are as under:-

(1) Traffic throughput considered for the projections:

The traffic considered for the projected years 2010-11 to 2012-13 are as under:

Year	Traffic (in MMT)
2010-11.1	5363500
2011-12.1	5460500
2012-13.1	5555500

During 2009-10 throughput of 649000 MMT has been achieved indicating a capacity utilization of 118%.

(2) Assessed capacity of BPCL:
It is seen from the projections made in the BPCL proposal that the assessed capacity throughout the period 2010-11 to 2012-13 has been taken as 5.5 MMT. As per the bid document and agreement entered into, the assessed capacity of BPCL jetty is 5.5 MMT. There is no change envisaged in the assessed capacity till date.

(3) Increase in current rates:
BPCL has sought an increase of 55.02% from the existing rates in services. However, regarding other services like pipeline charges, compressor charges, hard and soft pigging, vaporizer chares and bunkering services only cost price of the material plus nominal charges are being recovered.

(4) Audited accounts:
As per the information received from BPCL no location-wise annual accounts are prepared for the Liquid Cargo Jetty at JNPT. All revenue and capital transactions pertaining to the jetty are recorded in a separate cost centre in the accounting

system. Items pertaining to the cost centre have been extracted and the statements duly certified by a practicing Chartered Accountant. The cost statements are based on internal SAP system generated reports.

(5) Direct Operating cost:

The following observations are made relating to the projections for 2011-12 & 2012-13.

a) Direct labour & operating cost has been increased by 7.44%.

b) Equipment running cost have been increased by 8%

c) Other expenses have been increased by 7.70% in 2011-12 and 7.75% in 2012-13. These expenses consist of CISF security, fire fighting expenses, safety expenses, protective clothing, and are mainly related to safety and security of the jetty.

d) Management & Admn. Overheads have been increased by 8%

e) Insurance cost has been varied based on the assets to be insured for each of the projected year.

f) Royalty/Revenue share is shown as a part of direct operating cost

The increase in operating cost considered for the projections are not as per the TAMP guideline No.2.9.2.

(6) Royalty shown as operating cost :

The royalty received from BPCL as per the audited accounts of JNPT are as stated below

(Rs. In crores)

	2007-08	2008-09	2009-10
Royalty shown as paid to JNPT In the BPCL proposal	6.29	12.64	14.25
Royalty received as per accounts	6.29	9.22	10.98

(7) Capital cost :

From Form-4(B) of BPCL proposal the following observations are made:

(Rs. In lakhs)

	2010-11	2011-12	2012-13
Fire water pump replacement	625	---	---
LPG loading arm	400	---	---
Fire protection facility augmentation	1000	---	---
Oil spill response facility	500	---	---
LPG pipeline installation cost	216		
LPG project management expenses	150	---	---
Replacement of fender, QRMH, High Mast Tower & Yard light	---	240	---

Loading arms control panel	---	100	---
Strengthening of jetty structure	---	400	---
TOTAL	2891	740	Nil

These figures are not matching with the details of the capital expenditure given in Form-4A.

(8) Income projections :

Income projection as shown in Form-2B of the BPCL proposal is as stated below :

	2010-11	2011-12	2012-13
Traffic (MT)	5363500	5460500	5555500
Wharfage and handling charges (Rs. In Lakhs)	2941.12	3077.71	3159.91

(9) Penalties :

BPCL has asked for the levy of three types of penalties on the consignee as stated below:

a) penalty of low flow rate - low flow rate of the vessels affects the business as volumes are reduced.

b) vessel idling charges- results hampers throughput operations

c) penalty for leakages at jetty

It is stated that these penalties are to be levied as a measure of deterrent rather than as an income earning exercise. Hence, the income under these heads has not been estimated.

(10) Way leave charges

The way leave charges paid to JNPT have been shown under the head 'Management and Administration Overhead'. It is seen from the proposal that the expenditure on this account is shown as Rs.27 lakhs per year with an escalation of 4% every year. The details relating to Way Leave Charges as per the books of accounts of JNPT are as stated below:

(Rs. In lakhs)

	2007-08	2008-09	2009-10
Billed amount	22.53	23.66	24.84
Amount received	3.26	4.90	-

The cumulative outstanding as on 31.03.2010 on account of way leave rent is Rs.486.64 lakhs.

(11)Repairs and maintenance cost:

The repairs to the terminal as per the license agreement have to be undertaken by BPCL.The repairing and maintenance cost have been shown in the projected years 2010-11 to 2012-13 under equipment running cost. The estimated costs for the three years are Rs. 273.66 lakhs, Rs.295.55 lakhs and Rs.319.20 lakhs.

(12) Specific comments of JNPT on the assessed capacity of BPCL Liquid Jetty:
As per the bid document and the agreement entered into with BPCL the assessed capacity of BPCL liquid jetty is stated as 5.5 MMT. There is no change envisaged in the assessed capacity till date. Clarifications were sought from BPCL regarding the throughput achieved of 5.70 MMT in 2008-09 and 6.49 MMT in 2009-10 being much higher than the assessed capacity of 5.50 MMT for the liquid jetty. BPCL in its clarification has stated that the product mix handled by BPCL during the last two years had a large proportion of HSD, Naphtha, furnace oil in 2009-10 leading to increased flow rate of the products handled. Hence, huge quantities were loaded in the short time. BPCL does not influence the discharge rates for cargo which is dependent on ship pumping rates, pipeline diameter and storage capacity. It is further clarified that there is no guarantee that the same product mix will continue in the projected years. The berth is already being operated at 97% to 103% during the period of the last three years. Hence, it appears that the assessed capacity indicated by BPCL for the projected years is reasonable.

(13) Restricted capacity repairs proposed to be undertaken by BPCL :

As per the clarifications received from BPCL:

a) **Replacement of fire fighting facility** – This involves replacement of three fire water pumps with higher capacity 5 no. of pumps, replacement fire water hydrant pipeline, tower monitors and hydrant points. These fire fighting facilities are being undertaken as per the directives received from Ministry of Petroleum in the background of the Jaipur IOC fire. As the jetty cannot be operated without fire fighting system shutdown will be required to be taken for at least one month.

b) **Structural repairs :** - The RCC structure at the jetty are more than 12 years old and are damaged over a period of time wherein steel reinforcement are exposed due to erosion /corrosion. This will require BPCL to undertake major jetty repairs, replacement of fenders etc during the projected years. This will lead to partial shutdown of the liquid cargo jetty at least for two months.

Due to the facts stated in points (a) &(b) above the throughput is estimated at 5.3 MMT, 5.4 MMT& 5.5 MMT in the projected years.

(14) Proposal of BPCL to consider royalty as an item of cost :

As per TAMP guidelines royalty / revenue share will be taken into account as cost for tariff fixation in such a manner as to avoid loss to the operator on account of royalty / revenue share subject to maximum of the amount quoted by next lowest bidder. Further BOT agreement should be before July, 2003 and there should be provision in the agreement. The agreement with BPCL has been entered into on 17th Aug., 1999 and it contains a clause for payment of royalty. BPCL was awarded the liquid cargo terminal on nomination basis. Hence, in this case both highest bidder and the next lowest bidders are on equal footing. The BPCL agreement is silent on royalty being allowed as pass through. Hence, the royalty can be regulated strictly as per clause 2.8.1 of TAMP guidelines.

8.2. A copy of JNPT's letter dated 1 July 2010 was forwarded to BPCL for comments on 6 July 2010. BPCL however has not offered its comments thereon.

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

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

(i). Clause 2.13 of the tariff guidelines mandates a review of the actual physical and financial performance of the jetty at the end of the prescribed tariff validity period with reference to the projections relied upon at the time of fixing the prevailing tariff. The position with reference to the period relating to the years 2007 – 08 to 2009 – 10 is discussed below.

(a) the actual aggregate traffic stood at 15.27 MMT as against the estimated traffic of 14.28 MMT during the years 2007-08 to 2009-10. BPCL has actually handled 6.93 % additional traffic when compared with the estimates.

(b) The actual aggregate operating income amounted to Rs. 87.78 crores as against the estimate of Rs. 76. 69 crores, an increase of 12.63 %.

(c) The aggregate operating expenditure including depreciation and other overheads amounted to Rs. 34.41 crores as against the estimate of Rs. 30.45 crores, an increase of 13.00 %.

(d) The actual aggregate operating surplus is Rs. 53.36 crores as against the estimate of Rs. 46.23 crores, an increase of 15.42 %.

(e) The aggregate capital employed has been Rs. 289.65 crores as against the estimated capital employed of Rs. 297.57 crores.

(f) The estimated net deficit of Rs. 1.41 crores during 2007 – 08 to 2009 – 10, actually turned into a net surplus of Rs. 14.34 crores.

A statement showing the analysis for the years 2007 – 08 to 2009 – 10 is attached as **Annex I**. The performance variation between the estimates and the actuals for the years 2007 – 08 to 2009 – 10 is not more than 20%. As such, no adjustment of the past period appears to be warranted in the next tariff cycle.

(ii). (a) The actual throughput handled by BPCL during 2007-08, 2008-09 and 2009-10 stood at 3.07 Million Metric Tonnes (MMT), 5.70 MMT and 6.49 MMT respectively. BPCL has estimated the throughput for 2010-11 to 2012-13 at 5.48 MMT, 5.60MT and 6.00 respectively. Compared to the actual traffic of 2009-10, the projections for 2010-11, 2011-12 and 2012-13 are less by 15.56 %, 13.71 % and 7.55 % respectively. When requested to clarify about the reduction in the traffic projections for the next three years, BPCL has stated as under:-

- Naphtha coastal movement had to be estimated downwards due to expiry of agreement between HPC and RCF.

- Due to increase in prices in international market, coastal naphtha movement has reduced drastically.

- Commissioning of more refineries in Gujarat has increased the availability of indigenous base oil. The indigenous base oil is being transported in land through bulk lorries. The import of base oil has hence reduced drastically.

- Edible oil imports are expected to be handled more at Kandla due to availability of refining / processing facilities in Gujarat.
- Due to increase in refining capacity in India, petroleum products such as HSD, motor spirits etc are hardly imported nowadays.

- The jetty, constructed between 1998 – 2002, is ageing and breaking down frequently and in 2010-11, a major overhaul of the main facilities has been planned which will require partial / full shutdown of facilities at the jetty. Since these engineering works will hamper vessel berthing, the throughput will decrease.

- The jetty is presently utilised to the extent of 97 to 100% of its capacity and hence there is no scope for further increase in throughput.

(b) Naphtha handled in 2009-10 was about 8.53 lakh tonnes. BPCL expects to handle only 4.50 lakh tonnes, 4.50 lakh tonnes and5.00 lakhs tonnes of Naphtha during 2010-11 to 2012-13. The edible oil to be handled during 2010 – 11 to 2012 – 13 has been estimated at 7.00 lakh tonnes, 7.00 lakh tonnes and 7.5 lakh tonnes per annum as against the actual handling of 8.62 lakh tonnes during 2009-10. There is a marginal drop in the projection of crude to be handled - at 27.50 lakh tonnes per annum - during the ensuing three years as against the actual handling of 27.78 lakh tonnes during 2009 – 2010. BPCL expects to handle 3 lakh tonnes, 3.00 lakh tonnes and 3.50 lakh tonnes of base oil during 2010-11 to 2012-13 as against the handling of 3.40 lakhs tonnes during 2009-10. BPCL has stated that it would invest an aggregate of Rs. 7.66 crores on commissioning of an LPG loading arm and laying of LPG pipeline during 2010 – 11 and Rs. 1 crore in 2011-12 on installation of loading arms control panel. BPCL has estimated to handle 1,00,000 tonnes of LPG per annum during 2011 – 12 and 2012 – 13.

(c) As per the directives received from Ministry of Petroleum in the background of the fire at IOC depo in Jaipur, BPCL proposes to replace the fire fighting facility at the jetty during the projected years. BPCL has also proposed to undertake major jetty repairs, replacement of fenders etc during the ensuing two years. According to BPCL, the work of replacement of the fire fighting facility will necessitate shutdown of the jetty at least for one month and the structural repairs will lead to partial shutdown of the jetty at least for two months.

(d) JNPT has endorsed the throughput estimation of BPCL for the next three years stating that the replacement of fire fighting facilities will result in the shut down of the jetty atleast for one month and the structural repairs would lead to partial shutdown of the jetty atleast for two months.

(e) The cargo-wise traffic projection furnished by the BPCL for the purpose of tariff fixation is as under

In Metric Tonnes

Sr.No.	Details	2009-10 (actuals)	2010-11	2011-12	2012-13
1.	Naphtha	853745	450000	450000	500000
2.	Base Oil	340165	300000	300000	350000
3.	Edible oil	862630	700000	700000	750000
4.	HSD	514072	500000	500000	500000
5.	Crude oil	2778956	2750000	2750000	2750000
6.	LPG	---	----	100000	100000
7.	Others	1146432	785000	800000	1050000
	TOTAL	6496000	5485000	5600000	6000000

(f) As per the concession agreement BPCL has entered into with JNPT the minimum guaranteed traffic from the 5th year of commencement of the operation is 4 million tonnes per annum. Since the traffic projected for the years 2010-11 to 2012-13 exceeds the minimum guaranteed traffic, and the jetty will be subjected to shutdown fully or partially for major overhaul and also considering the reasons advanced by BPCL for drop in the throughput as detailed in sub-para ii (a) above the traffic projections furnished by BPCL are relied upon for the purpose of this analysis. Nevertheless, if any undue advantage is found to have accrued to BPCL due to wrong estimation, adjustment will be made in the tariff at the time of next review in line with the tariff guidelines.

(iii). (a) The consolidated operating income from the liquid cargo terminal for the years 2007-08, 2008-09 and 2009-10 amounted to Rs.18.56 crores, Rs.38.29 crores and Rs.36.92 crores respectively. The operating income projected, based on the existing tariff and the estimated traffic for the years 2010-11 to 2012-13 is Rs.29.17 crores, Rs.30.09 crores and Rs. 32.95 crores respectively. BPCL has projected for 2010-11 a decrease in throughput by 15.56 % vis-à-vis that of 2009-10. The decrease in operating income projected for the corresponding period is 21%. When specifically requested to justify BPCL has replied that though the volume decease is by 15.56 %, the decrease in income is 21 % because of the variation in the cargo mix estimated to be handled in 2010 – 11.

(b) BPCL has proposed a new tariff item viz. Vessel Idling Charges the details of which have been discussed subsequently at para (xvii) (b). On the ground that vessel idling charges are to be levied as a measure of deterrent, no income under this head has been estimated by BPCL. However, an estimated income of Rs. 6,00,000/- lakhs per year have been considered by us on the assumption that such levy would be levied on an estimate basis for twenty occasions per year.

(c) As already stated in sub-para iii (a) above, the income projected for the next three years are not exactly in tandem with the traffic projections. BPCL has stated that the variation in the volume decrease and the income decrease need not be in direct proportion due to the existence of rate difference amongst the various products. Giving credence to this explanation, the income projection furnished by BPCL is relied upon for the purpose of this analysis. Nevertheless, if any undue advantage is found to have accrued to BPCL due to wrong estimation, adjustment will be made in the tariff at the time of next review in line with the tariff guidelines.

(iv). (a) As per the cost sheet submitted by BPCL, the consolidated operating cost of the jetty amounted to Rs. 8.22 crores, Rs.14.83 crores and Rs.19.03 crores for the years 2007-08, 2008-09 and 2009-10. The projected operating cost for the next 3 years is Rs.16.83 crores, Rs.17.29 crores and Rs.18.68 crores respectively. The items included therein are operating and direct labour, equipment running cost, royalty payment to JNPT and other expenses excluding depreciation and management and administrative expenses.

(b) The operating and direct labour expenditure projected for 2010-11 to 2012 – 13 are Rs. 2.05 crores, Rs. 2.13 crores and Rs. 2.21 crores respectively. This expenditure includes environmental monitoring charges, expenses on diesel generator sets and fire water pumps and third party payments. These charges also include the cost for providing hoses and labour to connect the hoses. This expenditure has been allocated amongst the four activities of (i) cargo handling, (ii) wharfage management, (iii) pipeline pigging etc and (iv) bunker and water supply in the ratio of 80:10:5:5

(c) As ascertained from BPCL, the equipment running cost consists of (i) repairs and maintenance, (ii) the cost of spares, (iii) breakdown repairs and (iv) expenses towards meeting the annual maintenance contracts for preventive maintenance of all the equipment including the marine loading arms, their various valves, fire fighting pumps, jetty pumps and air compressor. This expenditure projected for 2010-11 to 2012 – 13 is Rs. 1.38 crores, Rs. 1.49 crores and Rs. 1.61 crores respectively. It has been allocated amongst the three activities of (i) wharfage management, (ii) pipeline pigging etc and (iii) bunker and water supply in the ratio of 50:30:20.

(d) Other expenses consist of fire fighting expenses, safety expenses, survey agency fees, CISF expenses and expenses on protective clothing etc. This expenditure projected for 2010-11 to 2012 – 13 are Rs. 1.43 crores, Rs. 1.48 crores and Rs. 1.54 crores respectively. It has been allocated amongst the four activities of (i) cargo handling, (ii) wharfage management, (iii) pipeline pigging etc and (iv) bunker and water supply in the ratio of 60:20:10:10.

(e) The expenditure on insurance projected for the three years is Rs. 11.89 lakhs, Rs. 12.36 lakhs and Rs. 12.36 lakhs respectively. This expenditure has been allocated amongst the four activities of (i) cargo handling, (ii) wharfage management, (iii) pipeline pigging etc and (iv) Bunker and water supply in the ratio of 60:20:10:10.

(f) Management and administration and general overheads expenses consist of employee cost, travel cost, rent, communication, courier, postal, printing and stationery, inspection fees, legal and miscellaneous expenditure, hire of vehicles and bank guarantee charges. This expenditure has been fully allocated to the wharfage activity.

(g) As stated earlier, BPCL in the cost statement has allocated the operating and direct labour, equipment running cost, other expenses and insurance under the four activities of (i) cargo handling, (ii) wharfage management, (iii) pipeline pigging etc and (iv) Bunker and water supply at varying percentages. BPCL has not come forward with any cogent explanation on the basis of allocation followed by it. The allocation of common costs to different activities plays a role in determining the financial result of that activity. The basis of allocation of expenditure under different activities proposed now is different from the basis adopted at the time of the earlier Order. The aggregate operating expenditure (excluding depreciation) estimated for the years 2010 – 11 to 2012 – 13 has been allocated under the abovementioned four activities in the ratio of 73:8:16: 4 which was the basis followed at the time of issuance of the Order in August 2007.

(h) Coming to the activity-wise details of operating cost, the BPCL has projected an expenditure of Rs. 14.42 crores, Rs14.73 crores and Rs. 15.96 crores respectively for the ensuing 3 years under cargo handling activity. The expenditure included herein is operating and direct labour, royalty payment to JNPT, insurance and other expenses excluding depreciation.

(i) The expenditure in respect of (i) operating and labour, (ii) other expenses, (iii) management and administration and (iv) general overheads projected by BPCL for the years 2010-11 to 2012-13 is in line with traffic adjusted for price fluctuation with reference to current movement of wholesale price index for all commodities. These expenditure projections are, therefore, accepted without any modification. The insurance expenditure incurred in 2008 – 09 was Rs. 17.17 lakhs. BPCL has proposed this expenditure at Rs. 11.89 lakhs, Rs. 12.36 lakhs and Rs. 12.36 lakhs for the years 2010-11 to 2012 – 13 which has also been accepted without any modification. The equipment running cost has been projected by BPCL with an escalation factor of 8 % over the expenditure of 2009-10. This expenditure stood at Rs. 1.28 crores in 2009-10. It has been projected at Rs. 1.38 crores, Rs. 1.49 crores and Rs.1.61 crores respectively for 2010-11 to 2012-13. When advised to limit the expenditure with reference to current movement of WPI vide Clause 2.5.1 of the tariff guidelines, BPCL has informed that it has planned major maintenance works on facilities like loading arms, control panels etc which will increase the cost of repairs and maintenance shown under the head equipment running cost. Considering the facts put forward by BPCL, this Authority relies on the expenditure projected by BPCL in this regard for the next three years without any modification. In this regard, it may be noted that the estimated repair cost considered by us works out to 1.95 %, 1.89 % and 2.04 % of the respective gross block of the years 2010-11, 2011-12 and 2012-13 which appears to be reasonable.

(j). At the existing level of tariff the royalty payable has been estimated by BPCL at Rs. 11.84 crores, Rs. 12.06 crores and Rs.13.19 crores respectively for the years 2010-11, 2011-12 and 2012-2013. As per the guidelines for tariff fixation, in case of bids finalised before 29 July 2003, the tariff computation must take into account royalty / revenue share payable by the private operators to the landlord port as cost for tariff fixation so as to avoid the likely loss on account of this item not being taken into account, subject to maximum of the amount quoted by the next lowest bidder. The license agreement was signed by the BPCL in August 1999. The licence was awarded on a nomination basis and no competitive bids were invited as per the directions of the Ministry of Petroleum. Since there is no second bid available for comparison, BPCL at the time of last revision in 2007 had sought pass through of the entire royalty payable to the JNPT. The tariff guidelines do not cover the situation where there is single technically qualified bidder and no other bid is available for comparison. Therefore, the Government was requested under letter dated 22 March 2007 to advise in the matter of treating revenue share/royalty in such cases as cost for tariff fixation. BPCL in May 2007 requested this Authority to provide a copy of the letter dated 22 March 2007 addressed to the Government to enable it to take up appropriately with the Ministry for an early clarification in this regard. A copy of the said letter was furnished to BPCL. Since the Government did not convey any decision in this regard, the royalty payable by BPCL was not allowed as pass through at the time of last rate revision. In the absence of any specific direction till date from the Government about the treatment of royalty, the royalty payable by BPCL to JNPT has not been treated as pass through even in the present tariff fixing exercise. If any decision contrary to this position is received from the Government, this Authority is inclined to undertake a review of the tariff of the BPCL to correctly reflect the decision of the Government.

(v). The depreciation provided by BPCL for the years 2007-08, 2008-09 and 2009-10 amounted to Rs.6.81 crores, Rs.6.77 crores and Rs.6.87 crores respectively. The depreciation provided for 2010-11, 2011-12 and 2012-13 is Rs.8.36 crores, Rs.8.74 crores and Rs.8.74 crores. At the time of last tariff revision in August 2007, it was given to understand that in compliance with the license agreement, BPCL has made an upfront payment of Rs. 5 crores to JNPT and this amount has been capitalized and is being depreciated over a period of 20 years at the rate applicable to fixed assets category as per Companies Act, 1956. Since the tariff guidelines stipulate that the upfront payment is to be amortized over the concessional period, while carrying out the cost analysis in 2007 Rs.16.67 lakhs per year was considered as amortization expenditure and the capital employed was increased by Rs. 8.33 lakhs per year towards unamortized expenditure on this account. BPCL in its letter dated 6 May 2010 has informed that it has not paid any upfront payment to JNPT, but has only given a bank guarantee of Rs. 5 crores to JNPT and hence this payment need not to be amortized. Since no upfront payment has been made, but only a Bank Guarantee has been executed no expenditure has been considered under the head amortization in the present cost analysis. However, the wrong addition made to the capital employed and additional expenditure allowed under amortization in the last Order has been suitably adjusted in the current tariff cycle.

(vi). BPCL has stated that it has not assumed any working capital for operation and maintenance of the jetty as all dealings are done without any credit period.

(vii). (a) As per the cost statement furnished by BPCL, the net block forming capital employed stands at Rs.103.64 crores, Rs.96.40 crores and Rs.89.60 crores respectively for the years 2007-08, 2008-09 and 2009-10. BPCL has identified and presented the net block relating to each of the activities, viz., (i) Cargo handling, (ii) Wharfage Management and Loading Arm, (iii) Provision of pipeline compressor, pigging, vaporizer and nitrogen and (iv) bunker and supply of water. BPCL has proposed augmentation of its net block aggregating to Rs. 38.76 crores during the next two years (Rs. 30.76 crores in 2010-11 and Rs. 8 crores in 2011 -12). Except for a small expenditure of Rs. 3 lakhs in improvement of its information technology in 2010-11, the bulk of the proposed capital expenditure is under the head plant and machinery. It has also confirmed that all these investments are for developing or replacing the existing business assets. BPCL has confirmed that the investment decisions have already been taken and the expenses will be incurred in phases and the facilities will be commissioned in 2010-11 and 2011-12. In support of its claim that the investment will be made during the next two years, BPCL has produced a copy of the decision taken at the level of its "Committee of Functional Directors" in respect of the setting up of the LPG import facility at JNPT and laying of pipeline from JNPT to Uran LPG bottling plant. In Form 4 B, BPCL has given details of nine projects (where individually investment exceeds Rs. 1 crore) aggregating to Rs. 36.31 crores to be incurred in 2010 – 11 and 2011 – 12 viz (i) fire water pumps replacement (Rs. 625 lakhs), (ii) LPG loading arm (Rs. 400 lakhs), (iii) fire protection facility augmentation (Rs. 1000 lakhs) (iv) fender, QRMH, highmast tower and yard light (Rs. 240 lakhs) (v) oil spill response facility (Rs 500 lakhs) (vi) LPG pipeline installation cost (Rs. 216 lakhs) (vii) LPG project management (Rs. 150 lakhs) (viii) loading arms control panel (Rs. 100 lakhs) and (ix) strengthening of jetty structures (Rs. 400 lakhs). BPCL has stated that the projects at Sr.Nos. (iv), (vii) and (ix) herein will be commissioned in 2011-12 and the other projects will be commissioned in 2010-11 BPCL has also submitted extracts of its internal documents justifying the capital expenditure. Relying upon these documents, the additions to capital estimated at Rs. 30.76 crores, Rs. 8.00 crores and Rs. nil respectively for 2010-11, 2011-12 and 2012-13 is considered. If, however, any undue advantage is found to have accrued to BPCL due to over estimation of capital expenditure, adjustment will be made in the tariff at the time of next review in line with the tariff guidelines.

(b) The JNPT Liquid Bulk Users Association has stated that the BPCL though has put up several pipelines of 5 kilometers long, it does not allow the needy to make use of those lines. BPCL has countered this argument stating that it will allow anyone to use those pipelines if the parties fulfill the specified conditions. BPCL has also confirmed that in its cost structure, the cost of those pipelines has not been included.

(c) BPCL has considered all its assets as business assets and it has no assets to classify under the category social obligation assets.

(d) Though in the cost statement the capital employed as on 31 March 2010 has been shown by BPCL as Rs. 89.60 crores, as per the certificate of its Chartered Accountant the gross acquisition of assets is only Rs.72.65 crores as on that date. This matter of difference in the capital employed had come to the focused attention of this Authority at the time of the last tariff revision in August 2007. It has gone on records then that the jetty was built by BPCL and IOCL jointly by sharing the cost equally and the certificate issued by the Chartered Accountant only mentioned the acquisition value of the assets as appearing in BPCL books as the balance 50% of the acquisition value has been transferred to IOC. A doubt then arose whether only 50% of the value of the assets as appearing in the books of accounts of BPCL should be considered for determining the ROCE. BPCL at that occasion informed that as per the clause pertaining to computation of compensation in the concession agreement, the termination payments referring to depreciated costs require reference to statement of costs by an independent Chartered Accountant and not the books of the licensee. Further, the agreement with IOC requires sharing of depreciation, other costs and revenues in equal proportion. JNPT also expressed the view that the entire asset value could be considered for the purpose of calculation of ROCE. In view of these explanations, the total value of the assets jointly created by IOCL and BPCL was considered for the tariff setting exercise in August 2007. Similar treatment has been given in this respect in the present rate revision exercise.

(e) It was observed at the time of earlier tariff revision in 2007 that the jetty has been constructed by BPCL at a huge cost as per the conditions laid down by JNPT in the BOT agreement even to cater to bigger vessels carrying containers. BPCL was, therefore, then advised to consider a reasonable amount as capital employed which would be relevant for handling of about 5.5 million tonnes of liquid cargo. In reply BPCL stated that the jetty has been constructed by it as per the guidelines laid down by JNPT and it has considered only reasonable portion of capital employed for tariff proposal. As per clause 2.9.11. of the tariff guidelines, in the case of private terminal operators, if the investment made is in accordance with the obligations under the concession agreement it will be considered for ROCE even if full capacity utilisation is not achieved. Although this clause is directly related to capacity utilisation, it has a bearing on the investment made by the private terminal operators in fulfillment of the conditions stipulated in the concession agreement and hence this Authority in its Order dated 7 August 2007 allowed return on the entire investment. Even in this occasion similar query was raised and similar reply was offered by BPCL. Following the decision taken earlier, in the tariff setting exercise now being carried out the ROCE has been calculated on the entire investment made by BPCL.

(viii). JNPT was specifically requested to offer its comments on the assessed capacity of the jetty since at the joint hearing, MANSA expressed its view that there is a need to reassess the capacity. JNPT has informed that as per the bid document and the agreement entered into with BPCL the assessed capacity of the jetty is 5.5 MMT. JNPT has further sought clarification from BPCL as to how it could achieve the throughput of 5.70 MMT in 2008-09 and 6.49 MMT in 2009-10 being much higher than the assessed capacity of 5.50 MMT. The clarification furnished by BPCL to JNPT is that on completion of construction in 2001-02, the design throughput of the jetty was assessed at 5.5 MT as per the estimates of Engineers India Ltd who carried out the feasibility study. BPCL has further stated that the product mix handled during the last two years had a large proportion of HSD, naphtha, and furnace oil leading to increased flow rate which resulted in loading of huge quantities in the short time. BPCL has also informed JNPT that it does not influence the discharge rates for cargo which is dependent on ship pumping rates, pipeline diameter and storage capacity. According to JNPT, there is no guarantee that the same product mix will continue in the projected years. Since the berth is already being operated at 97% to 103% capacity during the last three years, JNPT is of the view that the assessed capacity of 5.5 MMT indicated by BPCL for the next three years is reasonable. In the absence of any scientific calculation substantiating the designed capacity of the jetty, this Authority is constrained to accept the capacity of the jetty as 5.5 million tonnes as stated by BPCL and endorsed by JNPT.

(ix). Since the capacity utilization is estimated to be more than 60% during the years 2010 – 11 to 2012 -13, the maximum permissible return of 16% is allowed on the capital employed.

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

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

Sr.No.	Particulars	Operating Income (Rs. in lakhs) (at the existing tariff)			(Net surplus(+)/Deficit(-) (Rs. In lakhs)				(Net surplus (+)/Deficit (-) as a % of operating income.			Average Surplus/Deficit %
		2010-11	2011-12	2012-13	2010-11	2011-12	2012-13	Total	2010-11	2011-12	2012-13	
1.												
	Cargo handling	2677.32	2763.99	3033.32	-35.96	-29.11	325.40	260.33	-1.34	-1.05	10.73	2.78
	Wharfage	154.10	157.33	168.57	-72.30	-61.00	-41.76	-175.06	-46.92	-38.77	-24.78	-36.82

	management											
	Pipeline pigging etc.	30.59	31.24	33.47	-333.89	-321.83	-308.32	-964.04	-1091.33	-1030.30	-921.25	-1014.30
	Bunker and water supply	55.32	56.48	60.52	7.94	9.59	14.09	31.62	14.35	16.98	23.27	18.20
	TERMINAL AS A WHOLE	2917.34	3009.04	3295.87	-434.22	-402.35	-10.60	-847.17	-14.88	-13.37	-0.32	-9.53

(b). The activity-wise additional revenue sought to be generated by BPCL through the proposed tariff revision, is as follows:

Rs.in lakhs

Sl. No.	**Activity**	**Additional Income**			**Total**
		2010-11	**2011-12**	**2012-13**	
1.	Cargo handling	1348.17	1391.81	1527.43	4267.41
2.	Wharfage management	139.92	142.85	153.06	435.83
3.	Pipeline pigging etc	48.28	49.29	52.81	150.38
4.	Bunker and water supply	6.68	6.82	7.31	20.81
	Total	1543.05	1590.77	1740.61	4874.43

Though BPCL has sought an across the board rate increase of 50.36% over the existing rates, it has not adhered to the said rate increase while arriving out the additional income under activities pipeline, pigging etc and bunker and water supply.

(xi). The increase in rates proposed is required to be justified in terms of the tariff guidelines with reference to the cost deficit position for the terminal as a whole. The summarised result brought out at para. (x)(a) above are analysed below for admissibility of the proposed hike in rates for the respective activities reckoning with the estimated additional revenue position brought out at para. (x) (b) above.

(xii). The estimated financial position at the existing level of tariff for the jetty as a whole shows an aggregate deficit of Rs. 8.47 crores for the three years of 2010-11, 2011-12 and 2012-13 vis-a-vis the targeted additional revenue generation of Rs. 48.74 crores through the proposed tariff revision. As explained subsequently at para xvii (b) that follows, an additional revenue of Rs. 18 lakhs has been contemplated under the proposed levy of vessel idling charges during the years 2010-11 to 2012-13. The deficit to be covered by tariff increase thus works out to Rs. 8.29 crores.

(xiii). The wharfage management activity shows an aggregate deficit of Rs. 1.75 crores which is 36.82 % of the operating income. Against the rate increase of 50.36 % sought by BPCL, this Authority approves a rate increase of 36.82 % on this service to attain a revenue neutral position.

(xiv). The activity of providing pipeline services, compressor, hard pigging, foam pigging, liquid nitrogen and vaporizing charges shows an aggregate deficit of Rs. 9.64 crores during the ensuing 3 years which is 1014.30% of the operating income. The increase sought by BPCL on these activities is 50.36 %. In view of the deficit position reflected in the cost analysis, this Authority is inclined to accord approval to the rate revision sought by BPCL in these activities. This rate increase will generate an additional income of Rs. 0.48 crore in the next three years.

(xv). The activity bunkering services and supply of fresh water to vessels for the 3 years 2007-08 to 2009-10 shows a surplus of Rs. 0.31 crore which is 18.2 % of the operating income. In view of the surplus position, in fact, there exists a case to reduce the existing rates of these activities by 18.20 % to maintain an activity wise revenue neutral position. However, since the jetty as a whole shows an aggregate deficit of Rs. 8.29 crores, this Authority retains the existing rates on these activities.

(xvi). The cargo handling activity shows an aggregate surplus of 2.60 crores. BPCL has sought an across the board increase of 50.36 % in rates in wharfage. Although the stated position of this Authority is not to allow any increase in tariff for those activities which show a surplus, the fact remains that at the existing level of tariff the terminal as a whole shows an aggregate deficit of Rs. 8.29 crores for the three years of 2007-08 to 2009-10. Acceding the rate increase of 36.82 % in wharf management (additional income of Rs. 1.75 crores), 50.36 % in pipeline pigging etc. (additional income of Rs. 0.48 crore) and retention of existing rates in bunker and water supply (additional income of Rs. 0.31 crore) would leave a net deficit of Rs. 5.75 crores. Since the group of users availing all the facilities provided at the jetty is the same, this Authority accords approval to increase the wharfage rates to the extent of covering the resultant deficit of Rs. 5.75 crores. A 6.78 % across the board increase in the existing wharfage rates would cover this deficit and this Authority therefore, accords approval thereto. It is to be mentioned herein that this approach was followed in determining the rate increase at the time of last tariff revision in August 2007.

(xvii). (a) BPCL has proposed introduction of three new tariff items viz. vessel idling charges, penalty for low flow rate and penalty for leakages at the jetty which are discussed in the following sub-paras.

(b) Vessel idling charges:- According to BPCL many a times operation of vessels is stopped due to various reasons attributable to tank farm and tankers. After berthing of vessel at the jetty four hours are initially allowed to start the operation and four hours after completion. Quite often vessels do not get ready for sailing within the permissible time which causes loss of time and revenue to BPCL. Idling of vessels at the jetty delays turn of other vessels in queue and also forces the jetty to remain idle. As a deterrent, BPCL has proposed to introduce a vessel idling charges to be levied on the consignees. It has arrived at the proposed rate with reference to the hourly loss of opportunity of earning. Considering the total berth hours available in a year at 17520 (365 days x 24 hours x 2 berths), during 2008 -09 BPCL had a total berth occupancy of 12985 hrs (74.11 %) and a total operation time of 10220 hours. The total revenue generation in 2008 – 09 stood at Rs. 32.30 crores. Based on the revenue generation per hour at Rs. 31604 (Rs. 32.08 crores divided by 10220 hours), for overstayal of the vessels BPCL has proposed a penalty of Rs. 30,000 per hour.

The objection raised by MANSA in this regard is with reference to the provision contained in the Scale of Rates of JNPT for levy of penal berth hire charges for not achieving the minimum flowrates for certain commodities and idling of the vessels berthed at the jetty operated by BPCL. As per the provision contained in the Scale of Rates of JNPT, penal berth hire charge shall be levied at the prescribed rates in addition to berth hire charges, if a vessel other than container / car carrier vessels occupies the berth beyond 6 hours after completion of operations. Further, as per the SOR of JNPT, vessels carrying liquid cargo like furnace oil, carbon black feed stock, bright stock etc must have adequate heating arrangements to maintain the prescribed average discharge rates for effective working of 20 hours per day. If the discharge rate of such vessels falls below the specified rates, JNPT reserves the right to charge penal berth hire. In the view of MANSA it is a double penalty for the same default, if BPCL also levies charges for overstay of the vessel at its jetty. It has to be recognized that when a vessel overstays at the berth it not only occupies the berth after the operations are over but also the landward facilities of BPCL are clogged; and, the revenue earning time of BPCL is wasted. As such the penal berth hire contained in JNPT Scale of Rates is in compensation of the strain passed on to JNPT's operations due to overstayal of the vessel whereas the BPCL proposal to impose a penalty for ovestayal of vessel at its jetty is for compensating the loss of its revenue generating time. In view of this position, the proposal of BPCL to impose penalty does not amount to double charging.

Though the Licence Agreement entered into between JNPT and BPCL does not authorize the BPCL to collect vessel related charges, it has to be kept in view that the charge proposed by the BPCL is in the form a penalty for overstay of vessel at its terminal. For overstayal of vessels after completion of operation due to users fault, this Authority under Order No. TAMP/ 49/2008-GTIPL dated 3 March 2010 and Order no. TAMP/14/2008 – NSICT dated 19 September 2008 has approved a penalty of Rs. 1,00,000/- per hour. On this analogy, this Authority accords approval to the levy of penalty at the rate of Rs. 30,000 per hour for overstay of the vessels at the BPCL jetty beyond 2 hours after completion of operation due to users fault.

As stated earlier, BPCL has proposed the levy of vessel idling charges on the consignees. Since the levy is to act as a deterrent against overstayal of the vessel at the jetty, this Authority accords approval to the levy of the proposed vessel idling charges which will be levied from the concerned vessels and not from the consignees.

c) Penalty for low flowrate:- BPCL has stated that quite often there are restrictions on the flow rate either from tanker side or from tank farm side due to reasons like no ullage in tanks, topping up of tanks, deteriorated conditions of pipelines, stripping of vessel tanks etc. Some vessels give flow rate as low as $50m^3$ per hour. The low flow rate increases the time of operation of the vessels and the jetty is occupied for more time with less quantity of cargo. According to BPCL 62% of the volume comes from POL vessels which occupy jetty for 33% time, whereas 38% volume is given by chemical vessels which occupy jetty for 67% time. To improve efficiency and turn around of the vessels, BPCL has proposed a penalty for low flow rate with the stipulation of minimum flow rate for different categories of products.

BPCL was requested to clarify the basis of arriving at the minimum flowrate per product required to be achieved. Instead of furnishing a reply to this specific query, BPCL in its letter dated 17 August 2010 has only furnished the average flowrate achieved by the vessels of various cargoes.

BPCL has also explained that the proposed minimum flow rates are based on the average achieved during the last 7 years. Since the basis of arriving at the minimum flowrate as proposed by BPCL is not clear, BPCL is advised to come forward with a separate proposal, if considered necessary, with the full details and the requisite cost statement. It is to be established that the flow rates considered for calculating the designed capacity are comparable with the minimum flow rate proposed.

(d) Leakages at the jetty: - Tankfarm operation, according to BPCL, causes spillage at Jetty which becomes a safety hazard. Considerable manpower and equipment are required to clean the area. To prevent accidents, BPCL intends to impose a penalty for leakages mainly to make tank farms representatives aware about the safety precautions to be taken at the jetty. Instead of proposing any rate in this respect, BPCL has left it to this Authority. In the absence of any cost details it will not be possible to arrive at any rate for imposing penalty for leakages at the jetty. BPCL is, therefore, advised to come forward with a separate proposal, if considered necessary, with the requisite cost details.

(xviii). The guidelines stipulate that the rate of interest on delayed payments will be 2% above the Prime Lending Rate (PLR) of State Bank of India. It is ascertained that the present PLR is 12.25%. As such, the rate of interest on delayed payments may be prescribed at 14.25%.

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

11.2. The revised Scale of Rates and conditionalities of the BPCL will come into effect after expiry of 30 days from the date of Notification of the Order in the Gazette of India and shall be in force till 31 March 2013. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

11.3. In this regard, BPCL may be required to furnish to this Authority through JNPT its annual accounts and performance report within 60 days of closing of the respective accounting year. If BPCL fails to provide such information within the stipulated time limit the JNPT may initiate appropriate action against BPCL.

11.4. The tariff of the BPCL has been fixed relying on the information furnished by the operator and based on assumptions made as explained in the analysis.

11.5. In this regard, the BPCL is requested furnish a report of the actual physical and financial performance within 15 days of completion of each quarter of a year i.e. for the period ending on 30 June, 30 September, 31 December and 31 March of each of the years in the same format in which the cost statement for the tariff proposals are filed. The report should also be accompanied with the reasons for variation from the estimates relied upon for fixing the tariff in force. If a variation of (+)/(-)20% is observed between the actual and the estimates for two consecutive quarterly period, TAMP will call upon BPCL to submit its proposal for an ahead of scheduled review. If the BPCL fails to file a tariff proposal within the time limit to be stipulated by TAMP, this Authority may proceed *suo motu* to review the tariff. This apart, analysis of variation may also be made at the time of the next general review to be done at the end of the usual tariff validity period and adjustment of additional surplus, if any, will be made as per the tariff guidelines.

(Arvind Kumar)
Member

Annex - I

BHARAT PETROLEUM CORPORATION LIMITED

Analysis of the performance of BPCL for the years 2007-08 to 2009-10

(Rupees in Lakhs)

Sr. No.	Particulars	Estimates relied upon in the Tariff Order dated 7 August 2007			Actuals		
		2007-08	2008-09	2009-10	2007-08	2008-09	2009-10
	Traffic (In MTs)	**4,009,700**	**4,791,700**	**5,481,700**	**3,072,880**	**5,702,836**	**6,496,001**
I	**Total Operating Income**						
	(i) Wharfage	1957.57	2322.67	2611.57	1,707.53	2,917.26	3,332.13
	(ii) Wharfage Management & Loading Arm	141.31	198.54	201.24	97.20	178.41	182.50
	(iii) Pipeline, Compressor, Pigging, Vporiser etc	40.30	47.68	48.26	27.11	89.84	36.23
	(iv) Bunker & Water Supply	31.37	34.21	34.21	24.56	44.34	141.49
	Total (i to iv)	**2170.55**	**2603.10**	**2895.28**	**1,856.41**	**3,229.85**	**3,692.36**
II	**Operating Costs (excluding depreciation)**						
	(i) Wharfage	261.64	218.36	228.00	94.33	126.21	251.37
	(ii) Wharfage Management & Loading Arm	27.92	23.28	24.28	49.05	46.57	114.80
	(iii) Pipeline, Compressor, Pigging, Vporiser etc	56.95	47.04	48.63	27.45	25.63	63.80
	(iv) Bunker & Water Supply	12.59	10.50	10.97	21.60	20.94	51.38
	Total (i to v)	**359.10**	**299.18**	**311.88**	**192.43**	**219.35**	**481.35**
III	Amortisation	16.67	16.67	16.67	0.00	0.00	0.00
IV	Depreciation	667.11	678.89	678.64	681.07	677.79	687.76
V	Overheads						
	(i) Management & Administration	0.00	0.00	0.00	107.01	145.28	203.06
	(ii) General Overheads	0.00	0.00	0.00	5.76	9.98	30.28
	Total (i & ii)	0.00	0.00	0.00	**112.77**	**155.27**	**233.34**
VI	**Total Expenditure (II + III + IV + V)**	**1042.88**	**994.74**	**1007.19**	**986.27**	**1,052.41**	**1,402.45**
VII	**Operating Surplus (I) – (VI)**	**1127.67**	**1608.36**	**1888.09**	**870.14**	**2,177.45**	**2,289.91**
VIII	**Surplus Before Interest and Tax**	**1127.67**	**1608.36**	**1888.09**	**870.14**	**2,177.45**	**2,289.91**
IX	Capital Employed	10631.53	9927.73	9224.23	10,364.57	9,640.61	8,960.76
X	Return on Capital Employed	1701.04	1588.44	1475.88	**1,658.33**	**1,542.50**	**1,433.72**
XI	Capacity Utilization	72.90%	87.12%	99.67%	55.87%	103.69%	118.11%
XII	RoCE adjusted for capacity utilization	1701.04	1588.44	1475.88	926.52	1,542.50	1,433.72
XIII	**Net Surplus/(Deficit) (VIII) - (XII)**	-573.37	19.92	412.21	**(56.38)**	**634.95**	**856.19**
XVI	**Net (Deficit) as a % of operating income (XV/I in %)**	**-26.42%**	**0.77%**	**14.24%**	**-3.04%**	**19.66%**	**23.19%**
XVII	**Average Net (Deficit) as a % of operating income (XVI/I in %)**	**-3.80%**			**13.27%**		

Annex - II

BHARAT PETROLEUM CORPORATION LIMITED

Consolidated Income & Cost statement

(Rupees in Lakhs)

Sr. No.	Particulars	Actuals			Estimates as given by BPCL at existing level of tariff			Estimates at existing level of tariff as moderated by us		
		2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
	Actual Traffic (In MTs)	**3,072,880**	**5,702,836**	**6,496,001**	**5,485,000**	**5,600,000**	**6,000,000**	**5,485,000**	**5,600,000**	**6,000,000**
I	**Total Operating Income**									
	(i) Wharfage	1,707.53	2,917.26	3,332.13	2,677.32	2,763.99	3,033.32	2,677.32	2,763.99	3,033.32
	(ii) Wharfage Management & Loading Arm	97.20	178.41	182.50	154.10	157.33	168.57	154.10	157.33	168.57
	(iii) Pipeline, Compressor, Pigging, Vporiser etc	27.11	89.84	36.23	30.59	31.24	33.47	30.59	31.24	33.47
	(iv) Bunker & Water Supply	24.56	44.34	141.49	55.32	56.48	60.52	55.32	56.48	60.52
	Total (i to iv)	**1,856.41**	**3,229.85**	**3,692.36**	**2,917.34**	**3,009.04**	**3,295.87**	**2,917.34**	**3,009.04**	**3,295.87**
II	**Operating Costs (excluding depreciation)**									
	(i) Operating & Direct Labour	69.67	113.94	198.41	205.87	213.61	221.64	205.87	213.61	221.64
	(ii) Equipment Running Costs	58.44	46.98	127.92	138.15	149.21	161.14	138.15	149.21	161.14
	(iii) Royalty / revenue share	0.00	0.00	0.00	1,184.85	1,206.31	1,319.10	0.00	0.00	0.00
	(iv) Insurance	16.05	10.08	17.17	11.89	12.36	12.36	11.89	12.36	12.36
	(v) Other expenses	48.27	48.35	137.85	143.03	148.41	153.99	143.03	148.41	153.99
	Total (i to v)	**192.43**	**219.35**	**481.35**	**1,683.79**	**1,729.90**	**1,868.24**	**498.94**	**523.58**	**549.13**
III	Depreciation	681.07	677.79	687.76	836.45	874.45	874.45	836.45	874.45	874.45
IV	Overheads									
	(i) Management & Administration	107.01	145.28	203.06	210.70	218.62	226.84	210.70	218.62	226.84
	(ii) General Overheads	5.76	9.98	30.28	31.42	32.60	33.83	31.42	32.60	33.83
	Total (i & ii)	**112.77**	**155.27**	**233.34**	**242.12**	**251.22**	**260.67**	**242.12**	**251.22**	**260.67**
	Total Expenditure	**986.27**	**1,052.41**	**1,402.45**	**2,762.36**	**2,855.57**	**3,003.35**	**1,577.51**	**1,649.26**	**1,684.25**
V	Operating Surplus (I) – (II) – (III) - (IV)	**870.14**	**2,177.45**	**2,289.92**	**154.98**	**153.47**	**292.51**	**1,339.83**	**1,359.78**	**1,611.62**
VI	**Surplus Before Interest and Tax**	**870.14**	**2,177.45**	**2,289.92**	**154.98**	**153.47**	**292.51**	**1,339.83**	**1,359.78**	**1,611.62**
VII	Capital Employed	10,364.57	9,640.61	8,960.76	11,200.31	11,125.85	10,251.40	11,191.98	11,117.52	10,243.07
VIII	Return on Capital Employed	**1,658.33**	**1,542.50**	**1,433.72**	**1,792.05**	**1,780.14**	**1,640.22**	**1,790.72**	**1,778.80**	**1,638.89**
IX	Capacity Utilization	55.87%	103.69%	118.11%	99.73%	101.82%	109.09%	99.73%	101.82%	109.09%
X	RoCE adjusted for capacity utilization	926.52	1,542.50	1,433.72	1,792.05	1,780.14	1,640.22	1,790.72	1,778.80	1,638.89
XI	**Net Surplus/ (Deficit) (VI) - (X)**	**(56.38)**	**634.95**	**856.20**	**(1,637.07)**	**(1,626.66)**	**(1,347.71)**	**(450.89)**	**(419.02)**	**(27.27)**
XII	**Amortisation amount wrongly considered in the last Order is now added back in the current tariff cycle.**	0.00	0.00	0.00	0.00	0.00	0.00	16.67	16.67	16.67
XIII	**Total adjusted Surplus/ (Deficit) (XI + XII)**	(56.38)	634.95	856.20	(1,637.07)	(1,626.66)	(1,347.71)	(434.22)	(402.35)	(10.60)
XIV	**Net (Deficit) as a % of operating income (XIII/I in %)**	**-3.04%**	**19.66%**	**23.19%**	**-56.12%**	**-54.06%**	**-40.89%**	**-14.88%**	**-13.37%**	**-0.32%**
XV	**Average Net (Deficit) as a % of operating income (XIV/I in %)**	**13.27%**			**-50.36%**			**-9.53%**		

Annex II (a)

Cost statement for Wharfage

Sr. No.	Particulars	Actuals			Estimates as given by BPCL at existing level of tariff			Estimates at existing level of tariff as moderated by us		
		2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
I	**Operating Income**	**1,707.53**	**2,917.26**	**3,332.13**	**2,677.32**	**2,763.99**	**3,033.32**	**2,677.32**	**2,763.99**	**3,033.32**
II	**Direct Operating Expenses**									
	(i) Operating & Direct Labour	55.74	91.15	158.36	164.70	170.89	177.31	148.23	153.80	159.58
	(ii) Equipment Running Cost	0.00	0.00	0.00	0.00	0.00	0.00	99.47	107.43	116.02
	(ii) Royalty / revenue share	0.00	0.00	0.00	1,184.85	1,206.31	1,319.10	0.00	0.00	0.00
	(iii) Insurance	9.63	6.05	10.30	7.13	7.41	7.41	8.56	8.90	8.90
	(iv) Other expenses	28.96	29.01	82.71	85.82	89.05	92.39	102.98	106.85	110.87
	Total	**94.33**	**126.21**	**251.37**	**1,442.49**	**1,473.66**	**1,596.23**	**359.24**	**376.98**	**395.38**
III	Depreciation	516.66	513.40	522.29	668.40	706.40	706.40	668.40	706.40	706.40
IV	Allocated share of Overheads									
	(i) Management & Administration overheads	107.01	145.28	203.06	210.70	218.62	226.84	210.70	218.62	226.84
	(ii) General Overheads	5.76	9.98	30.28	31.42	32.60	33.83	31.42	32.60	33.83
	Total (i to iv)	**112.77**	**155.27**	**233.34**	**242.12**	**251.22**	**260.67**	**242.12**	**251.22**	**260.67**
V	Operating Surplus / (Deficit) (I) – (II) – (III) - (IV)	**983.77**	**2,122.37**	**2,325.13**	**324.31**	**332.71**	**470.02**	**1,407.56**	**1,429.39**	**1,670.87**
VI	**Surplus / deficit**	**983.77**	**2,122.37**	**2,325.13**	**324.31**	**332.71**	**470.02**	**1,407.56**	**1,429.39**	**1,670.87**
VII	Capital Employed for the activity	8,089.18	7,555.69	6,726.94	9,134.53	9,228.13	8,521.73	9,126.20	9,219.80	8,513.40
VIII	Return on Capital Employed	1,294.27	1,208.91	1,076.31	1,461.53	1,476.50	1,363.48	1,460.19	1,475.17	1,362.14
IX	Capacity Utilization	55.87%	103.69%	118.11%	99.73%	101.82%	109.09%	99.73%	101.82%	109.09%
X	RoCE adjusted for Capacity utilization	723.12	1,208.91	1,076.31	1,461.53	1,476.50	1,363.48	1,460.19	1,475.17	1,362.14
XI	**Net Surplus / (Deficit) (VI) - (X)**	(310.50)	913.46	1,248.82	(1,137.22)	(1,143.79)	(893.46)	(52.63)	(45.78)	308.73
XII	**Amortisation amount wrongly considered in the last Order is now added back in the current tariff cycle.**	0.00	0.00	0.00	0.00	0.00	0.00	16.67	16.67	16.67
XIII	**Total adjusted Surplus/ (Deficit) (XI + XII)**	(310.50)	913.46	1,248.82	(1,137.22)	(1,143.79)	(893.46)	(35.96)	(29.11)	325.40
XIV	**Net Surplus / (Deficit) as a % of operating income (XIII/I in %)**	-18.18%	31.31%	37.48%	-42.48%	-41.38%	-29.45%	-1.34%	-1.05%	10.73%
XV	**Average Net (Deficit) as a % of operating income (XIV/I in %)**		**16.87%**			**-37.77%**			**2.78%**	

Annex II (b)

Cost statement for Loading Arm , Wharfage Management

Sr. No.	Particulars	Actuals			Estimates as given by BPCL at existing level of tariff			Estimates at existing level of tariff as moderated by us		
		2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
I	**Operating Income**	**97.20**	**178.41**	**182.50**	**154.10**	**157.33**	**168.57**	**154.10**	**157.33**	**168.57**
II	**Direct Operating Expenses**									
	(i) Operating & Direct Labour	6.97	11.39	19.84	20.59	21.36	22.16	16.47	17.09	17.73
	(ii) Equipment Running Costs	29.22	23.49	63.96	69.08	74.60	80.57	11.05	11.94	12.89
	(iii) Insurance	3.21	2.02	3.43	2.38	2.47	2.47	0.95	0.99	0.99
	(iv) Other expenses	9.65	9.67	27.57	28.61	29.68	30.80	11.44	11.87	12.32
	Total	**49.05**	**46.57**	**114.80**	**120.65**	**128.12**	**136.00**	**39.92**	**41.89**	**43.93**
III	Depreciation	61.42	61.40	60.19	62.77	62.77	62.77	62.77	62.77	62.77
IV	Allocated share of Overheads	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
V	Operating Surplus / (Deficit) (I) – (II) – (III) - (IV)	**(13.27)**	**70.45**	**7.51**	**(29.32)**	**(33.56)**	**(30.21)**	**51.41**	**52.67**	**61.87**
VI	**Surplus / deficit**	**(13.27)**	**70.45**	**7.51**	**(29.32)**	**(33.56)**	**(30.21)**	**51.41**	**52.67**	**61.87**
VII	Capital Employed for the activity	950.70	887.03	836.00	773.23	710.46	647.69	773.23	710.46	647.69
VIII	RoCE - Maximum permissible	152.11	141.92	133.76	123.72	113.67	103.63	123.72	113.67	103.63
IX	Capacity Utilization	55.87%	103.69%	118.11%	99.73%	101.82%	109.09%	99.73%	101.82%	109.09%
X	RoCE adjusted for Capacity utilization	84.99	141.92	133.76	123.72	113.67	103.63	123.72	113.67	103.63
XI	**Net Surplus / (Deficit) (X) - (XIII)**	(165.38)	(71.48)	(126.25)	(153.04)	(147.23)	(133.84)	(72.30)	(61.00)	(41.76)
XII	**Net Surplus / (Deficit) as a % of operating income (XI/I in %)**	-170.14%	-40.06%	-69.18%	-99.31%	-93.58%	-79.40%	-46.92%	-38.77%	-24.78%
XIII	**Average Net (Deficit) as a % of operating income (XII/I in %)**	**-93.13%**			**-90.76%**			**-36.82%**		

Annex II (c)

Cost statement for Pipeline, Compressor, Vapouriser, Pigging

Sr. No.	Particulars	Actuals			Estimates as given by BPCL at existing level of tariff			Estimates at existing level of tariff as moderated by us		
		2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
I	**Operating Income**	27.11	89.84	36.23	30.59	31.24	33.47	30.59	31.24	33.47
II	**Direct Operating Expenses**									
	(i) Operating & Direct Labour	3.48	5.70	9.92	10.29	10.68	11.08	32.94	34.18	35.46
	(iii) Equipment Running Costs	17.53	14.09	38.38	41.45	44.76	48.34	22.10	23.87	25.78
	(viii) Insurance	1.61	1.01	1.72	1.19	1.24	1.24	1.90	1.98	1.98
	(ix) Other expenses	4.83	4.83	13.78	14.30	14.84	15.40	22.88	23.75	24.64
	Total	**27.45**	**25.63**	**63.80**	**67.23**	**71.52**	**76.06**	**79.83**	**83.77**	**87.86**
III	Depreciation	93.94	93.93	96.03	96.03	96.03	96.03	96.03	96.03	96.03
IV	Allocated share of Overheads	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
V	Operating Surplus / (Deficit) (I) – (II) – (III) - (IV)	(94.27)	(29.72)	(123.59)	(132.66)	(136.31)	(138.62)	(145.26)	(148.56)	(150.42)
VI	**Surplus / deficit**	**(94.27)**	**(29.72)**	**(123.59)**	**(132.66)**	**(136.31)**	**(138.62)**	**(145.26)**	**(148.56)**	**(150.42)**
VII	Capital Employed for the activity	1,452.09	1,354.78	1,274.97	1,178.94	1,082.91	986.89	1,178.94	1,082.91	986.89
VIII	RoCE - Maximum permissible	232.33	216.76	203.99	188.63	173.27	157.90	188.63	173.27	157.90
IX	Capacity Utilization	55.87%	103.69%	118.11%	99.73%	101.82%	109.09%	99.73%	101.82%	109.09%
X	RoCE adjusted for Capacity utilization	129.81	216.76	203.99	188.63	173.27	157.90	188.63	173.27	157.90
XI	**Net Surplus / (Deficit) (X) - (XIII)**	(326.61)	(246.48)	(327.58)	(321.29)	(309.57)	(296.52)	(333.89)	(321.83)	(308.32)
XII	**Net Surplus / (Deficit) as a % of operating income (XIV/I in %)**	-1204.63%	-274.35%	-904.07%	-1050.15%	-991.07%	-885.99%	-1091.33%	-1030.30%	-921.25%
XIII	**Average Net (Deficit) as a % of operating income (XII/I in %)**	**-794.35%**			**-975.74%**			**-1014.30%**		

Annex II (d)

Cost statement for Water , Bunkering & others

Sr. No.	Particulars	Actuals			Estimates as given by BPCL at existing level of tariff			Estimates at existing level of tariff as moderated by us		
		2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
I	**Operating Income**	24.56	44.34	141.49	55.32	56.48	60.52	55.32	56.48	60.52
II	**Direct Operating Expenses**									
	(i) Operating & Direct Labour	3.48	5.70	10.29	10.29	10.68	11.08	8.23	8.54	8.87
	(iii) Equipment Running Costs	11.69	9.40	25.58	27.63	29.84	32.23	5.53	5.97	6.45
	(viii) Insurance	1.61	1.01	1.72	1.19	1.24	1.24	0.48	0.49	0.49
	(ix) Other expenses	4.83	4.83	13.78	14.30	14.84	15.40	5.72	5.94	6.16
	Total	**21.60**	**20.94**	**51.38**	**53.42**	**56.60**	**59.95**	**19.96**	**20.94**	**21.97**
III	Depreciation	9.05	9.06	9.25	9.25	9.25	9.25	9.25	9.25	9.25
IV	Allocated share of Overheads	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
V	Operating Surplus / (Deficit) (I) – (II) – (III) - (IV)	**(6.09)**	**14.34**	**80.86**	**(7.35)**	**(9.37)**	**(8.68)**	**26.11**	**26.29**	**29.30**
VI	**Surplus / deficit**	**(6.09)**	**14.34**	**80.86**	**(7.35)**	**(9.37)**	**(8.68)**	**26.11**	**26.29**	**29.30**
VII	Capital Employed for the activity	139.56	130.23	122.85	113.60	104.34	95.09	113.60	104.34	95.09
VIII	RoCE - Maximum permissible	22.33	20.84	19.66	18.18	16.69	15.21	18.18	16.69	15.21
IX	Capacity Utilization	55.87%	103.69%	118.11%	99.73%	101.82%	109.09%	99.73%	101.82%	109.09%
X	RoCE adjusted for Capacity	12.48	20.84	19.66	18.18	16.69	15.21	18.18	16.69	15.21
XI	**Net Surplus / (Deficit) (X) - (XIII)**	(28.42)	(6.49)	61.21	(25.52)	(26.06)	(23.89)	7.94	9.59	14.09
XII	**Net Surplus / (Deficit) as a % of operating income (XIV/I in %)**	-115.69%	-14.64%	43.26%	-46.13%	-46.14%	-39.48%	14.35%	16.98%	23.27%
XII	**Average Net (Deficit) as a % of operating income (XII/I in %)**	**-29.02%**			**-43.92%**			**18.20%**		

ANNEX- III

BPCL- IOCL LIQUID CARGO JETTY
JN-PORT, SHEVA, NAVI MUMBAI.

SCALE OF RATES

CHAPTER - I

1.1. Definitions

In this Scale of Rates, unless the context otherwise requires, the following definitions shall apply:

(i). **"Coastal vessel"** shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal licence issued by the competent authority.

(ii). **"Foreign-going vessel"** shall mean any vessel other than Coastal vessel.

(iii). **"Hazardous Chemicals"** mean and include the chemicals referred under Schedule I, Schedule II and Schedule III of Manufacture, Storage and import of Hazardous Chemicals Rules, 1989 framed under Environment (Protection) Act, 1986 and Rules, as applicable from time to time.

(iv). "**Marine Loading Arm"** means by which liquid cargo is loaded to/discharged from vessel used for petroleum products.

(v). **"Vaporizer"** means by which liquid nitrogen is vaporized for use of pigging of dock lines after completion of cargo operation of class hazardous chemicals.

(vi). **"Wharf Management"** means various services provided by BPCL – IOCL liquid cargo jetty during the cargo operation of vessel at the jetty.

(vii). **"Compressor"** means equipment by which compressed air is supplied for pigging of dock lines after completion of cargo operation.

(viii). **"Pigging"** means clearing/emptying/cleaning of dock lines before/after cargo operation using compressed air/nitrogen/water.

1.2. GENERAL TERMS & CONDITIONS

(i). (a). A foreign going vessel of Indian Flag having a General Trading Licence can convert to Coastal run on the basis of a Customs Conversion Order.

(b). A foreign going vessel of Foreign Flag can convert to coastal run on the basis of a Coastal Voyage Licence issued by the Director General of Shipping.

(c). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.

(d). In cases of such conversion coastal rates shall be chargeable only till the vessel completes coastal cargo discharging operations; immediately thereafter, foreign-going rates shall be chargeable by the discharge ports.

(e). For dedicated Indian coastal vessels having a Coastal Licence from the Director General of Shipping, no other document will be required to be entitled to Coastal rates.

(ii). The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for classifying into 'coastal' or 'foreign-going' category for the purpose of levying vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.

(iii). (a). All dollar denominated tariff shall be recovered in Indian rupees after conversion of US currency to its equivalent Indian rupees at the market-buying rate notified by the Reserve Bank of India, State Bank of India or its associates or any public sector banks as may be notified from time to time.

(b). The date of entry of the vessel into the port limit shall be reckoned with as the day for such conversion.

(c). A regular review of exchange rate shall be made once in thirty days from date of arrival of the vessels in cases of vessels staying in the Port for more than thirty days. In such cases the basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review.

(iv). For the purpose of calculating the dues the unit by weight shall be 1 tonne or 1,000 kilograms, the unit by volume measurement shall be 1 cubic metre and the unit by capacity measurement for liquids in bulk shall be 1,000 litres.

(v). (a). The Vessel related charges for all Coastal vessels should not exceed 60% of the corresponding charges for other vessels.

(b). The cargo related charges for all Coastal cargo, other than POL including crude oil, should not exceed 60% of the normal cargo related charges.

(c). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship-shore transfer and transfer from / to quay to / from storage area including wharfage.

(d). For the purpose of this concession, cargo from a foreign port which reaches an Indian Port 'A' for subsequent transhipment to Indian Port 'B' will also qualify insofar as the charges relevant for its coastal voyage. In other words, cargo from /to Indian Ports carried by vessels permitted to undertake coastal voyage will qualify for the concession.

(e). The charges for coastal cargo shall be denominated and collected in Indian Rupee.

(vi). Interest on delayed payments / refunds:

(a). The user shall pay penal interest on delayed payments under this Scale of Rates. Likewise, the BPCL-IOCL liquid Cargo Jetty shall pay penal interest on delayed refunds.

(b). The rate of penal interest will be 14.25%. The penal interest rate will apply to both the BPCL-IOCL liquid Cargo Jetty and the port users equally.

(c). The delay in refunds will be counted only 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.

(d). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the BPCL-IOCL liquid Cargo Jetty. This provision shall, however, not apply to the cases where payment is to be made before availing the services / use of the BPCL-IOCL liquid Cargo Jetty's properties as stipulated in the Major Port Trust Act and / or where payment of charges in advance is prescribed as a condition in this Scale of Rates.

(vii). All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.

(viii). In calculating the gross weight or measurement by volume or capacity of any individual item, fractions upto 0.5 shall be taken as 0.5 unit and fractions of 0.5 and above shall be treated as one unit, except where otherwise specified.

(ix). The users will not be required to pay charges for delays beyond a reasonable level attributable to the BPCL-IOCL liquid Cargo Jetty.

(x). In case a vessel idles due to non-availability or breakdown of the shore based facilities of the BPCL-IOCL liquid Cargo Jetty or any other reasons attributable to the BPCL-IOCL liquid Cargo Jetty, rebate equivalent to berth hire charges payable to JNPT accrued during the period of idling of vessel shall be allowed by the BPCL-IOCL liquid Cargo Jetty.

(xi). (a). Wherever a specific tariff for a service/cargo is not available in the notified Scale of Rates, the BPCL-IOCL liquid Cargo Jetty can submit a suitable proposal to the TAMP.

(b). simultaneously with the submission of proposal, the proposed rate can be levied on an ad hoc basis till the rate is finally notified.

(c). The ad hoc rate to be operated in the interim period must be derived based on existing notified tariffs for comparable services/ cargo; and, it must be mutually agreed upon by the BPCL-IOCL liquid Cargo Jetty and the concerned user(s).

(d). The final rate fixed by the TAMP will ordinarily be effective only prospectively. The interim rate adopted in an ad hoc manner will be recognised as such unless it is found to be excessive requiring some moderation retrospectively.

CHAPTER-II

WHARFAGE CHARGES

Sr.No.	Tariff category	Foreign rate per metric tonne (in Rs.)	Coastal rate per metric tonne (in Rs.)
2.1. PETROLEUM PRODUCTS:			
(1)	Sko, LDO	31.71	31.71
(2)	HSD,FO, Base Oil, CBFS, AHE	49.01	49.01
(3)	Naphtha, MS	77.84	77.84
(4)	AFS	98.02	98.02
5)	Crude Oil	43.25	43.25
2.2. CHEMICALS:			
(1)	MEG, Styrene, Butyl Acrylate, Crude Glycol, LAB, Xylene	98.02	58.81
(2)	Unenumerated chemicals	121.09	72.65
2.3. OTHER LIQUID CARGO:			
(1)	Edible Oil	51.90	31.14
(2)	Acid	98.02	58.81
(3)	Molasses	40.36	24.22

NOTES:

a) BPCL-IOCL liquid cargo jetty will provide only wharf facilities. Pumping in/out through pipelines shall be arranged by importers/exporters through tank farm operators registered with the JNPT.

b) Handling of liquid bulk cargo will normally be permitted through pipelines only.

c) Assessment of cargo shall be done on the basis of the description of the cargo as given in the bill of entry/coastal bill of lading in case of import cargo and shipping bill in the case of export cargo, that best fits the item description covered under the schedule.

d) Before classifying any cargo under unspecified category in the wharfage schedule, the relevant Customs classification shall be referred to find out whether the cargo can be classified under any of the specific categories mentioned in the schedules.

e) Wharfage dues shall be collected at the rates specified in the schedule on the basis of the manifested tonnage/measurement or volume of cargo given in the bill of entry/bill of lading/ coastal bill of lading in the case of import cargo and shipping bill/ bill of coastal goods in the case of export cargo.

f) The gross tonnage/measurement shall be reckoned with as specified in the related document such as out-turn report / intake certificate duly signed by central excise/ ullage certificate issued by ship's surveyor. In the absence of these details, the tonnage/measurement arrived at by actual test check by the BPCL-IOCL Liquid cargo jetty administration shall be taken as gross tonnage/measurement.

g) Requests for amendments in the import or export application or import general manifest or delivery order shall be accompanied by certificate duly signed by central excise/customs.

CHAPTER-III

MISCELLANEOUS CHARGES

Sr.No.	Particulars	Unit	Foreign rate	Coastal rate
3.1.	**Wharfage Management charges** – for the use of loading arm/ intermediate pipeline	per MT	Rs. 6.16	Rs.3.69
3.2.	**Loading Arm charges** –for the use of the loading arm while handling petroleum cargo at the jetty.	per MT	Rs.6.84	Rs.4.10
3.3.	**Pipeline charges** - for the use of BPCL-IOCL Liquid Cargo Jetty's cross country pipeline.	per MT	Rs. 37.59	Rs.22.55
3.4.	**Compressor charges** - for the use of BPCL-IOCL Liquid Cargo Jetty's compressor for pipeline blowing/ pigging operation	per hour	Rs.3759.00	Rs.2255.40
3.5.	**Hard pigging charges -** for the use of hard pig for pigging operation incase BPCL-IOCL Liquid Cargo Jetty's pipeline is used	per operation	Rs.27064.80	Rs.16238.88
3.6.	**Foam pigging charges -** for the use of foam pig for pigging operation incase BPCL-IOCL Liquid Cargo Jetty's pipeline is used	per operation	Rs.18043.20	Rs.10825.92
3.7.	**Liquid nitrogen charges -** for purchase of nitrogen for pigging operation incase of imports/ exports of class 'A' product.	per MT	Rs.30072.00	Rs.18043.20
3.8.	**BPC vaporizer charges -** for the use of BPCL-IOCL Liquid Cargo Jetty's nitrogen vaporizer	per operation	Rs.11277.00	Rs.6766.20
3.9.	**Bunkering charges –**for handling bunker fuel at the jetty.	per MT	Rs.30.00	Rs.18.00
3.10.	**Water charges –**for supply of fresh water to vessels.	per MT	U.S.$.3.60	Rs.87.13
3.11.	**Charges for vessel overstay -** due to user's fault beyond 2 hours after completion of operation	per hour	Rs. 30000.00	Rs.18000.00

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

No. TAMP/10/2010-BPCL - Proposal from the Bharat Petroleum Corporation Limited for fixation of tariff at the liquid cargo jetty at JNPT operated on BOT basis by BPCL

A summary of the comments received from the user organizations are summarized below:

Sl.No.	Comments of Users	Remarks of BPCL
1	**Oil and Natural Gas Corporation**	
	After ONGC started loading crude oil through JNPT from 19 January 2008, the berth occupancy at the liquid jetty has increased from 55% in 2007-08 to almost 100% in 2008 – 09. ONGC has created facilities at JNPT including the loading arms at a cost of Rs. 150 crores, which are otherwise to be provided and maintained by the service provider. ONGC has to pay compensation to MBPT for the crude oil loaded from JNPT (as per the terms and conditions of the agreement between MBPT and ONGC signed on 28 January 2005). ONGC has requested MBPT for waiving the same which is yet to be considered. There is no change in crude oil pricing pattern introduced in 2002. Therefore, any increase in wharfage will be an additional expenditure to ONGC as it is borne by ONGC. Considering the above points, TAMP may avoid further increase of the wharfage rates.	The Liquid Cargo Jetty handled 5.7 MMT of cargoes during the year 2008 -09. This includes handling of 2.7 MMT of crude. There is no increase in the quantity of Crude handled in the year 2009 -10. In fact the Crude loading facilities have been utilised 100% of its capacity. No further growth may be envisaged with the existing facilities. On the contrary due to frequent maintenance problems of their Loading Arms, we foresee reduction in loading of JNPT.
2.	**J.N.P.T. Liquid Chemical Berth User's Association.** (i) **<u>Proposed new tariff</u>**: (a) Vessel Idling Charges are beyond the control of respective tank farms except when the tank farm is not ready to receive / load the cargo. However, the vessel is allowed to berth by Port on the basis of tank farm readiness and such idling can happen only due to non-availability of port infrastructure i.e. Pilot, Tugs, Mooring Crew etc., when the discharge is completed. Tank farm/s plays no role in this area.	(i) (a) Vessel Idling Charges Many times it is observed that operation of vessel is stopped due to various reasons pertaining to tankfarm, tankers, causing loss of time and revenue to BPCL. After berthing of vessel at jetty initially four hours are allowed to start the operation and four hours after completion. Many time vessels do not get ready in four hours, or even if ready do not get pilot for sailing which causes loss of time / revenue to BPCL. The tanker waiting for tides for berthing / sailing will also be considered under above case. Idling vessels at the jetty delays turn of other vessels in queue to berth and hence keep jetty idle. Jetty utilisation is affected due to these idling. Vessel idling charges are proposed to minimize the idling of tankers at

		berth and increase tanker and tank farm efficiency to reduce turn around time.
	(b) Penalty for low flow rate: Flow rate is dependent on pipeline sizes which have been decided by JN Port while allotting the respective land to develop individual tank farms. Notwithstanding this, the flow rate depends upon the vessel's pumping capacity. Again, tank farm has no direct role to play except by installing booster pumps to improve the flow rates in case of handling of viscous cargo.	(b)Penalty for low flow rate Many times it is observed that there are restriction on flow rate either from tanker side or from tank farm side due to reasons like no ullage in tanks, topping up of tanks, deteriorated conditions of pipelines, restriction from vessel side, stripping of vessel tanks. Some vessels give flow rate as low as 50 cubic meter per hour. This increases time of operation of vessels and jetty is occupied for more time but for less quantity of cargo. 62% of volume comes from the POL vessels which occupy jetty for 33% time, whereas 38% volume is given by chemical vessels which occupy jetty for 67% time.To improve efficiency and turn around of the vessels, new penalty is proposed.
	(c) Leakages at the jetty: In the first place BPCL has to provide adequate facilities at the jetty like sump/s, pumps, etc. which are needed for decanting the cargo from Marine Loading Arm / hoses. In any event of leakage, the respective tank farms do the needful to ensure safety and cleaner environment.	(c)Leakage of the jetty It is observed that tankfarm undertaking operation causes spillage at Jetty. Trays are not used while connecting /disconnecting hose pipes. This careless attitude causes damage to housekeeping and it becomes a safety hazard. Considerable manpower and equipments are required to clean the area to improve the housekeeping. We are required to use different cleaning methods to remove the stains. Even after normal use of saw dust, water acid etc the stains on the jetty do not vanish. We are required to use cement slurry and other materials to hide the stains. These stains are slippery and may cause accidents. To prevent this we intend to impose penalty for leakages. The intention of penalty is not to earn revenue but to make tank farms representative aware about the safety precautions in other's premises. The major part of the rates proposed will be used towards cleaning the surface of jetty as well as clearing sea water stains by using dispersants. We also intend to display posters, banners to be procured from National Safety Council at prime work locations about maintaining cleanliness, safe working practices.

	(ii) **Revision in the existing tariffs:** BPCL has proposed approximately 55% revision which is not at all justifiable in any circumstances. Wharfages and other tariffs at neighbouring Ports i.e. MBPT are highly competitive compared to proposed tariff by BPCL. The tariff proposed by BPCL is approximately 60% higher than the current tariff charged by MBPT. We are afraid about the intention of BPCL to ask for such unjustifiable and uncompetitive revision. We, on behalf of our Association, request TAMP to reject BPCL's proposal as current tariff are more or less at par with the tariff charged by MBPT and that there s no justification in giving any hike to BPCL as even after 55% to 60 % hike in tariff, BPCL is projecting loss.	(ii) Comparison cannot be made with the neighbouring ports only for wharfage. Parameters deciding the wharfage like age, capital employed, depreciation, cost of maintenance and income vary with each port. We would not like to comment on other ports, however the facilities, maintenance, housekeeping, ease of access, security and services at the liquid cargo jetty are of international standards. To maintain these standards, upward revision is essential.
	(iii) **Royalty** BPCL in their working have shown royalty as expenses. It can be argued that they should calculate the profitability on the basis of gross revenue i.e. revenue inclusive of royalty which is what trade & industry pays to BPCL for use of their Jetty.	(iii) The License Agreement for the terminal has been signed prior to July 2003. BPCL as a terminal operator is not generating sufficient surpluses from operations of the terminal at the existing tariff levels. Even at the revised tariff levels the surpluses would be less than the allowed ROCE assuming that the revenue share is treated as a cost for tariff fixation purposes. If such revenue share were not to be allowed as a cost for tariff fixation purposes then the losses on account of such revenue share would be the equivalent amounts of royalty payable for such period that the revenue share is not allowed and will result in increase in the extent of deficit in relation to the allowed ROCE. The clause 2.8.1 clearly states that the tariff computation should take into account royalty payment as cost for tariff fixation in such a manner as to avoid likely loss to the operator on account of the royalty. On the basis of this principle, royalty should be considered as a cost incurred and should be included in tariff computation.
	(iv) **Investments on pipeline etc.** BPCL has made huge investments mainly in pipelines (24" x 3 off 6 km approx) & compressor, vaporizer and nitrogen facility. We wish to point out that these facilities have never been offered by BPCL since beginning to trade or users with the exception of pipe lines in the beginning for a few months. BPCL has failed to evolve a policy & methodology to allow berth users to use these facilities. Hence, we strongly contend that trade and industry should not be made to pay for BPCL's inefficient use of assets / investments in facilities	No specific reply is furnished.

	which are not used or maintained.	

2. A joint hearing in this case was held on 15 June 2010 in the office of this Authority. BPCL, JNPT and the concerned users made their submissions thereat. The gist of the joint hearing held is as under:-

<u>BPCL</u>
(Shri. Agarwal & Consultants)

(1) Powerpoint presentation explaining salient points of the proposal. Hard copy is given

(2) Capacity of our terminal is 5.5 million tonnes. We have handled 6.47 million tonnes in the year 2009-10.

(3) Capacity of 5.5 million was determined by JNPT in the CA. Because of product mix and better flow rate achieved, we could handle more than the capacity.

(4) We will furnish actuals of 2009-10 in two weeks time.

(5) Our traffic estimates for 2010-11 are about 10 -12% lower than the previous years, because our jetty is very old and maintenance work is envisaged. We have proposed required capital expenditure in this regard. Renovation works may need 3 years time to complete.

(6) Royalty / Revenue share payable by us to JNPT should be allowed as pass through. Royalty accounts 50% of our expenditure.

<u>MANSA</u>

(7) The estimated capacity of 5.5 million tonnes is based on outdated parameters. There is a need to reassess the capacity.

(8) We don’t feel, traffic in future will be seriously affected because of routine maintenance / replacement / renovation works.

<u>BPCL</u>
(Shri. Agarwal)

(9) We will not close the terminal for renovation. We have to scale down operations to accommodate certain civil works. Therefore, we expect lower volumes to be handled.

<u>JNPT Liquid Bulk Users Association</u>
(Shri. Lele)

(10) We have given written submission. Please consider.

(11) Capacity should be reassessed and traffic forecast should be adjusted accordingly.

(12) Royalty / Revenue share cannot be allowed as an expenditure. TAMP was clear in its last order.

(13) BPCL has put up several pipelines for 5 Kms. long. But these lines are not allowed to be used by private users.

BPCL

(14) We will allow anyone to use the pipelines, if the concerned users fulfil the conditions precedents.

(15) In our cost structure, we have not included the cost of pipeline.

JNPT
(Shri. Ramani)

(16) Royalty cannot be included as an item of cost.

(17) We will send our written comments on the proposal within one week.

ONGC

(18) We have given written comments. Please consider.

(19) We will suffer heavily if wharfage is increased as we have to pay to MBPT 50% as compensation fee, on crude passing through the submarine pipelines.

BPCL
(Shri. Agarwal)

(20) We don't charge for loading arms and pipelines put up by private users. We collect only wharfage.

3. By letter dated 17 June 2010, Mumbai and Nhava Sheva Ship-Agents Association (MANSA) was advised to furnish its comments on the proposal of BPCL. MANSA by its letter dated 21 June 2010 furnished its comments. A copy of MANSA's comments was forwarded to BPCL for remarks and BPCL responded thereto vide letter dated 23 June 2010. A summary of the comments received from MANSA and the comments of BPCL thereon are tabulated below:

Sl. No.	Comments of Users	Remarks of BPCL
	Mumbai and Nhava-Sheva Ship-Agents' Association (MANSA)	
	(i) In the proposal given by BPCL we note that BPCL have included the royalty payment as an expense while deriving the P&L to substantiate the proposal for increase in the revised tariff. As we understand, the royalty payment is not be included as per TAMP's directives and it has been a settled matter as per the Government's directives. We request that the royalty should not be a part of the element towards fixing of tariff.	(i) The License Agreement for the terminal has been signed prior to July 2003. BPCL as a terminal operator is not generating sufficient surpluses from operations of the terminal at the existing tariff levels. Even at the revised tariff levels the surpluses would be less than the allowed ROCE assuming that the revenue share is treated as a cost for tariff fixation purposes. If such revenue share were not to be allowed as a cost for tariff fixation purposes then the losses on account of such revenue share would be the equivalent amounts of royalty payable for such period that the revenue share is not allowed and will result in increase in the extent of deficit in relation to the allowed ROCE. The clause 2.8.1

clearly states that the tariff computation should take into account royalty payment as cost for tariff fixation in such a manner as to avoid likely loss to the operator on account of the royalty. On the basis of this principle, royalty should be considered as a cost incurred and should be included in tariff computation.

(ii) For arriving at the future handling capacity and revenue due to be generated BPCL has limited its capacity to 5.5 million tonnes. However, we note that with the support of ONGC's export traffic through BPCL Terminal and because of the modernization of the handling system and in spite of handling varieties of chemicals, the terminal has already handled more than 6 million tonnes cargo in the last two fiscal years. Therefore we believe that the capacity needs to be revised upwards and taken into consideration while arriving at the revenue to be generated for fixing the tariff.

(ii) Though BPCL has not given its reply to this point raised by MANSA, informally BPCL stated that its remarks in this respect contained in its letter dated 6 May 2010 to this Authority answer to this point. BPCL's remarks furnished therein are reproduced below:-

Design capacity has been based on assumptions relating to tanker configuration for handling of FO, SKO, HSD and Naphtha in the following manner with full unloading and ullage availability

- FO and SKO assumed to be handled in 25000 DWT tankers carrying 22,500 MT
- HSD and Naphtha assumed to be handled in 40000 DWT tankers carrying 36,000 MT

On completion of construction in 2001-02, the design throughput of the jetty as per the estimates of Engineers India Ltd is 5.5 M Tonnes, assuming service time per vessel of 34 hrs.

Year	Throughput TMT			Tanker calls	
	Proj Total	In 40000 DWT tankers	In 25000 DWT tankers	40000 DWT	25000 DWT
1999-00	3469	2306	1163	64	51
2001-02	3069	1895	1174	53	52
2006-07	6582	4349	2233	120	99

As can be seen the throughput calculations are influenced based on assumptions relating to traffic in terms of number of vessels. Changes in the actual vessel traffic characteristics, (which is the reality) vis-à-vis the assumptions impact the throughput of the facility.

	(iii) We also note that BPCL are proposing certain penalties on the vessels/terminals in their scale of rates. We would like to state that since the berth hire for all vessels are being collected by JNPT, they already have in their SOR ample safeguards and penalties to be imposed on vessels for any kind of delay on account of the vessels. Unfortunately, even on account of delay caused by the tank farms, the penalty is imposed on the vessels. As such any additional penalty imposed by BPCL would tantamount to double penalty for a single error, a case not supported in the point of law. The port already has penal berth hire for idling and minimum flow rates for certain commodities set out in their scale of rates and penalties for not achieving the same.	(iii) (a) Vessel Idling Charges Many times it is observed that operation of vessel is stopped due to various reasons pertaining to tankfarm, tankers, causing loss of time and revenue to BPCL. After berthing of vessel at jetty initially four hours are allowed to start the operation and four hours after completion. Many time vessels do not get ready in four hours, or even if ready do not get pilot for sailing which causes loss of time / revenue to BPCL. The tanker waiting for tides for berthing / sailing will also be considered under above case. Idling vessels at the jetty delays turn of other vessels in queue to berth and hence keep jetty idle. Jetty utilisation is affected due to these idling. Vessel idling charges are proposed to minimize the idling of tankers at berth and increase tanker and tank farm efficiency to reduce turn around time. (b)Penalty for low flow rate Many times it is observed that there is restriction on flow rate either from tanker side or from tank farm side due to reasons like no ullage in tanks, topping up of tanks, deteriorated conditions of pipelines, restriction from vessel side, stripping of vessel tanks. Some vessels give flow rate as low as 50 cubic meter per hour. This increases time of operation of vessels and jetty is occupied for more time but for less quantity of cargo. 62% of volume comes from the POL vessels which occupy jetty for 33% time, whereas 38% volume is given by chemical vessels which occupy jetty for 67% time.To improve efficiency and turn around of the vessels, new penalty is proposed. (c)Leakage of the jetty It is observed that tankfarm undertaking operation causes spillage at Jetty. Trays are not used while connecting /disconnecting hose pipes. This careless attitude causes damage to housekeeping and it becomes a safety hazard. Considerable manpower and equipments are required to clean the area to improve the housekeeping. We are required to use different cleaning methods to remove the stains. Even after normal use of saw dust, water acid etc the stains on the jetty do not vanish. We are required to use cement slurry and other materials to hide the stains. These stains are slippery and may cause accidents. To prevent this we intend to impose penalty for leakages. The intention of penalty is not to earn revenue but to make tank farms representative aware about the safety precautions in other's premises. The major

	(iv) The present tariff rates are already comparable with the neighbouring Ports and terminals and any increase in the tariff would be a disincentive to increase the vessels calls at the Terminal. As such, such a fall in traffic at the Terminal will affect the revenues of both BPCL Terminal as well as the Trade and our members.	part of the rates proposed will be used towards cleaning the surface of jetty as well as clearing sea water stains by using dispersants. We also intend to display posters, banners to be procured from National Safety Council at prime work locations about maintaining cleanliness, safe working practices. (iv) Comparison cannot be made with the neighbouring ports only for wharfage. Parameters deciding the wharfage like age, capital employed, depreciation, cost of maintenance and income vary with each port. We would not like to comment on other ports, however the facilities, maintenance, housekeeping, ease of access, security and services at the liquid cargo jetty are of international standards. To maintain these standards, upward revision is essential.