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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 416 **New Delhi,** **06 October 2020**

NOTIFICATION

In exercise of the powers conferred under Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Mumbai Port Trust (MBPT) seeking approval of Schedule of Rates for Special Way Leave charges of MBPT, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/62/2019-MBPT

The Mumbai Port Trust - - - Applicant

QUORUM

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Rajat Sachar, Member (Economic)

O R D E R

(Passed on this 8th day of September, 2020)

This case relates to a proposal received from Mumbai Port Trust (MBPT) vide its letter No. FA/OEA-L/21(90)/Gen/1000 dated 13 December 2019 seeking approval of Schedule of Rates for Special Way Leave charges of MBPT.

2.1. The main points made by the MBPT in its proposal dated 13 December 2019 are summarized below:

(i). MBPT owns about 882 Hectares of land in Mumbai City from Colaba to Wadala, Mahim, Worli, Govandi, Titwala etc. MBPT's land is let out on long term leases, 15 months leases, monthly tenancies and licenses. MBPT also grants permission for Right of Way, without any allotment of land and any right of the land, to the applicant to lay a pipe/ cable on payment of some fees either Nominal or Special, where no tenancy right or the beneficial interest is created, whatsoever, in the Trustees' land so occupied, and such permission is not transferable.

(ii). <u>Nominal</u> way leave are general Way Leaves, which are given on nominal way leave charge of ₹.1/- or ₹ 10/- p.m./ p.a. for Utility services like laying of water supply lines, drainage lines by MCGM, electric cables by BEST, telephone lines by MTNL/ BSNL/ DOPT – Telecom, etc. and no profits are derived by laying such connections on the Trustees' land/ passages/ roads to PSU/ Govt. bodies and private parties in terms of policy laid down under various statutes/ laws in accordance with TR No.123 of 1977.

(iii). <u>Special</u> way leave are granted for commercial and beneficial use of the Trustees' land for any such right of way like laying of pipelines for crude oil, chemical, vegetable oil, gas or optical fiber cable, railway tracks, electric cables, transmission lines etc. by charging some special way leave fees over a period of time. Way Leave fee is one of the important sources of revenue for the Port.

(iv). The Right of Way permission is neither a lease nor license. It is only a permission given for occupation of land/ water/ air space for laying pipe/ cable underground/ over ground/ underwater/ seabed/ overhead. Special Way Leave Fee (Special WLF) is chargeable for such occupation. The Right of Way permission is given to the port user, lessee and tenants who are importing and exporting liquid cargo through pipelines for the purpose of retaining and attracting port traffic.

(v). The Ministry vide Clarification Circular No.1 of 2018 dated 14.05.2018 extended the applicability of the PGLM 2015 to the non-home occupation/ commercial area of the township areas of Mumbai, Kolkata and Kandla Port. Thus, the PGLM 2015 has become applicable to the commercial occupations of the township areas of Mumbai Port Trust.

(vi). PGLM provides that proposals for Right of Way permission, etc. shall be recommended by the Land Allotment Committee and approved by the Board. It further provides that Port Trust Board would formulate and approve their own policy for one-time supervision charges, MGT and additional compensation charges, if any, for granting way leave permission.

(vii). The provision with regard to Way Leave has been covered in para 19 of the guidelines under the head "Right of Way permission" in PGLM 2014/ 15, which reads as '*The Right of Way permission for laying pipelines / conveyors, etc. from jetties to the tank farms within and outside Port area shall be given with approval of the Board. It shall neither be a lease nor a license. As far as possible, the pipeline should be permitted only underground. There shall not be any allotment of land to a party for giving Right of Way permission. As far as possible, these shall be laid on common user basis and if the same pipeline is required by any other party, it shall be spared, on such terms as agreed between the parties and the Port Trust Board. The parties shall have to abide by the conditions specified by the Port*.'

(viii). In terms of provision of PGLM 2015, Policy for Right of Way (Special Way Leave) permission, with revised SOR, for MBPT land/ water area including Port area has been prepared and recommended by the Land Allotment Committee. Board vide TR No.109 of 2019 has approved the Policy for Right of Way (Special Way Leave) Permission.

(ix). The Special WLF has been revised by the Board from time to time. The last being revised in accordance with the Board's Resolution No.138 of 2009 by relating it to 6% p.a. return on land value as per the Stamp Duty Ready Reckoner for the year 2009 for the period upto 30.09.2012. The Special WLF is due for revision from 01.10.2012. Presently, all Special WLF cases are being billed as per rate fixed under the TR 138 of 2009 with 4% increase every October.

(x). Revision of Special WLF for the period of 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for existing Special WL and rates applicable for new permissions has been recommended by the Land Allotment Committee (LAC).

(xi). The Board of MBPT has approved the revision for the period 01.10.2012 to 30.09.2017.

(xii). **Rate for existing Special Way Leave Fee w.e.f. 01.10.2012 –**
The Board has already approved RR zone wise SOR for the period of 2012-17 vide TR 105 of 2018. Accordingly, rate at 6% return per annum as per Stamp Duty Ready Reckoner 2012 may be taken for the Sp. Way Leave fee from 01.10.2012 to 30.09.2017 with 4% increase p.a. Further, the re-fixation of the Way Leave will be every 5 years subject to maximum of 150% of the Way Leave charges for the fifth year. In case, the prevalent way leave fee is higher than the rate worked out on the above lines, the higher prevalent rate will be continued with 4% increase p.a. Accordingly, for all the existing Spl WL cases, demand notice for differential arrears as per the revised SOR will be issued for the period 01.10.2012 to 30.09.2017 for principal amount and GST (excluding interest) after TAMP's approval.

(xiii). **Rate applicable for pipelines laid on the trestle of Old Pir Pau Pier (OPP), First Chemical Berth (FCB) and Second chemical berth (SCB) which are based on return on investment –**
The rate of Spl WLF for pipelines laid on tresle upto FCB is Rs.182.87 per Sq. Mtr. per month for 300 mm diameter as on 01.10.2012 with 4% annual increase and the rate of Spl WLF for pipelines laid on SCB is Rs.230.64 per Sq. Mtr. per month for 300 mm diameter as on 01.01.2015. Spl WLF will be increased by 4% every October. The Way Leave fee for higher diameter would increase proportionately.

(xiv). **Rate applicable for loop of pipeline –**
The rate for loop length of pipeline laid on trestle are taken at 60% of Spl WLF rate of respective trestle in accordance with TR No.257 of 2015.

(xv). **Interest on differential arrears due to revision** –
Interest will not be applicable on differential arrears on account of revision of Spl WLF as per the updated SOR 2012-17, till raising of demand notice. If party fails to pay as per the demand notice/ invoice within the stipulated time, i.e. 3 months from the date of demand notice/ invoice, interest will be applicable as may be decided by TAMP.

(xvi). Thus, the present proposal is to seek approval for the Schedule of Rates of Spl WLF for the period from 01.10.2012 to 30.09.2017, as per the proposed scale of rates furnished by MBPT.

2.2. The Draft Scale of Rates for Special Way Leave for the period 01.10.2012 to 30.09.2017, as furnished by MBPT is as follows:
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Sr. No.	Name of MBPT Estate	Stamp duty ready reckoner 2012 village No. / Zone No.	Descriptions as per Ready Reckoner	Rate per sq. meter per month applicable for over – ground pipeline / cable (to be charged for FSI=1) (in ₹.	Rate applicable per sq. meter per month for pipeline / cable for occupation of airspace, under – ground, overhead, seabed and below seabed (to be charged for FSI=0.5) (in ₹.)
A	B	C	D	E	F
1	Wadala	14/101	All the portion on East of Harbour Railway Line	120.00	60
2	Sweree (East)	11/86	Portion towards East of Harbour Line, on South Acharya Donge Marg (king Edward Road) upto sewri Railway Stn., on east sea, on north boundry of ward and on west harbor railway line, All the portion surrounded	69.00	34.50
3	Mazgaon Sewree Reclamation (Cotton Depot)	10/79A	On East BPT railway line, on west central railway harbor line, on north division boundary upto First avenue road,, triangular portion of all the land.	83.50	41.75
4	Mazgaon Sewree Reclamation (Grain & Cotton Depot)	10/80	On West BPT railway line (East oilfield freeway) on east sea on South Jijabhai mMulji Rathod Marg (wadi bundar road) and on north BPT railway line and first avenue road. All the portion surrounded.	84.50	42.25
5	Mazgaon Sewree Reclamation (Grain & Cotton Depot)	11/85	On East division boundary, from sweri station towards South Hindustan Level Company's East side road, on west BPT railway line, on south division boundary.	86.50	43.25
6	Mazgaon Reclamation and Santacruz Estate	10/78B	On East BPT railway line, on west central railway harbor line, on south Jeenabai Rathod Marg (Wadi bunder road, triangular portion of all the land.	107.50	53.75
7	Mazgaon Reclamation	3/36	All portion of B ward on Eastside of P.D'Mello Road upto sea shore (Victori Dock &	134.00	67.00

			Princess Dock).		
8	Elphinstone Estate (West)	3/35	Area between north boundary of B ward (Ramchandra Bhatt Marg, 2013), South Boundary of B ward (Lokmanya Tilak Marg, 2013), Central Railway Line and P.D'Mello Road.	244.50	122.25
9	Ballard Estate	2/22	Ballard Estate part, portion towards east of shahid bhagat singh marg from Mint to General Post Office upto Indira Dock Portion upto division boundary	273.50	136.75
10	Pilot Bunder	1/6A	On East Sea, on wet shahid bhagat singh road, on sough home bhabha road on north division boundary.	494.50	247.25
11	Pir Pau	90/419	All the properties of Mahul village	68.50	34.25
12	Mazgaon	10/78A	On west shivdas Champasi Marg and Dr. Mascrenas Road on east BPT Railway Line on North Sant Savtamali Marg and on South Jijabhai Mulji Rathod Marg	174.50	87.25
13	Elphinstone Estate	2/23	Indira Dock land portion towards east of P D'Mello road upto sea and from GPO to north boundary of ward.	265.00	132.50

Notes:

1. Rates for the Way Leave fee on MBPT land and trestle (i.e. trestle of OPP,FCB & SCB) will be applicable for the period from 01.10.2012 to 30.9.2017 as approved vide Board's TR No 109 of 2019 will be revised every 5 years or as decided by the Board from time to time.

2. Way leave fees will increase by 4% every October. First such 4% increase will be effected from 01.10.2013.

3. In case, the prevalent way leave fee is higher than the revised rate, the higher prevalent rate will be continued with 4% increase p.a.

4. For the purpose of Right of way leave charges, the area occupied by pipelines, other those of trestle shall be calculated on the based on width (subject to minimum of 1 meter) and length of those pipelines.

5. Charges for way leave for occupation of air space, underground, seabed and below seabed will be 50% of above rate. License fee for water area would be 50% of the license fee of abutting land. The way leave fee for over-ground service shall be based on full rate provided under TR No.222 of 2015.

6. (i). The rate of Sp Way Leave for the pipeline laid on Old Pir Pau Pier (OPP) and First Chemical Berth (FCB) was finalized vide TR 540 of 1994 at Rs.80.25 per sq meter per month upto 30.09.1992 with 4% increase annually and was valid up to 30.09.2012. The rate of Sp Way Leave fee was again reviewed and the existing rate of Rs.182.87 as on 01.10.2012 has been continued with 4% increase every October till Sept.2022.

(ii). The rate of Sp Way Leave for the pipeline laid on Second Chemical Berth (SCB) was finalized at Rs.230.64 per sq.mtr. per month for 300 dia. Pipeline as on 01.01.2015 with 4% increase every October as approved vide T.R.No.176 of 2018 and the same will be continued till Sept.2022. The same would be proportionately increased for higher dia. Pipelines.

7. <u>Formula for calculation of W.L.Fee</u>

(i).	W.L.Fee per month on land	= length of pipeline	x (External dia including insulation + 600 mm) -- 1000mm	x Rate applicable
			(Subject to minimum width of 1 mtr)	
(ii)	W.L.Fee per month on trestle	= length of pipeline	x (External dia including insulation) --- 300mm	x Rate applicable

(iii). Rate applicable for loop of pipeline – The rate applicable for loop length of pipeline laid on trestle will be taken at 60% of Way Leave rate of respective trestle in accordance with TR No.257 of 2015.

(iv). The special way leave fee for Optical Fibre Cable will be at applicable rates but taking the width subject to a minimum of half a meter for computation instead of 1 mtr.

8. Whenever the Stamp Duty Ready Reckoner values are not available, land value rate obtained by the valuer will be considered.

9. (i). Interest on delayed payment – Interest for delayed payment of monthly bills will be charged at 18% per annum as per the existing policy or as may be decided by the Board from time to time.

(ii). Interest on differential arrears due to revision - Regarding the differential interest of Way Leave as per the updated SoR 2012-17, the interest will not be applicable on the differential arrears till raising of demand notice. If the party fails to pay as per the demand/invoice within the stipulated time, i.e. 3 months from the receipt of demand notice/invoice, interest will be applicable as may be decided by TAMP

10. In the event of failure to achieve Minimum Guaranteed Throughput (MGT), the user should compensate the port by paying additional wharfage charges for the shortfall quantity.

11. Transfer – Right of Way Permissions are not transferrable. However, any case of specific requirement of the party transfer of Right of Way may be permitted by the Board in its discretion and subject to payment of all past dues, prevailing SoR and transfer fee equivalent to 12 months way leave as per the prevailing SoR and for the unauthorized assignment / transfer of way leave permissions granted in the past due to merger, amalgamation, etc. be regularized by levy of 24 months' revised Way Leave fee as per prevailing SoR.

12. Other aspects related to Right of Way permission will be dealt with as per policy approved by the Board.

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2.3. The MBPT has also requested this Authority to decide the rate of interest to be charged on differential arrears on account of revision of Spl WLF during the period 01.10.2012 to 30.09.2017, if parties fail to liquidate the arrears within the stipulated time of 3 months from the date of demand notice/ invoice.

3.1. With regard to the proposal of the port, it may be recalled that, this Authority had passed an Order dated 15 March 2000 setting out the legal position about this Authority's jurisdiction in respect of framing scale of Rates and Statement of Conditions for use of port properties.

3.2. The MBPT had filed a Writ Petition in the Bombay High Court in April 2000 challenging the Order dated 15 March 2000 and praying, *interalia*, that this Authority has no power to fix rates of those premises belonging to the MBPT and situated outside the port limits.

3.3. The Hon'ble Division Bench of Bombay High Court had passed an interim order on 2 May 2000 restraining this Authority from giving effect to the Order dated 15 March 2000 to the extent that the decision taken therein shall not apply to any property or place not within the limits of the port or port approaches.

3.4. The Ministry of Shipping (MOS) under cover of its letter no. Secy(S)/Visit-Mumbai/Land management/ 2018(333951) dated 25 March 2019 had forwarded a copy of the Minutes of the Meeting held on 21 August 2018 at Mumbai under the Chairmanship of Secretary, MOS with regard to clarifications on the Land Policy Guidelines, 2015. Forwarding the copy of the Minutes, the Way forward forming part of the Minutes indicated that MBPT will withdraw the Writ Petition and Ministry will advise this Authority that consequent to PGLM 2015 read with clarifications dated 14th May 2018, the SOR with effect from 01.10.2012 onwards be fixed by this Authority for all areas of Mumbai Port including Township area.

3.5. In the context of MOS letter dated 25 March 2019, it was vide letter dated 28 March 2019, *interalia*, communicated to the MOS that the directions of the MOS in the matter in reference, with regard to fixation of lease rent/ license fee for the MBPT lands for the period from 01 October 2012 onwards, will be abided, subject to MBPT withdrawing the Writ Petition.

3.6. In this backdrop, the MOS vide its e-mail dated 16 May 2019 had *interalia*, directed this Authority to fix the SOR for all areas of Mumbai Port including Township Areas with effect from 01.10.2012 onwards, consequent to the Policy Guidelines for Land Management, 2015 (PGLM 2015) read with clarification on PGLM dated 14.05.2018, only after the writ Petition is withdrawn by MBPT. Vide the said letter, MOS requested MBPT to withdraw the Writ Petition no. 1153 of 2000 from the Bombay High Court and intimate the same to the MOS and TAMP.

3.7. Accordingly, the MBPT has withdrawn the Writ Petition and the Hon'ble Bombay High Court vide its Order dated 08 August 2019 has passed an Order disposing off the Writ Petition as withdrawn.

3.8. Thus, the MBPT has come up with a proposal seeking approval for schedule of rates for special way leave charges of MBPT for the period of 01.10.2012 to 30.09.2017.

4. In accordance with the consultative procedure prescribed, a copy of the MBPT proposal dated 13 December 2019 was circulated to concerned users/ user organizations seeking their comments. In response, some of the users / user organizations have furnished their comments. The said comments were forwarded to MBPT as feedback information. The MBPT has responded vide its letter dated 18 March 2020.

5. Based on a preliminary scrutiny of the MBPT proposal, some additional information/ clarification was sought from MBPT vide letter dated 18 February 2020. After a reminder dated 03 March 2020, the MBPT has responded vide its letter dated 18 March 2020. The additional information/ clarification sought and the response of MBPT thereon are tabulated below:

Sl. No.	Information / Clarification sought	Reply furnished by MBPT
(i).	Though the LAC Report as well as the approval of Board of Trustees of MBPT is for prescription of way leave charges for 2 five year periods viz., 01.10.2012 to 30.09.2017 and from 01.10.2017 to 30.09.2022, the proposal of MBPT seeks approval for way leave charges	The policy of Right of Way (Sp Way Leave) approved by the Board vide TR No. 109 of 2019 stated in para 4(c)(ii) as : "Rate for Sp Way Leave Fee for existing Sp. W.L. w.e.f. 01.10.2017 will be at 6% return per annum on value of land prescribed in the Stamp Duty Ready Reckoner 2017 with 4% increase p.a. only

	only for a five year period from 01.10.2012 to 30.09.2017. The reason for not seeking approval for the subsequent five year period to be explained.	for the **cargo operating pipelines** and associated facilities of Sp Way Leave occupations, whereas **non-cargo operating pipelines** of Sp Way Leave occupations will be charged on the basis of highest of the Five Factors of market value as per PGLM 2014/15. For calculation of revised Way Leave charges for non-cargo pipelines on MBPT land, the valuation work of MBPT land is in progress. Since the approval of LAC and Board for the SoR for the period of 01.10.2017 to 30.09.2022 does not materialize therefore, a separate proposal will be forwarded to TAMP in due course for the approval of SoR for the period 01.10.2017 to 30.09.2022.
(ii).	A comparative statement to show the Way leave charges being levied by MBPT as on 01 October 2012 and the proposed way leave charges as on 01 October 2012, for all the areas under consideration to be furnished.	A statement showing the party wise comparison between the way leave charges as on 01 October 2012 and the proposed way leave charges as on 01 October 2012 and the percentage increase in the way leave charges envisaged is furnished by MBPT. (From the comparative statement, it is seen that generally there is an increase in way leave charges in the range of 15% to 45%)
(iii).	From the Land Allotment Committee (LAC) Report as made available by MBPT along with its proposal, it is seen that the LAC at para 5 of its Report has listed down various general terms and conditions for levy of right of way leave charges for pipelines/ conveyors. However, these general terms and conditions are not seen to have been incorporated by the MBPT in its proposed Scale of Rates. The MBPT to examine to incorporate suitably the requisite general terms and conditions relating to levy of way leave charges in the SOR.	(The MBPT has attached a copy of the LAC Report.)
(iv).	The basis for proposing minimum 1 metre for calculation of Right of way leave charges on the area occupied by pipelines other than those of trestle at proposed note no. 4 to be explained.	As per the practice in vogue being followed, a minimum distance of 300mm on both sides of pipeline is taken for safety and maintenance/ repairs purposes, therefore the land of minimum width of 1 meter is required. Therefore, 1 metre has been considered.
(v).	(a). The basis for proposing 50% of the proposed rate at note no. 5, to enable the port to levy way leave charges for occupation of air space, underground, sea bed and below sea bed to be explained. (b). The relevance of FS = 1 for over ground pipeline/ cable and FS = 0.50 for pipelines / cables which would occupy airspace, underground, overhead, seabed and below seabed to be explained.	(i) As per PGLM 2014/15, it is stated that each port trust board may formulate and approve its own policy for granting Way Leave permission. (ii) Policy of Right of Way (Sp Way Leave) is approved by the Board vide TR No.109 of 2019. Right of Way permission is neither lease nor license and for any permission given for occupation of land/ water/ air for underground/ overground/ underwater/ seabed/ overhead services, the special way leave fee is chargeable. The way leave fee for over-ground service shall be based on full rate and that for underground /

		underwater will be at half the rate. (iii) A minimum distance of 300mm on both sides is taken for safety and maintenance purposes for laying of overground pipelines and therefore the land of minimum width of 1 meter is taken into account for calculating the Sp way leave fees. (iv) The land occupied by laying pipelines/ cables which occupy overground, overhead (< 6.5 meters height), etc cannot be used for any other purpose. Therefore, user requires to compensate MBPT for the use of its land at the rates for full FSI and for pipelines/ cables which are underground/ in airspace (> 6.5 meters height)/ in seabed / below seabed, for use of MBPT land at rates for FSI=0.5. For example, H.T. transmission lines, building/ structure cannot be constructed on the land below the transmission lines. Thus land below the transmission lines is of no use. Similarly, no building/ structure can be erected above the underground pipelines/ cables.
(vi).	When the proposal of the port seeks approval for way leave charges only for a five year period from 01.10.2012 to 30.09.2017, the reason for proposing note no. 6(i) and (ii) prescribing levy of way leave charges on 1st and 2nd Chemical berth upto September 2022 may be explained. The period for levy of way leave charges on 1st and 2nd chemical berth to be restricted upto 30 September 2017.	(i) The rate of way leave fee for pipeline on trestle of Old Pir Pau Pier(OPP) and First chemical berth(FCB) was finalized under TR No.540 of 1994 with 4% increase every year up to 30.09.2012 where after this rate will be revised as per Board's policy. Since this rate was not revised on 01.10.2012 therefore the existing rate has been continued with 4% increase every year till 2018. This rate was reviewed by the Dy.CE(Project) on 31.08.2018 and worked out the depreciation rate. This depreciation rate was compared with existing rate of 2018. Since the existing rate was being more than the depreciation rate, the existing rate has been continued which has been approved by the Board vide TR No.177 of 2018. (ii) The Way Leave fee for pipelines laid on Second chemical berth (SCB) was at the rate of Rs. 230.64 per sq.mtrs. p.m. as on 01.01.2015 with 4% annual increase for 300 mm diameter has been finalized by the Board vide TR No.176 of 2018. The Way Leave fee for higher diameter would proportionately increase. (iii) In accordance with Policy of Right of Way (Sp Way Leave) approved vide TR No.109 of 2019, these above rates (which are approved vide TR No.540 of 1994 and TR No.176 of 2018) are continued till Sept 2022 with 4% increase every year. Therefore, these rates are being applicable for the revision of Sp Way Leave charges for the period 01.10.2012 to 30.09.2017 and further from 01.10.2017 to 30.09.2022. Therefore, TAMP is requested to consider the proposal upto 30.09.2022.
(vii).	The basis for proposing to consider a	It may be noted that note nos. are 8(i) and 8(iv)

	minimum width of pipeline at 1 metre and that of optical fibre cable at 0.5 metre for the purpose of levy of way leave charges, in the proposed note no. 7(i) and 7(iv) to be explained.	and not 7(i) and 7(iv). Refer reply at point (iv) above. As regards 0.5 metre for OFC, they require less space. Therefore, 0.5 metre is considered. It is pointed that even if width of OFC is very less, it requires minimum 0.5 metre for excavation/ digging of trenches etc. Therefore, the proposal of the port is justified. Further, (i) The users are utilizing MBPT's limited and valuable capital assets in the form of a portion of its land for the laying of underground cables or overhead transmission lines which is permitted by charging Sp Way Leave fees since decades back as MBPT is entitled to be adequately compensated for utilization of its limited resources. (ii) Business of users are running on commercial basis with the motive of making profit. (iii) Since most of the land occupied by laying pipelines/ cables which occupy overground, airspace, underground, overhead, seabed etc cannot be used for any other purpose. Therefore, they require to compensate MBPT for the use of its land at the rates decided by MBPT.
(viii).	The rate applicable for loop length of pipeline laid on trestle is proposed to be taken at 60% of way leave of respective trestle, in accordance with TR no. 257 of 2015, as per proposed note no. 7(iii). The rationale to consider 60% of way leave of respective trestle to be explained.	This provision is only for land of MBPT such as Jawahar Dweep, Thal Knob, Cross Island, Uran, etc where Stamp Duty Ready Reckoner values are not available, land value rate obtained by the valuer will be considered for Sp Way Leave Fee for granting of new permission.
(ix).	In the proposed SOR, it is seen that the MBPT has derived the proposed way leave charges based on the Stamp Duty Ready Reckoner of 2012. When the way leave charges based on the Stamp Duty Ready Reckoner has already been determined for the period 01.10.2012 to 30.09.2017, the proposed note to the effect that 'whenever the Stamp Duty Ready Reckoner values are not available, land value rate obtained by the valuer will be considered', not to be required.	
(x).	The basis for proposing an interest rate of 18% per annum on delayed payment of monthly bills, to be explained.	In terms of Note No.10(i) of SOR, interest on delayed payment will be charged as per Board's policy from time. Board by TR No.296 of 2020 has decided to charge interest as per rate of interest applicable in respect of SOR approved by the TAMP in other cases, i.e. the policy of levying interest on delayed payment.

6. A joint hearing on the case in reference was held on 16 January 2020 at the office of this Authority in Mumbai. At the joint hearing, the MBPT made a brief power-point presentation of its proposal. The MBPT and users/ user organisations have made their submissions during the joint hearing.

7. As decided at the joint hearing, some of the users/ user organisations have furnished their comments/ made additional submissions on the MBPT proposal dated 13 December 2019. These comments were forwarded to MBPT as feedback information. The MBPT has responded vide its letter dated 18 March 2020.

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

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

(i). Section 49 of the Major Port Trusts Act, 1963 (MPT Act) mandates this Authority to frame the Scale of Rates and statement of conditions for use of property belonging to a Board. The way leave charges is a levy, levied for the use of the property of the port. Clarification No. 17 of the clarifications on Policy Guidelines for Land Management, 2015 issued by the MOS vide its letter No.PD-13017/2/2014-PD.IV dated 14 May 2018 read with clause 14 of PGLM 2015 provides that Right of Way permission for laying pipelines / conveyors, etc. for purposes such as telegraph cables, OFC Lines, tank farms, telephone towers, electric cables, etc., can be within and outside port area. Thus, the Mumbai Port Trust (MBPT) has come up with a proposal for fixation of way leave charges in respect of the gas or optical fiber cable, railway tracks, electric cables, transmission lines and pipelines laidfor carrying of crude oil, chemical, vegetable oil, etc.

(ii). In the subject proposal, the MBPT has sought approval for the way leave charges for a period of 5 years from 01 October 2012 and upto 30 September 2017. For the period prior to 01 October 2012, the MBPT has reported to have levied the way leave charges as approved by its Board of Trustees. Also, as regards the period prior to 01 October 2012, the lease rentals are reported to have been governed by the Supreme Court judgment.

In this connection, the Tata Power Company Limited (TPCL), Hindustan Petroleum Corporation Limited (HPCL), Bharat Petroleum Corporation Limited (BPCL) have objected to the retrospective fixation of the Special Way Leave fees from 01 October 2012 to 30 September 2017, on the ground that retrospective revision would jeopardise their financials and would increase their burden, which they may not be in a position to pass it on to customers.

In the case in reference, the lease rentals approved by the Board of Trustees for the lands of MBPT for the period from 1980 upto 30 September 2012 as per the Compromise formula had been upheld by the Hon'ble Supreme Court of India. As such, the Government has advised the MBPT in May 2019 to fix the SoR for all areas of Mumbai Port including Township areas with effect from 01 October 2012 onwards.

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

In the proceedings relating to the case in reference, the MBPT has conveyed that it had intimated all the stakeholders that the way leave charges are due for revision from 01 October 2012 onwards.

Under these circumstances and for the reasons given in the earlier paragraphs, the proposal of the MBPT for recovery of way leave charges for the period from 01 October 2012 to 30 September 2020 is taken up for consideration.

At the same time, the MBPT is advised to expedite formulating its proposal for fixation of way leave charges for the period from 01 October 2017 to 30 September 2022 and come up with a proposal within two months from the date of notification of the Order passed in the case in reference.

(iii). The MBPT has filed its proposal in December 2019. The said proposal alongwith the information/ clarification furnished by MBPT during the processing of the case, is considered in this analysis.

(iv). This Authority is mandated to follow the Land Policy Guidelines issued by the Government from time to time for the purpose of determining lease rentals for the lands belonging to the Port Trusts. The Ministry of Shipping in the Government of India has announced Land Policy Guidelines for Major Ports, 2014 in January 2014 which has come into effect from 2 January 2014. Subsequently, the Ministry of Shipping has issued amended Land Policy Guidelines, 2014 under Section 111 of the MPT Act, 1963 for implementation with effect from 17 July 2015. The MBPT has, come up with a proposal for fixing the Way Leave Charges, based on the provisions of the Land Policy Guidelines for Major Port Trusts, 2014, as amended in July 2015. The proposal of MBPT has the approval of its Board of Trustees.

(v). As per clause 13(a) read with clause 11.2(e) of the amended Land Policy Guidelines 2014, a Land Allotment Committee (LAC) constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic shall determine the market value of land as per the methodology prescribed in clause 13(a). Accordingly, the MBPT has constituted a Land Allotment Committee (LAC) under the chairmanship of the Dy. Chairman of the Port and the Heads of Departments of Finance, Traffic, Estate and Chief Engineer being the other members of the Committee.

(vi). (a). Para 13(a) of the Land policy guidelines of July 2015 prescribes the methodology for determination of market value of the land based on the five factors as prescribed therein. In terms of the said para of the amended Land policy guidelines of 2014, the Land Allotment Committee may normally take into account the highest of the factors mentioned therein, viz. (i). State Government ready reckoner of land values in the area if available for similar classification/ activities, (ii). Highest rate of actual relevant transactions registered in the last three years in the Port's vicinity with an appropriate annual escalation rate to be approved by the Port Trust Board, (iii). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (iv). Rate arrived at by an approved valuer appointed for the purpose by the Port and (v). Any other relevant factor as it is identified by the Port. The amended Land Policy Guidelines of 2014 also stipulates that in case the LAC is not choosing the highest factor, the reasons for the same have to be recorded.

(b). In this connection, the LAC in its Report has indicated that the Right of Way permission is neither lease nor licence and the grant of way leave permission bestows only a limited right to the user. The LAC has also stated that the allotment and use is not comparable to real estate development and cannot be at market values prevalent in the real estate development. Also, since the land values are sky high in Mumbai city, the

LAC has not found it appropriate to calculate Way Leave charges based on the highest of the five factors, as it is likely to act as a deterrent to port user and is also reported to result in diversion of cargo. Further, since the Land Policy Guidelines do not prescribe any rate for the purpose of levy of Way Leave fee, the LAC has recommended to not consider the market value of the land to determine the Way Leave Charges.

(c). Thus, to determine the Way Leave Charges for gas or optical fiber cable, railway tracks, electric cables, transmission lines and pipelines during the period from 01 October 2012 to 30 September 2017, the LAC is seen to have determined the way leave charges as applicable for various areas based on the Stamp Duty Ready Reckoner (RR) for the year 2012 for the respective area. Thereafter, 6% return on the RR value for the respective area has been considered to determine the way leave charges for the overhead pipelines/ cables passing through the said area. Further, a 50% discounting factor has been considered to determine the way leave charges for the pipelines/ cables for occupying airspace, underground, overhead, sea bed and below seabed, through the respective areas. Thus, the way leave charge has been derived from the rate of lease rental of the relevant parcel of land relevant for the concerned pipelines.

(d). The Land Policy Guidelines do not prescribe any specific methodology for determination of way leave charges. In the absence of any specific methodology for determining way leave charges in the Land Policy Guidelines, this Authority is inclined to rely upon the approach adopted by the MBPT to determine the way leave charges.

(e). There can be a view that the MBPT has not followed all the factors as prescribed in the Land Policy Guidelines for determination of market value of land. But, the MBPT has put forth the reasons for not determining market value of land based on all the five factors. Considering the reasoning given by the MBPT and given that the proposal is based on the recommendations of the LAC and has the approval of its Board of Trustees, this Authority is inclined to approve the way leave charges for the overhead pipelines/ cables.

(f). Further, as per Clause 12 (A) (I) of the amended Land Policy Guidelines, Licence fee for water area would be 50% of licence fee of abutting land. Resultantly, this Authority is inclined to approve the way leave charges for the pipelines/ cables for occupying airspace, underground, overhead, sea bed and below seabed, as proposed by the Port.

(vii). The Reliance Industries Limited (RIL) has contended that some pipelines are laid below ground and as such do not disturb any surface activities above the pipelines. It has also stated that some pipelines/ Optic Fibre Cable/ Utilities are laid in Sea Bed, thereby neither occupying any land space nor disturbing the Sea Traffic. In view of this, the RIL has stated that the MBPT should either levy very nominal way leave charges or not levy any charges. In this regard, it is relevant to mention here that pipelines/ cables are laid in the port area. So, way leave charges are payable to MBPT, as the MBPT is the facilitator of the space. Section 49 of the MPT Act, 1963 provides for fixation of charges for use of port properties. Another issue raised by RIL regarding the levy of transfer fee for transfer of way leave permission, is not an issue before this Authority.

(viii). The MBPT has proposed a note to the effect that the rates for way leave fee on MBPT land and trestles [i.e. trestle of Old Pir Pau Pier (OPP), First Chemical Berth (FCB) and Second chemical berth (SCB)] will be applicable for the period from 01 October 2012 to 30 September 2017 as approved vide Board's TR no. 109 of 2019 and will be revised every five years or as decided by the Board from time to time.

The TR no. 109 of 2019 as referred by MBPT, indicates that the rate of way leave fee on trestle of OPP, FCB and SCB is based on return on investment and that the existing rate will be continued till September 2022 with 4% increase. In this regard, it is to state that the proposal of MBPT does not give details of the methodology adopted by MBPT to determine the existing Way leave charges based on return on investment. The proposed SOR also does not categorically bring out the existing way leave fees being levied and the way leave charges proposed to be levied on trestle of OPP, FCB and SCB. Therefore, this Authority is not in a position to approve the proposed note, in the absence of requisite information. The MBPT is, however, advised to come up with a well analysed proposal for levy of way leave charges on the trestle of OPP, FCB and SCB, based on the stipulations contained in the Land Policy Guidelines.

(ix). The MBPT is seen to have proposed a note to the effect that the way leave charges shall increase by 4% every October and that 1st such revision will be effected from 01 October 2013. In this regard, it is relevant here to mention that Clause 13(c) of the Land Policy Guidelines of 2014 gives flexibility to the ports to fix annual escalation which would not be less than 2%. Accordingly, the MBPT has proposed 4% annual escalation. Since the annual escalation rate of 4% is as per the provision of the Land Policy Guidelines, the proposed rate of 4% annual escalation is approved.

(x). The MBPT is seen to have proposed a note to the effect that in case, the prevalent way leave fee is higher than the revised rate, the higher prevalent rate will be continued with 4% increase p.a.

The Land Policy Guidelines requires the port to prescribe rentals based on the market value of the land. As per the Land Policy Guidelines, the Rent Schedule shall be escalated by minimum of 2% per annum. The Rent Schedule is subject to revision after every five years. These provisions are reflected in the Rent Schedule by way of conditionalities. The provision proposed by the Port is for the purpose of inclusion in the Way Leave Agreement to be entered by the Port. The Scale of Rates framed by this Authority need not contain the clauses to be inserted in the Way Leave agreements to be entered by the port trust with the concerned parties. It is for the Port to enter into Way Leave Agreement ensuring compliance of the Rent Schedule and Land Policy Guidelines of the Government. Even in the case of Syama Prasad Mokeerjee Port (erstwhile Kolkata Port Trust), a similar note proposed by the Port was not included in the Rent Schedule approved by this Authority. Even otherwise, in the comparative statement furnished by MBPT, it is seen that the rentals as proposed by MBPT for all the areas as on 01 October 2012 is higher than the existing rentals as on 01 October 2012. Therefore, prescription of the note proposed by MBPT is seen to be only theoretical and may not be relevant as it may not serve any purpose. Hence, the proposed note is not included in the Rent Schedule.

(xi). The MBPT is seen to have proposed a note to the effect that for the purpose of Right of way leave charges, the area occupied by pipelines, other than those of trestle, shall be calculated based on width (subject to minimum of 1 meter) and length of those pipelines. In this regard, the MBPT has taken a view that since as per the current practice being followed by MBPT, a minimum distance of 300 mm is taken on both sides of pipeline for safety purposes, a minimum land width of 1 meter is necessary for calculating Way leave fees. A formula in this regard has been proposed by the port as one of the notes.

Many of the users viz., All India Liquid Bulk Importers and Exporters Association (AILBIEA), ALL, HPCL, BPCL, Indian Oil Corporation Limited (IOCL) and RIL have objected to the proposed note and have requested that the special way leave rates is charged only on the actual area of the pipelines rather than fixing a minimum width of 1 meter. It is appropriate that the users are not made to pay for the area not used by them.

Though for safety reasons and for repairs purposes, the MBPT wants to maintain a minimum distance of 300 mm on both sides and claim way leave charges on a minimum of 1 meter width of pipelines as per the 'Practice' followed by MBPT in the past, the provision of Land Policy Guidelines stipulates that for the purpose of Right of way leave charges, only the area occupied by the pipelines shall be calculated based on the diameter and length of those pipelines. The practice followed by MBPT does not conform to the provisions of Land Policy Guidelines. Also, even in the Rent Schedule prescribing rentals for the properties of other Major Port Trusts also, Way Leave Charges are prescribed based on the diameter and length of the pipelines. In such a scenario, it is not felt appropriate to prescribe the note proposed by MBPT. The note proposed by the port is modified to the effect that no minimum width of 1 meter is prescribed. The formula proposed by the port is also modified to reflect this change.

(xii). A note has been proposed by the port to the effect that charges for way leave for occupation of air space, underground, seabed and below seabed will be 50% of rate and that License fee for water area would be 50% of the license fee of abutting land. The said note further stipulates that the way leave fee for over-ground service shall be based on full rate provided under TR No.222 of 2015.

In this regard, as per Annexure forming part of the Land Policy Guidelines, 2014, which lists down the Broad Terms and Conditions for issuance of Right of way Permission for laying Pipelines/ Conveyors etc., as per Note no. 3, with regard to underground pipelines, if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines shall be considered as 50% of the diameter and length, for the purpose of levy of Right of Way charges. The note proposed by the port is seen to be based on the stipulation contained in the Land Policy Guidelines, 2014, and hence, it is approved.

(xiii). Two notes have been proposed by the port in connection with levy of Special Way Leave for the pipelines laid on Old Pir Pau Pier (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB). In the said notes, the MBPT has drawn reference to some of its Board Resolutions and has indicated that the rates as finalized by the Board of Trustees of MBPT would prevail till September 2022. Since the proposed notes are not in connection with the rates proposed by the MBPT in the subject proposal, it is felt that the said notes need not form part of the Rent Schedule notified by this Authority. Hence, the proposed notes are not incorporated in the Rent Schedule for Way Leave Charges notified by this Authority. Nevertheless, as brought out earlier, the MBPT is advised to come up with a well analysed proposal for levy of way leave charges on the trestle of OPP, FCB and SCB, based on the stipulations contained in the Land Policy Guidelines. As such, the note proposed by the MBPT indicating the formula for calculation of way leave charges on the trestle, is also not incorporated in the Rent Schedule notified by this Authority.

(xiv). Further, a note proposed by the port to the effect that the rate applicable for loop length of pipeline laid on trestle will be taken at 60% of Way Leave rate of respective trestle in accordance with TR No.257 of 2015, is found not in connection with the rates proposed by the MBPT in the subject proposal. Since the charges for loopline is linked to trestle and also since MBPT has already been advised to come up with a separate proposal for levy of way leave charge on trestle of OPP, FCB and SCB, it is felt that the said note need not form part of the Rent Schedule notified by this Authority. Hence, the proposed note is not incorporated in the Rent Schedule for Way Leave Charges notified by this Authority.

(xv). A note has been proposed by the port to the effect that the special way leave fee for Optical Fibre Cable will be at applicable rates but taking the width subject to a minimum of half a meter for computation instead of 1 mtr. A minimum area is stated to have been proposed by the port for safety and maintenance/ repairs purposes. As brought out earlier, as per the General Terms and Conditions for issuance of Right of Way permission for laying pipelines/ conveyors etc., forming part of the Land Policy Guidelines, for the purpose of Right of way leave charges, the area occupied by the pipelines shall be calculated based on the diameter and length of those pipelines. Also, even in the Rent Schedule prescribing rentals for the properties of other Major Port Trusts also, Way Leave Charges are prescribed based on the diameter and length of the pipelines. In such a scenario, it is not felt appropriate to prescribe the note as proposed by MBPT. The note proposed by the port is modified to the effect that no minimum width of half a meter is prescribed.

(xvi). A note has been proposed by the port to the effect that whenever the Stamp Duty Ready Reckoner values are not available, land value rate obtained by the valuer will be considered. In this regard, it is to state that the Rent Schedule for the Special Way Leave charges during the period from 01 October 2012 to 30 September 2017 has been frozen by the port taking into account the State Government Ready Reckoner rates for all the areas. In such a scenario, prescription of the proposed note is not found appropriate and hence, is not prescribed in the Rent Schedule.

(xvii). A note has been proposed by the port to the effect that Interest for delayed payment of monthly bills will be charged at 18% per annum as per the existing policy or as it is decided by the Board from time to time. The levy of interest will instill discipline on the users for timely payment of rentals and hence, it is approved.

(xviii). The MBPT has also proposed a note regarding the differential interest of Way Leave as per the updated SOR for the period from 2012-17. The note states that the interest will not be applicable on the differential arrears till raising of demand notice and that if the party fails to pay as per the demand/ invoice within the stipulated time, i.e. 3 months from the receipt of demand notice/ invoice, interest will be applicable as it is decided by TAMP. In this regard, when the Board of MBPT has already decided a rate of 18% interest on delayed payments, the question of this Authority deciding a particular rate of interest for delay in payment of differential rent does not arise. The note proposed by MBPT is, therefore, modified to reflect this position.

(xix). A note has been proposed by the port to the effect that in the event of failure to achieve Minimum Guaranteed Throughput (MGT), the user should compensate the port by paying additional wharfage charges for the shortfall quantity. As per the General Terms and Conditions for issuance of Right of Way permission for laying pipelines/ conveyors etc., forming part of the Land Policy Guidelines, for the purpose of Right of way leave charges, each Port Trust Board would formulate and approve their own policy for one time supervision charges, MGT and additional compensation charges if any for granting way leave permission. Prescription of MGT is in the domain of the port. However, the note proposed by the Port is only indicating that failure to achieve MGT will attract payment of additional charges for shortfall quantity, and hence it is incorporated in the Rent Schedule approved by this Authority.

The AILBIEA and the ALL have requested to include a provision in the SOR that the combined throughput achieved in all the pipelines in a year should be counted towards MGT. The MBPT has clarified that if a company has entered into an agreement for more than one pipeline, combined throughput achieved in all the pipeline in a year should be counted towards MGT. This clarification of MBPT is sufficient.

(xx). A note has been proposed by the port to the effect that right of Way Permissions are not transferrable. However, any case of specific requirement of the party transfer of Right of Way is permitted by the Board in its discretion and subject to payment of all past dues, prevailing SoR and transfer fee equivalent to 12 months way leave as per the prevailing SoR and for the unauthorized assignment / transfer of way leave permissions granted in the past due to merger, amalgamation, etc. be regularized by levy of 24 months' revised Way Leave fee as per prevailing SoR. The provision relating to transfer of right of Way Permissions is in the domain of the port. Hence, the proposed note need not form part of the Schedule of Way Leave Charges approved by this Authority.

(xxi). The MBPT has proposed a note to the effect that other aspects related to Right of Way Permission will be dealt with as per policy approved by the Board. The said note is modified to read that other aspects related to Right of Way Permission will be dealt with as per extant Land Policy Guidelines.

(xxii). The users viz. All India Liquid Bulk Importers and Exporters Association (AILBIEA), Aegis Logistics Ltd. (ALL), Bharat Petroleum Corporation Limited (BPCL), Hindustan Petroleum Corporation Limited (HPCL) and Indian Oil Corporation Limited (IOCL) have stated that the SOR proposed by the port does not include the case when pipelines are laid in multilayer stacks. The MBPT, while responding to the comments of the users have stated that the calculation of Special Way Leave fees in case of multilayer stacks, each individual pipeline upto 400 mm diameter will be calculated as per the formulae shown in the proposed SOR.

In this regard, it is to state that as per the Broad terms and conditions for issuance of Right of Way permission for laying pipelines / conveyors etc. forming part of the Land Policy Guidelines, 2015, in case of multi-layer stacks, the physical area occupied by the multilayer pipelines / conveyor stacks shall be considered and the respective users shall be billed accordingly".

Accordingly, the note as indicated by the MBPT is modified to the extent of removing the reference of 400 mm diameter and incorporated in the SOR as per the Land Policy Guidelines, 2015.

(xxiii). The charges to be levied for Right Of Way Permission (ROWP) would be as per the Broad terms and conditions for issuance of ROWP for laying pipelines / conveyors etc., forming part of Policy Guidelines for Land Management, 2015. As per clarification 17 on Policy Guidelines for Land Management, 2015 issued by Ministry of Shipping (MOS) vide its letter dated 14 May 2018, where there is a specific Central Act / Statute which governs such ROWP, the provisions under the said Central Act / Statute shall override the Policy Guidelines for charges to be levied for ROWP. In this context, the TATA Power Company Ltd. (TPCL) has contended that the proposed way leave charges are not applicable to the TPCL since the TPCL is a Telegraph Authority and in terms of Telegraph rules – 2016, the underground utilities are not chargeable. So far as the overhead transmission lines are concerned, charges are permitted to be recovered only if the land beneath is unlikely to be used for any other purpose, as per the contention of the TPCL. The TPCL has further requested to classify the power utilities as 'cargo operated', sought further reduction from 50% reduction in rates for HT lines / cables passing through CRS areas, to stop further annual increase in the rates for the pipelines laid on first chemical berth and to levy only administrative fees for unauthorized assignment / transfer of way leave permissions granted in the past due to merger, amalgamation etc. When these contentions of TPCL were shared with the MBPT in consultation process for its response, the MBPT has countered the contentions of TPCL stating that the cables referred by the TPCL are power cables whereas the reference made by TPCL is to the Guidelines of Indian Telegraph Act and Indian Telegraph Rules, 2016. According to MBPT, these rules are applicable only in respect of underground or over ground telegraph infrastructure. It is further seen from the response of MBPT that all the contentions of TPCL were already examined by the Port and the Board of Trustees of MBPT had rejected the contentions of TPCL. As brought out earlier, the TPCL has agitated the above said issues during the proceedings of this case. The MBPT has already considered the issues of TPCL even before filing the proposal before this Authority and rejected them. The Port is not willing to re-examine them. As per Section 49 of the Major Port Trusts Act, 1963 this Authority is mandated to frame Scale of Rates (SOR) and Statement of Conditions from time to time for use of the properties of the Port. This Authority is not the appropriate forum to adjudicate on the issues raised by TPCL in the current tariff proceedings.

10. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following way leave charges for pipelines for the period 01 October 2012 to 30 September 2017:

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Sr. No.	Name of MBPT Estate	Stamp duty ready reckoner 2012 village No. / Zone No.	Descriptions as per Ready Reckoner	Rate per sq. meter per month applicable for over – ground pipeline / cable (to be charged for FSI=1) (in ₹.	Rate applicable per sq. meter per month for pipeline / cable for occupation of airspace, under – ground, overhead, seabed and below seabed (to be charged for FSI=0.5) (in ₹.)
A	B	C	D	E	F
1	Wadala	14/101	All the portion on East of Harbour Railway Line	120.00	60
2	Sewree (East)	11/86	Portion towards East of Harbour Line, on South Acharya Donge Marg (king Edward Road) upto sewri Railway Stn., on east sea, on north boundry of ward and on west harbor railway line, All the portion surrounded	69.00	34.50
3	Mazgaon Sewree Reclamation (Cotton Depot)	10/79A	On East BPT railway line, on west central railway harbor line, on north division boundary upto First avenue road,, triangular portion of all the land.	83.50	41.75
4	Mazgaon Sewree Reclamation (Grain & Cotton Depot)	10/80	On West BPT railway line (East oilfield freeway) on east sea on South Jijabhai mMulji Rathod Marg (wadi bundar road) and on north BPT railway line and first avenue road. All the portion surrounded.	84.50	42.25
5	Mazgaon Sewree Reclamation (Grain & Cotton Depot)	11/85	On East division boundary, from sweri station towards South Hindustan Level Company's East side road, on west BPT railway line, on south division boundary.	86.50	43.25
6	Mazgaon Reclamation and Santacruz Estate	10/78B	On East BPT railway line, on west central railway harbor line, on south Jeenabai Rathod Marg (Wadi bunder road, triangular portion of all	107.50	53.75

			the land.		
7	Mazgaon Reclamation	3/36	All portion of B ward on Eastside of P.D'Mello Road upto sea shore (Victori Dock & Princess Dock).	134.00	67.00
8	Elphinstone Estate (West)	3/35	Area between north boundary of B ward (Ramchandra Bhatt Marg, 2013), South Boundary of B ward (Lokmanya Tilak Marg, 2013), Central Railway Line and P.D'Mello Road.	244.50	122.25
9	Ballard Estate	2/22	Ballard Estate part, portion towards east of shahid bhagat singh marg from Mint to General Post Office upto Indira Dock Portion upto division boundary	273.50	136.75
10	Pilot Bunder	1/6A	On East Sea, on wet shahid bhagat singh road, on sough home bhabha road on north division boundary.	494.50	247.25
11	Pir Pau	90/419	All the properties of Mahul village	68.50	34.25
12	Mazgaon	10/78A	On west shivdas Champasi Marg and Dr. Mascrenas Road on east BPT Railway Line on North Sant Savtamali Marg and on South Jijabhai Mulji Rathod Marg	174.50	87.25
13	Elphinstone Estate	2/23	Indira Dock land portion towards east of P D'Mello road upto sea and from GPO to north boundary of ward.	265.00	132.50

Notes:

1. Way leave fees will increase by 4% every October. First such 4% increase will be effected from 01.10.2013.

2. For the purpose of Right of way leave charges, the area occupied by pipelines, other than those of trestle shall be calculated based on width and length of those pipelines.

3. Charges for way leave for occupation of air space, underground, seabed and below seabed will be 50% of above rate. License fee for water area would be 50% of the license fee of abutting land. The way leave fee for over-ground service shall be based on full rate provided under TR No.222 of 2015.

4. <u>Formula for calculation of W.L.Fee</u>

   (i). $$\text{W.L.Fee per month on land} = \text{length of pipeline} \times \frac{\text{(External dia including insulation)}}{\text{1000mm}} \times \text{Rate applicable}$$

   (ii). The special way leave fee for Optical Fibre Cable will be at applicable rates.

5. In case of multi-layer stacks, the physical area occupied by the multilayer pipelines/ conveyor stacks shall be considered and the respective users shall be billed accordingly.

6. Interest on delayed payment – Interest for delayed payment of monthly bills will be charged at 18% per annum as per the existing policy or as may be decided by the Board from time to time.

7. Interest will not be applicable on the differential areas due to revision till raising of demand notice. If the party fails to pay as per the demand / invoice within 3 months from the receipt of demand notice / invoice, interest will be applicable at 18% per annum as per existing policy or as may be decided by Board from time to time.

8. In the event of failure to achieve Minimum Guaranteed Throughput (MGT), the user should compensate the port by paying additional wharfage charges for the shortfall quantity.

9. Other aspects related to Right of Way permission will be dealt with as per the extant Land Policy Guidelines."

(T.S. Balasubramanian)
Member (Finance)

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

TAMP/62/2019-MBPT	**:**	**Proposal received from the Mumbai Port Trust (MBPT) seeking approval of Schedule of Rates for Special Way Leave charges of MBPT.**

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A summary of the comments received from some of the users / user organisations and the response of Mumbai Port Trust (MBPT) thereon are tabulated below:

Sr. no	Comments of Users or user organizations	Reply of MBPT
1.	**All India Liquid Bulk Importers and Exporters Association (AILBIEA)**	
a.	MBPT should permit Bank guarantees as security deposit irrespective of the amount.	The form and manner of acceptance of Security Deposit is within the ambit of the Board and is not an issue before the TAMP.
b.	The proposed SOR does not include the case when pipelines are laid in multilayer stacks though the same is mentioned in MBPT's recommendation note.	The PGLM 2014-15 provides for framing of its own policy for right of way. Accordingly, MBPT has framed the policy which envisages the levy of charges to all the multi-layer stacks. Therefore, the issue raised by the ALL is more of challenging the policy rather than the rates. The policy envisages that the calculation shall be based on width and length of the pipeline subject to minimum of 1 meter. Thus, the rates fixed by MBPT are in line with the policy even in the case of multi-layer pipelines. The broad features of the guidelines are as under : (i). For the purpose of Right of way leave charges, the area occupied by pipelines, other than those on trestle shall be calculated on the basis of width (subject to minimum of 1 meter) and length of those pipelines. (ii). In case of multi-layer stacks, the physical area occupied by the multilayer pipeline/ conveyor stacks shall be considered and the respective users shall be billed accordingly. (iii). The formulae regarding calculation of Sp Way Leave fees have been indicated in the proposed SOR (Note no.7). (iv). For calculation of Sp Way Leave fees in case of multilayer stacks, each individual pipeline up to 400mm diameter will be calculated as per the formulae shown in the proposed SOR (Note no.7).

c.	The proposal also does not mention about combining throughput of all pipelines for MGT though the same is mentioned in MBPT's recommendation note.	It is felt that individual contracts entered into by the Port does not come under the purview of TAMP. TAMP may take a view. However, following information is provided. As per Board TR No. 109 of 2019, MGT will be applicable for the pipeline laid only on trestle of Old Pir Pau Jetty (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB) at the discretion of the Board and with a view of attracting more cargo. (i) MGT should be fixed by the port based on the capacity of the First/ Second Chemical Berth, trestle capacity, berth throughput over last five years, chemical cargo trends over last five years and inputs from the interested companies and any other relevant factor. (ii) If a company has entered into agreement for more than one pipeline then combined throughput (traffic) achieved in all the pipelines in a year should be counted towards MGT. (iii) In the event of failure to achieve MGT, a company should be required to compensate the port by paying additional wharfage for the shortfall quantity. (iv) This aspect is also covered as per note at sl no.10 of the proposed SOR.
d.	MBPT should charge way leave on actual area of pipeline rather than fixing a minimum width of 1 m on land.	As per the practice in vogue being followed, a minimum distance of 300mm on both sides of pipeline is taken for safety purposes, therefore the land of minimum width of 1 meter is taken into account for calculating the Sp way leave fees as per the formula shown below: W.L. Fee per month on land= length of pipeline x (External dia including insulation + 600 mm) x Rate applicable 1000 mm (Subject to minimum width of 1 mtr)
e.	Proposed interest charge of 18% is very high.	In terms of Note No.9(i) of SOR, interest on delayed payment will be charged as per Board's policy from time. Board by TR No.296 of 2020 has decided to charge interest as per rate of interest applicable in respect of SOR approved by the TAMP in other cases, i.e. the policy of levying interest on delayed payment.

f.	Escalation cap of 50% at the end of 5 years is very high. This should be capped to an annual escalation rate of 4%.	(i) It has been mentioned in the Terms and Conditions while granting permission to the party that the re-fixation of Way Leave charges will be after every 5 years on updated SoR or as decided by the Board time to time. However, while re-fixing in case, the prevalent way leave fee is higher than the rate worked out on the above lines, the higher prevalent rate should be continued with 4% increase p.a. (ii) With regard to the 4% annual increase, it does not have any relation to the revision/ return on capital expenditure but is basically for partially offsetting the eroding value of way leave fee on account of inflation.
g.	The above points need to be considered and wayleave charges of MBPT should be calculated accordingly.	No specific comments have been furnished by MBPT.
2.	**Aegis Logistics Ltd (ALL)**	
a.	The LAC Report at Pt. 5(c) mentions *"In case of multi-layer stacks, the physical area occupied by the multilayer pipelines/conveyor stacks shall be considered and the respective users shall be billed accordingly"*, which is in line with the Land Policy. However, the same is not mentioned in the proposed SOR submitted by MBPT.	The PGLM 2014-15 provides for framing of its own policy for right of way. Accordingly, MBPT has framed the policy which envisages the levy of charges to all the multi-layer stacks. Therefore, the issue raised by the ALL is more of challenging the policy rather than rates. The policy envisages that the calculation shall be based on width and length of the pipeline subject to minimum of 1 meter. Thus, the rates fixed by MBPT are in line with the policy even in the case of multi-layer pipelines. The broad features of the guidelines are as under : (i). For the purpose of Right of way leave charges, the area occupied by pipelines, other than those on trestle shall be calculated on the basis of width (subject to minimum of 1 meter) and length of those pipelines. (ii). In case of multi-layer stacks, the physical area occupied by the multilayer pipeline/conveyor stacks shall be considered and the respective users shall be billed accordingly. (iii). The formulae regarding calculation of Sp Way Leave fees have been indicated in the Note no.7 of the proposed SOR. (iv). For calculation of Sp Way Leave fees in case of multilayer stacks, each individual pipeline up to 400mm diameter will be calculated as per the formulae shown at Note no.7 of the proposed SOR.

b.	The LAC Report also mentions that if a company has entered into an agreement for multiple pipelines then the combined throughput achieved in all the pipelines in a year should be counted towards MGT. This clause also needs to be included in the proposed SOR submitted by MBPT.	It is felt that individual contracts entered into by the Port does not come under the purview of TAMP. TAMP may take a view. **However, following information is provided.** As per Board TR No. 109 of 2019, MGT will be applicable for the pipeline laid only on trestle of Old Pir Pau Jetty (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB) at the discretion of the Board and with a view of attracting more cargo. (i) MGT should be fixed by the port based on the capacity of the First/Second Chemical Berth, trestle capacity, berth throughput over last five years, chemical cargo trends over last five years and inputs from the interested companies and any other relevant factor. (ii) If a company has entered into agreement for more than one pipeline then combined throughput (traffic) achieved in all the pipelines in a year should be counted towards MGT. (iii) In the event of failure to achieve MGT, a company should be required to compensate the port by paying additional wharfage for the shortfall quantity. (iv) This aspect also got it covered at note no.10 of the proposed SOR.
c.	MBPT is insisting on FD's for Security Deposit below ₹.1 crore. Bank Guarantee (BG) should be permitted for Security Deposits below ₹.1 crore also. Alternatively, Security Deposit of all pipelines for a company can be collectively calculated and taken as a BG.	This is not an issue before TAMP as TAMP's approval is requested to the proposed SOR of Special Way Leave Fee for the period 01.10.2012 to 30.09.2017 and to fix the rate of interest on arrears as brought out in the proposal.
d.	Escalation of way leave charges at end of every 5 years is proposed to be capped at 50% of the preceding year depending on the ready reckoner rates. Considering the competitions and alternatives available to importers and exporters, it is requested to continue only with 4% annual escalation.	To bring in parity in the way leave fees in respect of the permissions granted in the past and the way leave permissions that may be granted in future and to enable port users to work out their future costs, a cap on the increase in way leave fees every 5 years was fixed at 50%. Accordingly, the terms and conditions were framed. The same is reproduced for ready reference. (i) It has been mentioned in the Terms and Conditions while granting permission to the party that the re-fixation of Way Leave charges will be after every 5 years on updated SoR or as decided by the Board time to time. However, while re-fixing in case, the prevalent way leave fee is higher than the rate worked out on the above lines, the higher prevalent rate should be continued with 4% increase p.a.

		(ii) With regard to the 4% annual increase, it does not have any relation to the revision/return on capital expenditure but is basically for partially offsetting the eroding value of way leave fee on account of inflation.
e.	MBPT is presently charging way leave for pipelines on land for a minimum width of 1 meter. This is only adding to the costs of the Port Users and making them less competitive. It is requested that Port Charges as per the actual area occupied by the pipeline may be considered. This is as per the guidelines laid down in the Land Policy.	As per the practice in vogue being followed, a minimum distance of 300mm on both sides of pipeline is taken for safety purposes, therefore the land of minimum width of 1 meter is taken into account for calculating the Spl way leave fees as per the formula shown below: W.L. Fee per month on land= length of pipeline x (External dia including insulation + 600 mm) x Rate applicable 1000 mm (Subject to minimum width of 1 mtr)
f.	For calculating return based on cost of trestle the life of trestle has been considered as 30 years. However, as per Government Order no. PR-24021/28/98/PG dated 19.08.1998, the life of a jetty has been fixed at 50 years. It is requested that this should be considered, and way leave charges should be worked out accordingly. (A copy of the Government Order dated 19.08.1998 has been made available by ALL.)	The trestle has been constructed in the year 1995. MBPT is spending significant amount of money for maintenance of structure to retain its life. The circular referred to by ALL is issued in the year 1998. Therefore, retrospective effect cannot be given in such cases. In terms of TR NO.351 of 26.11.1991, the life of structure under Piled structure (Sr. VII) is 30 years and MBPT has considered the same in the calculations.
g.	The wayleave charges worked out for the trestle by MBPT include the return based on cost of the trestle and also value of the land below the trestle, which is calculated as per the RR rate for Zone 90/149. Instead of double counting, it is requested that the charges should be worked out only on return of the cost of trestle.	The trestle is constructed in the sea. For any structure erected on land or sea, the total cost of the said structure will include the cost of land / sea + Cost of structure. MBPT is unable to utilize the land given for Way Leave for any other purpose.
h.	Annual 4% escalation in wayleave charges has been ignored while working out the return based on cost of trestle.	The 4% annual increase does not have any relation to the return on capital expenditure but is basically for partially offsetting the eroding value of way leave fee on account of inflation. Further, these assets (trestle) are created by port and it is the legitimate right of the port to recover charges for its created landed assets as long as the assets exits, to recover the management costs incurred by MBPT.
i.	With cost of the trestle being recovered under Depreciation, MBPT is double counting by considering additional 6% provision as replacement cost. Replacement after end of life is to be received from wayleave recovery post replacement and no future capex (after 50 years) can be loaded on present wayleave.	The contention of ALL defies logic. It is trying it surmise that no cost should be loaded if the depreciated values is less or zero. The rates have been worked out as per standard accounting policy approved by Board by T.R. no.179 of 2016. Further, these assets (trestle) are created by port

		and it is the legitimate right of the port to recover charges for its created landed assets as long as the assets exits, to recover the management costs incurred by MBPT.
j.	No sooner the cost of the trestle has been recovered under Depreciation, wayleave charges for this portion should be charged as 50% of that being charged for land.	The contention of ALL defies logic. It is trying it surmise that no cost should be loaded if the depreciated values is less or zero.It is important to mention here that the maintenance and security of the trestle is the responsibility of the port hence the contention of ALL is not tenable. Further, Notwithstanding fixation of return based on capex, the MBPT is entitled to earn the return on the structure created beyond the estimated life of infrastructure. Further, the prevailing way leave charges cannot be lesser than the way leave charges of the prevailing previous year.
k.	For utility lines no wayleave or token wayleave should be charged.	The Clarification No.17 of Clause No.1 of 2018 states that the right of way charges will be determined on the basis of provision and rate as per the respective statues for the same. The rates of existing utility lines given earlier will be re-examined. However, it is to note that MBPT is a service organization and has created various assets / facilities for commercial exploitation by Port Trust users. MBPT is incurring huge costs for management and repairs / maintenance of the same. Hence, MBPT is within its rights charge utility lines.
l.	Wayleave charges should commence when work on the pipelines has started and not from when permission has been granted.	Commencement of way leave on the basis of actual date of commencement of work or first of the month following acceptance of the terms communicated for grant of way leave whichever is earlier, which in accordance with the Board's policy and also to ensure that the space for which permission is granted is not kept idle/unutilized by the user depriving the port's revenue. MBPT cannot sacrifice its revenue for the work delayed by its users.
m.	Interest proposed to be charged is at 18%. Rate of Interest should be as per SBI PLR rate.	In terms of Note No. 9(i) below SOR, interest on delayed payment will be charged as per Board's policy from time. Board by TR No.296 of 2020 has decided to charge interest as per rate of interest applicable in respect of SOR approved by the TAMP in other cases, i.e. the policy of levying interest on delayed payment.
n.	MGT volume fixed should be clearly mentioned.	This is not an issue before the TAMP.
3.	**The Tata Power Company Limited (TPCL)**	
	TPCL's comments are without prejudice to the pending writ petition and to one another and in the alternative:	

a.	Following documents referred in the MBPT letter are not enclosed: i. TR 123 of 1977. ii. TR 138 of 2009 iii. PGLM 2015. iv. Circular No. 1 of 2018 dt. 14.05.2018 v. TR 105 of 2018 vi. TR 257 of 2015 vii. Annexures I, II, III, IV, V & VI of LAC report enclosed as Annexure III to TAMP's letter dated 31.12.2019. In the absence of the above enclosures, the comments given herein are preliminary comments and we reserve the right to adduce the submissions as and when reply is received from MBPT.	[Copies of the said documents were subsequently made available by MBPT. They were forwarded to TPCL, with a request to furnish their comments. The TPCL has not responded till the case was taken up for finalization.]
b.	**Nominal Way leave cases:** There are 18 nominal cases granted by MBPT of which electricity distribution lines (14 cases) are laid to the customers and one transmission line (under registered agreement) more than 40-50 years back as per the then prevailing policy which being settled cases are not liable to be reopened as also stated in para 4 (vi) and (viii) of LAC report.	(i) The existing distribution lines given on nominal basis earlier will be re-examined on the basis of existing policy. As regards high tension/ underground transmission lines, wherever there are conflicts will be dealt on the case to case basis with LAC's recommendation as stated therein. (ii) Settled cases denotes Sp Way Leave permissions given earlier at rate of return of 15% per annum as per Ready Reckoner value of the relevant year as per the then applicable policy which is being adopted in accordance with TR No.269 of 2014 and these cases will not be reopened as brought out in para 4(c)(iii) of LAC report. The statement is vague as no such subsisting agreement has been produced by TATA. There is no such subsisting agreement and therefore, these cases are liable to be reopened. The contentions of TATA were examined by the Board and the same were rejected vide TR No. 73 of 2003. Writ petition has been filed in respect of 3 codes for which there is a stay, so revision will only be effected after Court's order for these 3 cases. In view of the above, MBPT is well within its rights to revise in terms of existing guidelines.
c.	**Retrospective fixation of the Special Way Leave (SWL) fees:** The proposal is for fixation of special way leave fee from 1.10.2012 to 30.09.2017 and policy for the same for 1.10.2017 to 30.09.2022, being for the retrospective period is not permissible.	(i) The Ministry of Shipping vide its letter No. Secy(S)/VISIT-Mumbai/Land management/2018(333951) dated 15 May 2019 has directed TAMP to fix the SoR for all areas of Mumbai Port including Township areas w.e.f 01 October 2012 onwards.

		(ii) Further, TAMP also requested Port Trust vide their letter dated 15.07.2019 to file a proposal to fix lease rental for all areas of Mumbai Port including township areas w.e.f. 01.10.2012 onwards. (iii) Accordingly, a proposal is submitted to TAMP for approval of SoR of Sp Way Leave fees for the period of 01.10.2012 to 30.09.2017 and to fix the rate of interest on arrears. (iv) While conveying the revision in terms of TR 138 of 2009, it was clearly brought out that this revision is applicable upto 30.09.2012 and same will be revised w.e.f 01.10.2012 and the same was communicated to TPCL. These terms were accepted by TPCL and other licensees and paid the revised sp way leave fees. A copy of letter is enclosed herewith. Based on these letters, TATA should have made provision in their accounts and therefore this cannot be a reason for making this prospective. (v) The revision though being from retrospective effect is based on the RR value of 2012, and therefore it is in order.
d.	**SWL and its applicability:** It is important to distinguish between commercial and infrastructure utilities which are regulated such as power utilities. Thus, any enhancement in the cost is automatically transmitted to the customers, resulting in increased tariff. Tata Power is in the business of generation, transmission and distribution of electricity under the provision of Indian Electricity Act and regulated by MERC. Tata power is also a Telegraph Authority as per Govt. Notification dt. 7.04.1955 (Annexure-1). Thus, the relevant provision of Indian Telegraph Act and Indian Telegraph Rules-2016 are applicable. In terms of Telegraph Rules-2016 (Annexure-2), the underground utilities are not chargeable in terms of clause 6(4) except for administrative charges and restoration charges and in case of overhead transmission lines, charges are permitted to be recovered only if the land beneath is "unlikely to be used for any other purpose" . Thus, in case of HT lines which are passing through CRZ/ Mangroves/ Creek/ Sea/ Saltpan, since the land below are not usable for any other purpose being creek/ under water (and not due to HT lines), so specified in the DCPR 2034, no charges should be received in accordance with these Rules. Accordingly, the	MBPT disagrees with the contention raised by TATA. The reasons for the same are elaborated below : (i). The cables that have been referred are power cables whereas they have referred to guidelines of Indian Telegraph Act and Indian Telegraph Rules, 2016. In terms of Clause No.3 pertaining to applicability, it is stated that these rules are applicable only in respect of underground or overground telegraph infrastructure. Thus, these rules are not applicable in this case. These aspects may be taken into consideration by TAMP. (ii). The actions and report of the LAC are based on PGLM 2014-15 guidelines and clarifications issued from time to time and hence correct. (iii). It may be noted that clause No.17 of Clarification No.1 of 2018 does not talk about application of rate. TPCL is a company registered under Companies Act and is a commercial organization. It is running on commercial basis with a motive of profit making. In view of thereof, TPCL cannot claim any special

	current proposals to HT lines through creeks/ water and u/g cables are not applicable in accordance with para 3(c) of the LAC report read with 4(viii) of LAC Report and clarification no. 17 of Clause No. 1 of 2018 mentioned therein.	privilege on the ground that it is a public utility and they perform public services and functions. TPCL as a commercial entity is bound and liable to pay Way Leave charges. MBPT also has to act taking into consideration the limited availability of resources and to ensure that it earns reasonable return when the limited land resource is being utilized for commercial purposes. It is also pertinent to point out that the overhead transmission line passes through MBPT land with the result that the land below it has to be kept open and development thereon could not be undertaken. Charges for way leave for occupation of air space, under ground, seabed and below seabed will be 50% of the land rate. Nevertheless, whenever there are conflicts, such specific cases will be dealt on case to case basis with LAC's recommendations as brought out in Para 4(c)(vi) of LAC report.
e.	**Power utilities to be categorized as "cargo-operated"** The policy for fixation of Special Way Leave fees from 2017 to 2022 provides that for non-cargo operated utilities, the rate should be based on highest of 58 categories mentioned in 4(a) of LAC Report whereas for cargo operated utilities, the rates shall continue to be based on SOR (Ready Reckoner Rates). Since, HT line/ cables are electricity infrastructure utilizes regulated by MERC, it is imperative that such utilities are bracketed together with cargo operated category so as to mitigate the effect of transmission of enhanced SWLF rates on the electricity tariffs, in the context of the statement in para 4(b) of LAC report that the increases when linked to market rate has an effect of increase to the extent of 91%-1154% which would result in exorbitant increase in the electricity tariff. It should be noted that electricity infrastructure utilities are also unlike real estate development and cannot afford to be linked to the market values prevalent in the real estate development as stated in para 4(b) of LAC Report.	Queries are premature. A separate proposal will be submitted to TAMP after Board's approval of SoR for Sp Way Leave cases w.e.f. 01.10.2017 till 30.09.2022. Proposal submitted before TAMP is for approval of SoR with effect from 01.10.2012 to 30.09.2017. Further revision will be dealt separately and it is not under present consideration of TAMP. Regarding the 29 lines, since TATA is a commercial organization, all the revision as per PGLM 2014/15 will be applicable from 01.10.2012 as per SoR approved by TAMP. Regarding Berthing Pocket and Approach Channel, 50% concession for under water areas have been extended to this Way Leave fee of TATA and only RR rates have been adopted as per agreement period. Berthing Pocket and turning circle is governed by T&C between MBPT and TATA which expired on 31.05.2019 and extended up to 31.05.2024. Further revision will take place for which the matter will be placed before LAC for further extension. In terms of Berthing Pocket and Turning Circle, unless MBPT renews their
f.	Consideration as a special case (i). The Power Purchase Agreement (PPA) of BEST with Tata Power (BEST supplies electricity to the Mumbai City including MBPT and its customers) is currently for	

	the period from 2019 to 2024. The effect of these increases would be passed on to the customers adversely affecting their electricity tariffs. It should be noted that Tata Power pays an annual amount of ₹.11 crs to MBPT for 29 such cases. Only for the berthing pocket and approach channel at Mahul, Trombay, the annual amount being paid to MBPT is ₹.12.52 crs. including wharfage, dredging charges being additional. A case in point being the berthing pocket which is treated as a license and kept out of the purview of the "cargo operated" category despite wharfage being paid to MBPT. (ii). It needs to be further emphasized that as per MBPT's own berth hiring policy (Annexure-3), the annual charges would not exceed 40L where even dredging is done by MBPT. As against this, the Coal Berth which is fully owned by Tata Power and being operated as a captive berth, the current SWLF/ License charges are ₹.6Cr/ annum with wharfage and dredging charges are additional. This shows a highly skewed nature of charges being recovered currently and the proposed enhancement would make them further so. Thus, it would be in the larger public interest to categorize electricity infrastructure utilities as cargo operated. Therefore, as provided in para 3(e) of LAC Report, special consideration be accorded to the power utilities and the rates are rationalized.	permission, the party has to remove the Way leave facility.
g.	**Applicability of SOR and market rates in CRZ/ water and their reduction** In cases where electricity utilities such as HT lines/ cables pass through CRZ areas, it is not correct to reduce the SOR/ market rates only to the extent of 50% as mentioned in 4(b) (iii) of LAC report. In fact, SOR maps enclosed as Annexure-II clearly show that the land boundaries upto which these rates are applicable and thus not applicable under water or creek etc. SOR guidelines for NDZ and CRZ stipulating 40% and further 80% reductions for them are also applicable to only on the land portions. None can substantiate that the SOR/ market rates for lands which are based on the real estate transaction could also be applied to the lands under water or creek, further reductions are justified and should be done. Since the land beneath cannot be used for any other purpose, only nominal rates should be charged. If at all a higher rate is to be adopted, an analogy can be drawn from the Rules framed for capital value assessment of property taxes of MCGM where the lands	Rules pertaining to MCGM are not applicable to Port Sector. Hence it has no comparison. As per Policy of Right of Way (Sp Way Leave) on MBPT land in accordance with PGLM 2014/15 issued by Ministry of Shipping, GoI and approved by the Board vide TR No.109 of 2019, while fixing Sp Way Leave charges the same has been calculated for occupation of air space, underground, seabed, water area and below seabed at 50% of the land rate abutting to the same. The way leave fee for over-ground/ overhead service shall be based on full rate and that for underground/ underwater will be at half the rate.

	adversely affected are valued at 1% /10% of the SOR (Annexure -4) which are adopted when a land is affected by CRZ/ Reservation etc.	
h.	**Rates for First Chemical Berth (FCB), 4(vi) of LAC report** The FCB had become operational on September 1995-96. The rates for the pipelines laid on FCB were derived on the basis of a fair return on capex subject to 4% cumulative increase every year. The rates now stand at ₹.231.38 per sq.mtr. per month for 300 mm dia pipeline upto 30.09.2019. Whether a fair return on the capex has since been recovered and if so, it would be in the fitness of things to stop further annual increases.	The 4% annual increase does not have any relation to the return on capex but is basically for partially offsetting the eroding value of way leave fee on account of inflation. Port Trust has to incur huge amounts for maintenance and staff salaries of these facilities and also these are assets of MBPT from which returns are to be generated. 4% annual increase has been uniformly adopted historically in all rent revision cases considering rate of inflation. Whether PT Dues has been recovered based on fair returns on capex in the past has nothing to do with the 4% increase. It may also be noted that TAMP while approving the SOR for port services does not consider the income generated from estate services. As long as assets are in existence, MBPT has right to recover fair amount of returns from the same keeping the market value in consideration.
i.	**Charges for unauthorized assignment / transfer** It is proposed in the para 5(m) of LAC Report that for unauthorized assignment / transfer of way leave permissions granted in the past due to merger, amalgamation etc. could be regularized by levy of 24 months way leave fees. This condition requires a modification that where change of name is due to the merger achieved through a legal process which does not involve any transfer of assets and where the approved scheme is stamped only for nominal amount since the merger is by operation of law. Such transfers should be permitted by charging only administrative fees and should not be designated as unauthorized assignments / transfer.	Way leave permissions are not transferrable as no right subsists in the Grantee except the permission to lay the service. To obviate the difficulty arising out of unauthorized transfers taking place a provision has been incorporated in the policy. Further, the amalgamation/ merger also involves transfer as the same is not an involuntary act but a voluntary act and therefore charges are leviable for the reason that the entity on record changes which accounts to transfer. Under the extant law and terms of contract, transfer of WL isn't permissible.
j.	**Govt. of India circular dated 15th Oct 2015** Under section 67 & 68 of Electricity Act and 10 and 16 of Telegraph Act, GOI vide this circular has notified adoption of a onetime compensation of 85% of SOR rates for tower bases and 15% thereof for the width of line corridors specified in the said circular. As mentioned in 4(viii) of LAC Report the clarification no. 17 of Clause No. 1 of 2018, the ROW charges will be determined on the basis of provision and rate if there is a stature for the same. Thus, provision of aforesaid circular needs to be applied subject to its applicability in terms of comments at point d. above.	As mentioned earlier, the cables referred to by TPCL are HT power cables and therefore the provisions of Telegraph Act is not applicable in these cases. Apart from the above, following is stated : (i) TPCL is utilizing MBPT's limited and valuable capital assets in the form of a portion of its land for laying of underground cables or overhead transmission lines which is permitted by charging Sp Way Leave fees since decades back as MBPT is entitled to be adequately compensated for utilization of its limited resources.

		(ii) Whenever overhead transmission lines/ cables are laid requiring erection of pylons, the land gets adversely affected and consequently it is not possible to utilize the affected land gainfully. Thus, in view of encumbrances created on the land, the owner/ MBPT needs to be compensated. (iii) TPCL is a Public Limited Company run on commercial basis with the motive of making profit. Therefore, TPCL requires to compensate MBPT for the use of its land at the rates decided by MBPT since most of the land occupied with their transmission lines cannot be used for any other purpose. This issue was already taken up before the Board where TATA's contentions were rejected by the Board vide TR No.73 of 2003. (iv) Nevertheless, whenever there are conflicts, such specific cases will be dealt on case to case basis with LAC's recommendations as brought out in Para 4(c)(vi) of LAC report.
k.	Para 7 of TR 108/2019 approved by the MBPT Board also states that the cases of conflict shall be dealt with on case to case basis with LAC's recommendation. In view of submission above, TPCL have carved out a case for special consideration.	By the above points, the TPCL is expecting that their cases will be examined by the port on case to case basis. The contentions of the TATA were already examined by the Port and same were rejected by the Board. There is no further ground to re-examine.

2. A joint hearing on the case in reference was held on 16 January 2020 at the office of the Authority in Mumbai. At the joint hearing, the MBPT made a brief power-point presentation of its proposal. The MBPT and users/ user organisations have made the following submissions during the joint hearing:

Mumbai Port Trust (MBPT)

(i). MBPT grants permission for Right of Way, without any allotment of land and any right of the land, to the applicant to lay a pipe/ cable on payment of some fees either Nominal or Special, where no tenancy right is created.

(ii). Special way leave is granted for commercial and beneficial use of the Port's land for any such right of way like laying of pipelines for crude oil, chemical, vegetable oil, gas or optical fiber cable, railway tracks, electric cables, transmission lines etc. by charging some special way leave fees over a period of time.

(iii). The Special Way Leave charges has been revised by the Board from time to time. The last being revised in the year 2009 by relating it to 6% p.a. return on land value as per the Stamp Duty Ready Reckoner-2009 with 4% increase every October for the period upto 30.09.2012 and is due for further revision from 01.10.2012. Also, as regards the period prior to 01 October 2012, the lease rentals were governed by the Supreme Court judgment.

(iv). Though the Land Policy Guidelines has been issued by the Government in the past, it was not made applicable to the Township areas of MBPT. Only in the year 2018, the Ministry vide a clarification has extended the applicability of the Land Policy Guidelines of 2015 to the non-home occupation/ commercial area of the township areas of Mumbai, Kolkata and Kandla Port.

(v). Thus, the proposal is for fixation of Special Way Leave for the period of 01.10.2012 to 30.09.2017, based on Land Policy Guidelines. The proposal has been approved by the Board of MBPT. For the period from 01.10.2017, we will come with a separate proposal.

(vi). Rate for existing Special Way Leave Fees from 01.10.2012 to 30.09.2017 has been arrived at 6% return per annum as per Stamp Duty Ready Reckoner 2012 with 4% increase p.a. In case the prevailing Spl Way Leave rate is higher than revised Sp Way Leave rate, the prevailing rate will be continued with 4% increase per annum.

(vii). For pipelines laid on the trestle of Old Pir Pau Pier (OPP), Stamp Duty Ready Reckoner rate has not been considered. It is based on return on investment.

(viii). The rate applicable for loop length of pipeline laid on trestle is taken at 60% of Way Leave rate of respective trestle.

(ix). Charges for way leave for occupation of air space, underground, seabed and below seabed will be 50% of above rate. License fee for water area would be 50% of the license fee of abutting land.

(x) The special way leave fee for Optical Fibre Cable will be at applicable rates but taking the width subject to a minimum of half a meter for computation instead of 1 meter.

(xi). Interest on delayed payment of monthly bills will be charged at 18% per annum as per the Board’s policy.

(xii). Interest will not be applicable on the differential arrears arising due to revision till raising of demand notice. If the party fails to pay as per the demand/ invoice within the stipulated time, i.e. 3 months from the receipt of demand notice/ invoice, interest will be applicable.

(xiii). In the event of faliure to achieve Minimum Guaranteed Throughput (MGT), the user should compensate the port by paying additional wharfage charges for the shortfall quantity.

(xiv). Right of Way Permissions are not transferrable. However, any case of specific requirement of the party transfer of Right of Way may be permitted by the Board in its discretion and subject to payment of all past dues, prevailing SoR and transfer fee equivalent to 12 months way leave as per the prevailing SoR and for the unauthorized assignment / transfer of way leave permissions granted in the past due to merger, amalgamation, etc. be regularized by levy of 24 months' revised Way Leave fee as per prevailing SoR

(Member (F), TAMP: What is the quantum of increase arising due to the proposed way leave charges?

(xv). There would be an increase in the range of 4% to 30% for the various areas over the existing way leave charges depending on the locality.

Aegis Logistics

(i). The way leave charges worked out for the trestle by MBPT include the return based on cost of the trestle and also value of the land below the trestle, which is calculated as per the RR rate. Instead of this double counting, it is requested that the charges should be worked out only on return of the cost of trestle.

(ii). For calculating return based on cost of trestle the life has been considered as 30 years. However, as per Government Order no. PR-24021/28/98/PG dated 19.08.1998 the life of a jetty has been fixed at 50 years. It is requested that this should be considered, and way leave charges worked out accordingly.

(iii). Annual 4% escalation in way leave charges has been ignored while working out the return based on cost of trestle.

(iv). With cost of the trestle being recovered under Depreciation, MBPT is double counting by considering additional 6% provision as replacement cost. Replacement after end of life is to be received from way leave recovery post replacement and no future capital expenditure (after 50 years) can be loaded on present way leave.

(v). No sooner the cost of the trestle has been recovered under Depreciation, way leave charges for this portion should be charged as 50% of that being charged for land.

(vi). For utility lines, no way leave or token way leave should be charged.

(vii). Interest rate proposed to be charged at 18% is too high.

(viii). MGT volume fixed to be clearly mentioned. Also, the combined throughput achieved in all the pipelines in a year should be counted towards MGT.

(ix). We are okay with a reasonable increase.

(x). The way leave is subject to revision every five years. There should be a cap on the quantum of increase during the next revision after five years. Please share copy of powerpoint presentation.

[MBPT : we will share]

BPCL

(i). The proposal does not include the case when pipeline are laid in multilayer stacks.

(ii). The way leave should be charged on actual area of pipeline rather than fixing a minimum width of 1 m on land.

(iii). Interest rate at 18% is very high.

(iv). Escalation cap of 50% at the end of 5 years is very high. This should be capped to the annual escalation rate of 4%.

RIL

(i). Our pipelines are laid under the ground. It is not impacting the MBPT traffic in any manner. Also, our pipelines handle raw products. It does not handle commercial products. We should, therefore, be charged, similar to Utility lines.

(i). Some pipelines are also laid on the sea bed, without affecting any traffic of MBPT. Hence, no charges should be levied on such pipelines.

(ii). Our optical fibre cable is 200 mm width. The special way leave fee for Optical Fibre Cable is prescribed for a minimum of half a meter for computation.

(iii). Permission for pipeline was given to Indian Petrochemical Corporation Limited (IPCL). Merger of IPCL with Reliance took place as per Government decision. Pipelines are not in our name. Transfer fee should not be levied on us.

HPCL and IOCL

(i). The quantum of increase should be realistic. Our rates are going to increase between 38% to 59%.

(ii). Interest rate at 18% is very high.

(iii). Seeking retrospective increase from 2012 onwards would jeopardise our financials. It will increase our burden, but we will not be in a position to pass it on to our customers.

(iv). We will give written comments.

Harbour Water Suppliers

(i). We supply water to the ships. Retrospective increase is unwarranted.

MBPT

(i). We had been indicating in our bills by way of a footnote, that the rates are subject to revision. Nevertheless, we will not charge interest for the said period for the differential amount due to rate increase.

3.1. As decided at the joint hearing, some of the users/ user organisations have furnished their comments/ made additional submissions, which were forwarded to MBPT as feedback information. The MBPT vide its letter dated 18 March 2020 has responded. The comments received from users/ user organizations after the joint hearing and the response of MBPT thereon are tabulated below:

Sr. no	Comments of Users or user organizations	Reply of MBPT
1.	**Reliance Industries Limited.**	
(i).	MBPT has categorized pipelines according to their usage in above said proposal and recommended tariff according to usage. MBPT has also defined Nominal Way Leave charges and Special Way Leave Charges and its applicability to various categories of pipelines and its usage. i). Special Way Leave Charges are charged by MBPT for Crude, Chemical, Veg, Gas pipeline, Optical Fiber Cable etc. where the pipelines are laid in a Common Corridor. ii). As described by MBPT in their proposal, Right of Way Permission is neither a lease nor license. It is only Right of Use. iii). The pipelines/ utilities laid in MBPT corridor are mainly of following types: a). Process Pipelines – e.g. Salt water pipelines required for Power Generation. b). Crude/ unprocessed Oil/ Gas pipelines – These	

	pipelines are basically industrial pipelines and NOT commercial pipelines, as product transferred through these pipelines is used for industries only and not for direct sale. c). Utilities – Firefighting water pipelines / pigging pipelines, Optic Fiber Cable etc. d). Commercial pipelines – These pipelines carry finish products those are ready for sale in Market. In this regard, our Comments / Suggestion are listed hereinbelow.	
(ii).	Some pipelines are laid below Ground and therefore these are not disturbing any surface activities above the pipelines. In such case we feel there should be nominal Way Leave Charges.	The WL charges that has been proposed for underground pipelines are 50% of overground pipelines and thus at nominal rates only. Apart from this, following is brought to the notice of Hon'ble TAMP : (i) Reliance is utilizing MBPT's limited and valuable capital assets in the form of a portion of its land for the laying of underground pipelines which is permitted by charging Sp Way Leave fees since decades back as MBPT is entitled to be adequately compensated for utilization of its limited resources. (ii) Reliance is a Public Limited Company run on commercial basis with the motive of making profit. Therefore, Reliance requires to compensate MBPT for the use of its land at the rates decided by MBPT.
(iii).	Secondly Way Leave Charges should be charged on the basis of actual width area/width occupied by pipeline.	As per the practice in vogue being followed, a minimum distance of 300mm on both sides of pipeline is taken for safety, repairs and maintenance purposes. Land cost in Mumbai city is very high and FSI is ranging between 2.5 to 4. MBPT is unable to utilize the land given for Way Leave for any other purposes. Therefore, the land of minimum width of 1 meter is taken into account for calculating the Sp way leave fees. Hence, it is requested to take note of this. The formula for calculation of Way Leave charges is shown below: Fee per month on land= length of pipeline x $\frac{\text{(External dia including insulation + 600 mm)}}{\text{1000 mm}}$ x Rate applicable (Subject to minimum width of 1 mtr)
(iv).	In our case our pipeline size is 200mm and MBPT is charging on basis of 1m width. Therefore, it is requested to charge on the basis of actual area occupied by pipeline for onshore pipeline.	

(v).	As regards Pipelines/ Optic Fibre Cable/ Utilities laid in offshore area at Sea Bed should not have any charges as these are neither occupying any land space nor disturbing the Sea Traffic.	(i) Reliance is utilizing MBPT's limited and valuable capital assets in the form of a portion of its land for the laying of underground pipelines which is permitted by charging Sp Way Leave fees since decades back as MBPT is entitled to be adequately compensated for utilization of its limited resources. (ii) Reliance is a Public Limited Company run on commercial basis with the motive of making profit. Therefore, Reliance requires to compensate MBPT for the use of its land at the rates decided by MBPT.
(vi).	Optic Fibre Cable is laid or Supervisory Control and Data Analysis (SCADA) which is basically for safety and security of the pipelines operation. This Optic Fibre cable is not at all used for any public use/ commercial purpose. Diameter of this cable is hardly 25mm and the same is sometimes clamped to pipeline and therefore Way Leave Charges should not be levied for Optic Fibre Cable which is an Integral Part of pipeline.	It may please be noted that in respect of normal pipelines minimum width is considered as 1 metre. Whereas, in respect OFC minimum width is considered as 0.5 metre. This is already on the lower side as envisaged by the petitioner. Therefore, there is no question of further reduction. It may also be noted that this a prevailing practice in the Mumbai Port and is already in vogue. It has been noticed by the Port that whenever such cables are damaged or of no use, the parties have a tendency of abandoning the same. The contract provides for charging of WL fees till removal of such pipelines/ cables. However, the parties tend to avoid this. Therefore, the way leave charges proposed are justified.
(vii).	MBPT is presently charging I.S. @ ₹.10/- p.m. to us for submarine pipeline and ₹.10/- p.m. for submarine cable and same charges may be continued.	Not acceptable by MBPT.
(viii).	Further, MBPT has mentioned that in their proposal they are charging Nominal Way Leave Charges for utility services like water pipelines, electric cable, telephone line etc. i.e. ₹.1/- or ₹.10/- per month. Here, we would like to bring your kind notice that Petroleum, Gas Pipelines etc., also serves utility purpose of industries and therefore should be considered as utility services as those utility services are feeding feed stock to Industries as described in foregoing para. In view of above justification the Way Leaves Charges should not be identical to all types as mentioned in our Point no. (iii) and there should be Nominal Charges i.e. Re.1/- or ₹.10/- per month for first three types, i.e. as mentioned in Point no. (iii) a & b. As all above pipelines are laid under Petroleum and Minerals Pipelines Act, 1962 and other related Act and being safest mode	(i) Reliance is a company registered under Companies Act and is a commercial organization. It is running on commercial basis with a motive of profit making. In view of thereof, Reliance cannot claim any special privilege on the ground that it serves as utility services for industries. Reliance as a commercial entity is bound and liable to pay Way Leave charges to MBPT for the use of its limited and valuable capital assets in the form of a portion of land for the laying of underground/overground pipelines at the rates decided by MBPT as the land occupied cannot be used for any other purpose. (ii) With regard to the 4% annual increase, it does not have any relation to the return on capital expenditure but is basically for

	of Petrochemicals / chemicals transportation, in view of safety, environment friendly and encouraging the industrial growth there should be nominal charges for the pipelines and charges of said pipelines should not be connected to Ready Reckoner as the area where pipelines are above not laid is not a habitable area and is only occupying pipeline corridor. Since above ground pipelines are passing through the pipeline rack and way leave fees are worked out considering the construction cost, payback time, etc therefore annual escalation of 4% over and above the payback should not be applicable.	partially offsetting the eroding value of way leave fee on account of inflation.
(ix).	Transfer of ownership Under Central Government disinvestment Policy Indian Petrochemicals Corporation Limited (IPCL) was merged with Reliance Industries Limited (RIL) vide High Court Order dated 12.06.2007. Therefore, this merger should not be considered as commercial transfer and no transfer fees should be charged.	There is no evidence to substantiate that the disinvestment policy is not of commercial nature as contended. However, the MBPT way leave policy is not based on whether the transfer is of commercial or non-commercial nature. All transfer are treated on par. It may also be brought to your notice that Way leave permissions are a not transferrable as no right subsists in the Grantee except the permission to lay the service. To obviate the difficulty arising out of unauthorized transfers taking place a provision has been incorporated in the policy. Further, the amalgamation/merger also involves transfer as the same is not an involuntary act but a voluntary act and therefore charges are leviable for the reason that the entity on record changes which accounts to transfer.
(x).	TPCL had communicated this merger immediately after High Court Order and are following up with MBPT for last 13 years. However, the pipeline is not transferred in TPCL's name till date. This is effecting on GST set off mechanism as well as insurance and other safety issues of the pipeline.	This is not an issue before the TAMP.
3.	**Harbour Water Suppliers Co. Pvt. Ltd.**	
(i).	HWSCPL supplies fresh water to ships / crafts barges in stream / harbour since 1983. The water is sourced from BMC. The pipeline is of 4" dia and is fully underground of 925 mtrs length connecting BMC main at Reay road to our filling point at Lakri Bunder.	(i) The Ministry of Shipping vide its letter No. Secy(S)/VISIT-Mumbai/Land management/2018(333951) dated 15 may 2019 has directed TAMP to fix the SoR for all areas of Mumbai Port including Township areas w.e.f 01 October 2012 onwards. (ii) Further, TAMP also requested Port Trust vide their letter dated 15.07.2019 to file a proposal to fix lease rental for all areas of Mumbai Port including township areas w.e.f. 01.10.2012 onwards.
(ii).	The MBPT has proposed to increase the rates based on Ready Reckoner (RR) rates of 2012 and recover the difference from us. The period for which the rates are proposed to be collected is retrospective i.e. from 1 October 2012 to 30 September 2017 for five years.	

(iii).	HWSCPL does business in very competitive environment with minimum margin.	(iii) In accordance with TR 109 of 2019, a proposal is submitted to TAMP for approval of SoR of Sp Way Leave fees for the period of 01.10.2012 to 30.09.2017 and to fix the rate of interest on arrears.
(iv).	RR rates are published around March each year and are known to MBPT. They could have implemented it from 2012 and collected the charges accordingly. This would have helped us to include the increased rates in our costing and billed to customers accordingly. At this stage it would be impossible for us to recover the arrears from our customers for past supplies.	(iv) While conveying the revision in terms of TR 138 of 2009, it was clearly brought out that this revision is applicable upto 30.09.2012 and same will be revised w.e.f 01.10.2012. and the same was communicated to Harbour Water Suppliers Pvt. Ltd.. Harbour Water Suppliers Pvt. Ltd. should have made provision in their accounts and therefore cannot be a reason for making this prospective.
(v).	If the proposed rate is approved, our business would be severely effected in the present economic slowdown.	(v) The revision though being from retrospective effect is based on the RR value of 2012, and therefore it is in order.
4.	**Bharat Petroleum Corporation Limited**	
(i).	BPCL has been regular in making timely payments to MBPT. Any revision in rates should be prospective & not retrospective as our accounts for the respective earlier years are already closed.	(i) While conveying the revision in terms of TR 138 of 2009, it was clearly brought out that this revision is applicable upto 30.09.2012 and same will be revised w.e.f 01.10.2012 and the same was communicated to BPCL. These terms were accepted by BPCL and other licensees and paid the revised sp way leave fees. A copy of letter is enclosed herewith. Based on these letters, BPCL should have made provision in their accounts and therefore cannot be a reason for making this prospective. (ii) The Ministry of Shipping vide its letter No. Secy(S)/VISIT-Mumbai/Land management/2018(333951) dated 15 May 2019 has directed TAMP to fix the SoR for all areas of Mumbai Port including Township areas w.e.f 01 October 2012 onwards. (iii) Further, TAMP also requested Port Trust vide their letter dated 15.07.2019 to file a proposal to fix lease rental for all areas of Mumbai Port including township areas w.e.f. 01.10.2012 onwards. (iv) Accordingly, a proposal is submitted to TAMP for approval of SoR of Sp Way Leave fees for the period of 01.10.2012 to 30.09.2017 and to fix the rate of interest on arrears. (v) The revision though being from retrospective effect is based on the RR value of 2012, and therefore it is in order.

(ii).	In instances of multi-layered stacks the actual surface area occupied is a division between the different pipes. MBPT proposal does not include the instance of pipelines laid in multilayer stacks.	The PGLM 2014-15 provides for framing of its own policy for right of way. Accordingly, MBPT has framed the policy which envisages the levy of charges to all the multi-layer stacks. Therefore, the issue raised by the ALL is more of challenging the policy rather than rates. The policy envisages that the calculation shall be based on width and length of the pipeline subject to minimum of 1 meter. Thus, the rates fixed by MBPT are in line with the policy even in the case of multi-layer pipelines. The broad features of the guidelines are as under : (i) For the purpose of Right of way leave charges, the area occupied by pipelines, other than those on trestle shall be calculated on the basis of width (subject to minimum of 1 meter) and length of those pipelines. (ii) In case of multi-layer stacks, the physical area occupied by the multilayer pipeline/conveyor stacks shall be considered and the respective users shall be billed accordingly. (iii) The formulae regarding calculation of Sp Way Leave fees have been indicated in Note no. 7 of the proposed SOR. (iv) For calculation of Sp Way Leave fees in case of multi-layer stacks, each individual pipeline up to 400mm diameter will be calculated as per the formulae shown in Note no. 7 of the proposed SOR.
(iii).	MBPT should charge way leave on actual area of pipeline rather than fixing a minimum width of 1 m on land.	As per the practice in vogue being followed, a minimum distance of 300mm on both sides is taken for safety purposes therefore, the land of minimum width of 1 meter is taken into account for calculating the Sp way leave fees as shown below: W.L. Fee per month on land= length x<u>(External dia including insulation + 600 mm</u>) x Rate applicable of pipeline 1000 mm (Subject to minimum width of 1 mtr)
(iv).	Escalation cap of 50% at the end of 5 years is very high. This should be capped to the annual escalation rate of 4%.	To bring in parity in the way leave fees in respect of the permissions granted in the past and the way leave permissions that may be granted in future and to enable port users to work out their future costs, a cap on the increase in way leave fees every 5 years was fixed at 50%. Accordingly, the terms and conditions were framed. The same is reproduced for ready reference. (i) It has been mentioned in the Terms and Conditions while granting permission to the party that the re-fixation of Way Leave charges will be after every 5 years on updated SoR or as decided by the Board time to time. However, while re-fixing in

		case, the prevalent way leave fee is higher than the rate worked out on the above lines, the higher prevalent rate should be continued with 4% increase p.a. (ii) With regard to the 4% annual increase, it does not have any relation to the revision/return on capital expenditure but is basically for partially offsetting the eroding value of way leave fee on account of inflation.
(v).	Utility pipelines are for statutory & safety reasons. The lines at Pirpau ex Salt Water Jetty are used to supply water for Firefighting & Utility purposes. These are for safety purposes & should not attract commercial rates.	The Clause No.17 of Clarification Circular No.1 of 2018 states that the right of way charges will be determined on the basis of provision and rate as per the respective statues for the same. The rates of existing utility lines given earlier will be re-examined. (i). BPCL has laid cooling water pipeline (10104927) (salt water) for firefighting requirement of their refinery at Mahul. The said pipeline has been laid on the MBPT land. This being a requirement for the refinery of BPCL which is a commercial organization registered under Companies Act with a motive of profit making. In view of thereof, BPCL as a commercial entity is liable to pay Way Leave charges. (ii) BPCL is utilizing MBPT's limited and valuable capital assets in the form of a portion of its land for the laying of underground/ overground pipelines which is permitted by charging Sp Way Leave fees since decades back as MBPT is entitled to be adequately compensated for utilization of its land resources at the rates decided by MBPT since most of the land occupied with their pipelines cannot be used for any other purpose.
5.	**Aegis Logistics Limited (ALL)**	
	Way leave charges for pipelines laid on trestle is calculated by port to recover investment and its return over the life of the trestle, which in this case has been considered by Port as 30 years. Old Pir Pau jetty has already been in operation for more than 50 years and all the cost plus returns incurred would have been accordingly more than recovered. Thus, way leave charges for pipeline laid on trestle from land to jetty should now be charged for the period under review at 50% of charges for land rate of ROW, as the said portion is on sea.	The trestle has been constructed in the year 1995. MBPT is spending significant amount of money for maintenance of structure to retain its life. In terms of TR NO.351 of 26.11.1991, the life of structure under Piled structure (Sr. VII) is 30 years and MBPT has considered the same in the calculations. The trestle is constructed in the sea. For any structure erected on land or sea, the total cost of the said structure will include the cost of land / sea + Cost of structure. MBPT is unable to utilize the land given for Way Leave for any other purpose.

6.	**Joint comments from HPCL, BPCL and IOCL**	
(i).	We have been making timely payments to MBPT on a regular basis. As books of accounts for the respective (earlier) years has already been closed, it is requested that any revision in rates may please be made on a 'prospective' basis and not on a 'retrospective' basis.	(i) The Ministry of Shipping vide its letter No.Secy (S) / VISIT – Mumbai / Land management/2018(333951) dated 15 may 2019 has directed TAMP to fix the SoR for all areas of Mumbai Port including Township areas w.e.f 01 October 2012 onwards. (ii) Further, TAMP also requested Port Trust vide their letter dated 15.07.2019 to file a proposal to fix lease rental for all areas of Mumbai Port including township areas w.e.f. 01.10.2012 onwards. (iii) Accordingly, a proposal is submitted to TAMP for approval of SoR of Sp Way Leave fees for the period of 01.10.2012 to 30.09.2017 and to fix the rate of interest on arrears. (iv) While conveying the revision in terms of TR 138 of 2009, it was clearly brought out that this revision is applicable upto 30.09.2012 and same will be revised w.e.f 01.10.2012 and the same was communicated to BPCL, HPCL and IOCL. These terms were accepted by BPCL, HPCL and IOCL and other licensees and paid the revised sp way leave fees. A copy of letter is enclosed herewith. Based on these letters, HPCL, BPCL & IOCL should have made provision in their accounts and therefore cannot be a reason for making this prospective. (v) The revision though being from retrospective effect is based on the RR value of 2012, and therefore it is in order.
(ii).	In instances of multi-layered stacks, the actual surface area occupied is a division between the different pipelines. MBPT's proposal does not include the instance of pipelines laid in multilayer stacks. It is requested that the same be considered for this purpose.	The PGLM 2014-15 provides for framing of its own policy for right of way. Accordingly, MBPT has framed the policy which envisages the levy of charges to all the multi-layer stacks. Therefore, the issue raised by the ALL is more of challenging the policy rather than rates. The policy envisages that the calculation shall be based on width and length of the pipeline subject to minimum of 1 meter. Thus, the rates fixed by MBPT are in line with the policy even in the case of multi-layer pipelines. The broad features of the guidelines are as under : (i) For the purpose of Right of way leave charges, the area occupied by pipelines, other than those on trestle shall be calculated on the basis of width (subject to minimum of 1 meter) and length of those pipelines.

		(ii) In case of multi-layer stacks, the physical area occupied by the multilayer pipeline/conveyor stacks shall be considered and the respective users shall be billed accordingly. (iii) The formulae regarding calculation of Sp Way Leave fees have been indicated in Note no. 7 of the proposed SOR. (iv) For calculation of Sp Way Leave fees in case of multi-layer stacks, each individual pipeline up to 400mm diameter will be calculated as per the formulae shown at Note no. 7 of the proposed SOR.
(iii).	The special way leave rates may be charged only on the actual area of the pipelines rather than the fixing a minimum width of 1 meter of land around the pipelines.	As per the practice in vogue being followed, a minimum distance of 300mm on both sides is taken for safety purposes therefore, the land of minimum width of 1 meter is taken into account for calculating the Sp way leave fees as shown below: W.L. Fee per month on land= length x<u>(External dia including insulation + 600 mm</u>) x Rate applicable of pipeline 1000 mm (Subject to minimum width of 1 mtr)
(iv).	It is opined that the escalation cap of 50% at the end of five years is very high. It is requested that this be capped to the annual escalation rate of 4%.	To bring in parity in the way leave fees in respect of the permissions granted in the past and the way leave permissions that may be granted in future and to enable port users to work out their future costs, a cap on the increase in way leave fees every 5 years was fixed at 50%. Accordingly, the terms and conditions were framed. The same is reproduced for ready reference. (i) It has been mentioned in the Terms and Conditions while granting permission to the party that the re-fixation of Way Leave charges will be after every 5 years on updated SoR or as decided by the Board time to time. However, while re-fixing in case, the prevalent way leave fee is higher than the rate worked out on the above lines, the higher prevalent rate should be continued with 4% increase p.a. (ii) With regard to the 4% annual increase, it does not have any relation to the revision/return on capital expenditure but is basically for partially offsetting the eroding value of way leave fee on account of inflation.
(v).	Interest on delayed payment has been proposed to be charged @18% per annum. It is submitted that this rate is very high and will have to be reduced substantially.	In terms of Note No.9(i) of SOR, interest on delayed payment will be charged as per Board's policy from time. Board by TR No.296 of 2020 has decided to charge interest as per rate of interest applicable in

		respect of SOR approved by the TAMP in other cases, i.e. the policy of levying interest on delayed payment.
(vi).	Utility pipelines are for statutory and safety reasons. The lines at Pirpau ex salt water jetty are used to supply water for firefighting and utility purpose. As these facilities are means for safety purposes, it is prayed that they need not attract commercial rates.	The Clause No.17 of Clarification Circular No.1 of 2018 states that the right of way charges will be determined on the basis of provision and rate as per the respective statues for the same. The rates of existing utility lines given earlier will be re-examined. (i) BPCL has laid cooling water pipeline (10104927)(salt water) for fire fighting requirement of their refinery at Mahul. The said pipeline has been laid on the MBPT land. This being a requirement for the refinery of BPCL which is a commercial organization registered under Companies Act with a motive of profit making. In view of thereof, BPCL as a commercial entity is liable to pay Way Leave charges. (ii) BPCL is utilizing MBPT's limited and valuable capital assets in the form of a portion of its land for the laying of underground/ overground pipelines which is permitted by charging Sp Way Leave fees since decades back as MBPT is entitled to be adequately compensated for utilization of its land resources at the rates decided by MBPT since most of the land occupied with their pipelines cannot be used for any other purpose.

3.2. The Tata Power Company Limited (TPCL) has furnished its additional comments. The said comments were forwarded to MBPT for its specific comments. The MBPT vide its letter dated 11 September 2020 has responded. The additional comments of TPCL and the response of MBPT thereon is tabulated below:

<table>
<tr><th>Sr.</th><th>Additional Comments of TPCL</th><th>Reply of MBPT</th></tr>
<tr><td>1.</td><td>Arrears and percentage increase in way leave fees as proposed by MBPT is as follows:
<table>
<tr><th colspan="2">Retrospective revision (25 cases*) of way leave from 1.10.2012 to 30.09.2017</th></tr>
<tr><td>Revised way leave fee for 2012-13</td><td>₹..3,11,98,421/-</td></tr>
<tr><td>% increase in 2012-13</td><td>30%</td></tr>
<tr><td>Arrears from 1.10.2012 to 30.09.2017</td><td>₹.3,87,96,867/-</td></tr>
</table>
*excluding 3 cases subjudice and status-quo granted by Hon'ble High Court since 2003.</td><td>No comments</td></tr>
<tr><td>2.</td><td>Supreme Court and High Court judgments on revision of rates :

The Supreme Court of India in its judgment dated 13.01.2004 Appeal (civil) 5559 of 201 J.H. Wadia v/s MBPT had interalia, answered the following question as to the status of MBPT as a landlord; the rent that it can charge being exempted from the rent control act and to act in a fair and reasonable manner.
The following principles have been laid down in the judgement :</td><td>The rate as per the Supreme court judgment are valid only for monthly tenancies, fifteen monthly leases, etc. and are not applicable in case of license, special way leave and validity of Supreme Court rates were only upto 30.09.2012. In fact, the MBPT Board from time to time has sanctioned</td></tr>
</table>

<table>
<tr><td></td><td>i). The position of law is settled that the state and its authorities including instrumentalities of states have to be fair and reasonable in all their activities including those in the field of contract.
ii). There is a need to maintain distinction between a private landlord and MBPT when it comes to charging market rates.
iii).Accepting the current market rates of real estate and working out a return on such rate by reference to the market trends would tantamount to indulging into profiteering.
iv). The exemption from the provisions of the rent control law casts an obligation on the state and its instrumentalities and authorities to comply with the public policy of ensuring a fair return of investments without charging exorbitant rates based on the prevailing market price of the land.
v). The only consideration which prevailed with the High Court and Supreme Court was one of reasonability and the need for striking balance before taking a long leap in the direction of an upward revision of rate.
Accordingly, the Supreme Court moderated the market rates otherwise proposed by MBPT. In that, the market rates of 1982 were applied from 1994 similar to that provided in the Rent Act.</td><td>revision of special way leave rates, the last revision being done by Board TR No. 138 of 2009 which was accepted by many users including TATA. While conveying the revision in terms of TR 138 of 2009, it was clearly brought out that this revision is applicable upto 30.09.2012 and same will be revised w.e.f. 01.10.2012 and the same was communicated to TPCL and other licensees and they are paying as per the revised way leave fees.</td></tr>
<tr><td>3.</td><td>The Policy approved by GOM in Govt. Resolution dated 12.12.2012 which was based on the principles laid down by Hon'ble High Court's order dated 25.08.2004 for revising the rates of lease etc, that the share of State Government as landlord has to be limited to 25% on which the GOM proceeded to fix the rate of return as 2%, 4%, 5% for residential, industrial and commercial purposes respectively.</td><td rowspan="2">The GOM resolution stated above is not relevant as it is not applicable to MBPT land. MBPT land is central government land and PGLM 2014/15 approved by the cabinet and issued by MoS, GOI is applicable to MBPT land including way leave fees and license.</td></tr>
<tr><td>4.</td><td>The GOM while granting license / way leave permissions for erection of plies, towers, stay poles of stay rails for O/H cables etc. follow the Rules laid down under Disposal of Govt. Land Rules, 1971 Sec. 39 (2) under MLRC, 1966 provide for charging annual rent @25 paise per pole and 50 paise per tower etc.</td></tr>
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