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USAID ENERGY POLICY PROGRAM

MONTHLY REPORT OCTOBER 2014

LEGAL ADVISORY SUPPORT FOR LNG
PROCUREMENT

November 2014

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LEGAL ADVISORY SUPPORT FOR LNG PROCUREMENT

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Memorandum

Watson, Farley & Williams LLP

To:	Akbar Yusuf, Masood Bhatti, AEAI EPP	Date:	7 November 2014
From:	Heike Trischmann, WFW	Our Ref:	53743436v1
cc:	Andrew Baird, WFW		

Monthly Report - October 2014

Watson, Farley & Williams LLP (“WFW”) has been engaged as international legal counsel by Advanced Engineering Associates International, Inc. (“AEAI”) under Subcontract No. EPP-C1-SC-008 (dated 26 July 2014), Delivery Order No. EPP-C1-DO-001 (25 July 2014) and Task Order-1 (effective 30 July 2014) to advise various stakeholders in, and the Government of (together the “Client”), the Islamic Republic of Pakistan (“Pakistan”) on, negotiate on their behalf and help them finalise, as applicable, predominantly the following:

- (1) all outstanding conditions subsequent under the LNG Services Agreement (the “LSA”) dated 30 April 2014 between Engro Elengy Terminal (Private) Limited (“EETPL”) and Sui Southern Gas Company Limited (“SSGC”), with particular focus on the direct agreements and option agreements required under clauses 4.1(e) and 4.1(f) of the LSA;
- (2) LNG supply agreement(s) for LNG importation into Pakistan under the LSA regime and the necessary tender documentation to satisfy regulatory requirements in Pakistan.

To enable WFW to fully perform these tasks, WFW subcontracted Vellani & Vellani Advocates and Legal Consultants (“V&V”) in Karachi, Pakistan, to resolve questions involving Pakistan law and the Pakistan regulatory regime.

WFW’s and V&V’s work on this assignment started on 30 July. We have previously reported on the progress we made on the above referred to tasks during the months of August and September 2014. In this memo, we set out below the work we have carried out during the month of October 2014 and key issues we faced and continue to face:

1. Conditions subsequent under the LSA

- (a) Our work on closing the LSA continues. We conducted 3 calls with the entire team, including Excelerate and their UK (Allen & Overy) and US lawyers (FD Law), EETPL and their Pakistan internal and external lawyer Tariq Nasir at the Pakistan law firm HMCBNR, SSGC and their external Pakistan lawyers, Liaquat Merchant Associates (“LMA”), and AEAI.

Smaller points were taken offline and discussed directly in a number of calls with Rahat Kamal on behalf of SSGC, Rahat and LMA, Tariq Nasir on behalf of EETPL/Engro and Allen & Overy on behalf of Excelerate as well as a number of calls within our WFW team, to discuss and negotiate, where applicable, outstanding issues on the:

- (i) FSRU charter direct agreement;

- (ii) generic direct agreement;
 - (iii) FSRU option agreement;
 - (iv) fixed assets option agreement;
 - (v) amendment agreement to extend the long-stop date.
- (b) Since our last monthly report for the month of September, we have prepared further redrafts of each of the agreements set out under (b)(i) to (iv) below. Please see latest drafts of each document attached. In particular, we made the following progress:

- (i) As previously reported, the generic direct agreement was finalised in September and sent as a draft document to EETPL's lenders for early comments. As the lenders have not yet finalised their due diligence etc. and can therefore not enter into the agreements straight away but will have to accede to them later on. To avoid having to renegotiate points with the lenders at the time of their accession, EETPL had sensibly decided to ask for their early comments to ensure a smooth accession process later on.

Although we were never told the identity of the lenders (i.e. local or international banks) this document was sent to, we have now received comments which, we were told by Tariq, were "lenders' comments". However, all the comments had been introduced into the document in text bubbles by Tariq himself. We are flagging this here as an issue because we conducted a call with FGE to the Asian Development Bank (ADB) to ascertain the status of their current involvement in the due diligence of the terminal for their potential involvement as lenders to EETPL. The ADB told us that until LNG had been sourced, their involvement was on hold. We expect this to be the position with the other banks as well. Therefore, if in fact the document was never actually sent to lenders for comments, we would have to expect their comments upon their later accession to these agreements, which may mean that certain points will be reopened and renegotiated after the documents have been signed by the current parties. In fact, in the last couple of days we have received another set of comments which were again characterised by Tariq as being "lenders' comments". Again, we were not told the identity of these lenders. This is all a bit confusing. However, neither set of comments was extensive.

We now anticipate that the generic direct agreement will be sent to the individual contractors for their comments week commencing 10 November.

Tariq's comments during the past month have become very slow and far between. This may be related to him doing other work, which may or may not be connected to the project, or that he was waiting for comments from the lenders or matters are getting delayed somewhere else. However, it has started to hold up proceedings. We were even asked several times by Excelerate and their lawyers whether we had any news from EETPL, i.e. their project partner.

- (ii) The FSRU charter direct agreement was also finalised in September between EETPL and SSGC and sent to Excelerate, their UK counsel, Allen & Overy, and their US counsel, FD Law for further comments. During October the document was finalised by all parties. Minor issues arose when notice provisions turned out not to have been properly aligned. Also, the more finalised the provisions of the direct agreement and the option agreements become, the more small gaps between them come to light. Tariq has very recently provided 2 new sets of comments, some of which were rejected by Excelerate and us on behalf of SSGC. We are not sure whether these are also "lenders' comments". However, the points we are currently discussing are relatively minor and, subject to further

comments being raised by Tariq, the document should be finalised in the coming days.

- (iii) The FSRU option agreement was finalised during the month of October. As previously mentioned, one of the schedules to this agreement is a form of sales agreement for the FSRU which, we agreed with Excelerate and their external lawyers, should be based on the international standard Norwegian sales form for ships (published by BIMCO). The draft FSRU sales form that WFW had prepared was further amended in accordance with the minor comments we received from the other parties and has now been agreed between the parties.

Another schedule contained the option price proposal in respect of the FSRU purchase option. One of the outstanding points was SSGC's acceptance of the projected option price for the FSRU during the 15-year term of the LSA. FGE had prepared their commercial advice on this issue. To help SSGC take a decision on this, we organised and conducted a call with Excelerate, their lawyers and commercial team/finance director. Due to FGE being in Hawaii at that time and the resulting time difference, FGE did not participate in these meetings. SSGC was represented by representatives of their finance department, Rahat Kamal and Mr. Shoaib Warsi. Excelerate's CFO gave a short outline of the basis of their pricing proposal and SSGC took the opportunity to ask questions. At the end of the call, SSGC stated that they were satisfied with the pricing proposal.

Currently, the only outstanding point on this document is to finalise some wording that needs to be inserted to reflect the position under the fixed assets option agreement as it affects the FSRU option agreement. However, this is still being negotiated between SSGC and EETPL.

- (iv) The provisions of the fixed assets option agreement have been developed further during October. However, there are still a number of outstanding commercial points. Negotiations have been delayed because the relevant people at SSGC were constantly unavailable due to their involvement in the tender process for another LNG import terminal and meetings related to that. We had raised this issue openly with the Minister and Mobin Saulat during our meetings in South East Asia because this new tender effectively blocked and continues to block our access to the only human resources within SSGC that could work on the LSA open issues. However, we understand that our comments continue to be ignored and so we continue to make slow progress on this document.

- (c) We also prepared further redrafts of the amendment agreement referred to under (b)(v) above. This agreement has now been signed. The parties also negotiated and signed 2 side letters to this extension agreement. Accordingly, the Long-stop-Date for providing the SBLC was extended to 23 October, and this condition has now been satisfied and the SBLC provided to EETPL. We prepared a short letter on behalf of SSGC to be signed by EETPL confirming satisfaction of this condition but have not yet received any comments on it. The Long-stop Date for providing the direct agreements and option agreements has been extended to 31 December 2014.

I attach copies of the relevant agreements and the SBLC and draft satisfaction letter.

- (d) Clause 4.1(g) of the LSA requires all permits which the Operator requires to be able to provide to the Customer the services under the LSA to be in the name of the Operator. We have asked Tariq for any update on this but to date we are not aware that any of these permits and/or notices have in fact been transferred to EETPL. This is still work in progress.
- (e) We previously reported that in our view the condition subsequent under clause 4.1(h) of the LSA has been fulfilled. This is now been agreed by the parties and for the record confirmed in writing as part of the signed extension agreement.

- (f) We previously reported that in the early days of October we finalised and submitted to SSGC and their Pakistan lawyers, LMA, our due diligence report in respect of the Project Documents (as defined in the LSA). We have not yet received any comments or questions on it by SSGC or LMA.
- (g) We wrote a large number of Emails in support of the above.

2. LNG supply agreements and tender procedures

Our work in respect of this task during October 2014 involved the following:

- (a) We reviewed the comments the Pakistan stakeholders prepared on the Qatargas draft long-term LNG sale and purchase agreement (LNG SPA) and prepared a memo with our comments to all the comments and questions raised by the stakeholders as part of the draft LNG SPA and as submitted in their "Executive Summary" document. We submitted our memo to FGE for their further input.

We also raised a number of technical questions in the memo which were subsequently forwarded by AEAI to Granada, technical advisers to the Port Qasim Authority. We received and reviewed and further discussed these comments with Mohsin Siddiqui of Granada.

During our meeting in Islamabad at the end of October, our comments were discussed by the stakeholders and additional questions considered. Together with FGE and Pakistan lawyers for each of the stakeholders we then developed a high level issues paper for submission to Qatargas. Please see our meeting report attached.

An ongoing concern is how to deal with the commissioning cargo(es). We need to understand when the terminal and Port Qasim may be ready for testing and how the terminal may best be commissioned. This requires input from Excelerate and technical advisers, Granada. Please see our meeting report on this issue also.

- (b) As previously stated, we discussed in detail our first draft master LNG sale and purchase agreement (MSPA) with FGE during our stay in Singapore in early October. We undertook further research on how to deal with certain provisions and then finalised the MSPA and submitted it to Pakistan stakeholders ahead of the Islamabad meetings at the end of October.

During the Islamabad meetings, together with FGE we explained our rationale behind certain provisions and the main differences between the provisions of the MSPA and those of a longer term LNG SPA generally and the Qatargas LNG SPA in particular. We have not yet received any comments on this document.

- (c) We had various calls with FGE to move these matters forward / update each other on progress, prepare the meetings, discuss the Qatargas LNG SPA, the tender process for MSPAs and the contents of the MSPA itself.
- (d) We wrote a large number of Emails in support of the above.

