USAID ENERGY POLICY PROGRAM

MONTHLY REPORT DECEMBER 2014

LEGAL ADVISORY SUPPORT FOR LNG PROCUREMENT

January 2015

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LEGAL ADVISORY SUPPORT FOR LNG PROCUREMENT

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WATSON FARLEY
&
WILLIAMS

MEMORANDUM

To:	Akbar Yusuf, Masood Bhatty, Jim Hicks, Tahawar Hussain, AEAI	**Date:**	5 January 2015
From:	Heike Trischmann, WFW	**Our Ref:**	54321814v1
Cc:	Andrew Baird		

Monthly Report - December 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**" or "**Operator**") and Sui Southern Gas Company Limited ("**SSGC**" or "**Customer**"), 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 in the period from August to October 2014. In this memo, we set out below the work we have carried out during the month of November 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 a number of calls on smaller points discussed them directly with SSGC's external legal counsel, Liaquat Merchants Associates ("**LMA**"), Tariq Nasir of the Pakistan lawfirm HMCOBNR 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; and

(iv) fixed assets option agreement.

(b) Since our last monthly report for November 2014, we have prepared further redrafts of the draft agreements set out under point 1.(a)(i) to (iv) above. Please see latest drafts of each document attached.

In particular, we made some further progress during meetings between SSGC and EETPL in Karachi on 15 and 16 December. Please see the detailed results below. Please also see our report of these meetings (attached again for your convenience).

(i) As previously reported, the <u>generic direct agreement</u> was finalised in September 2014 and sent as a draft document to EETPL's lenders for early comments. Comments were received and incorporated ahead of the Karachi meetings but some further amendments were required as a result. The resulting draft was sent again to the lenders for their confirmation. During the Karachi meetings, the lenders came back with one further comment, which was addressed and the lenders confirmed their agreement during the meetings. However, the lenders' counsel (White & Case) also mentioned that all their comments were only preliminary and subject to their continued review.

As previously reported, once agreed by SSGC and EETPL as well as the lenders the generic direct agreement required (i) tailoring for each underlying agreement; i.e. the implementation agreement and lease with the Port Qasim Authority (the "**PQA**"), the services agreement with Engro Vopak Terminal Limited, the pipeline construction contract with AU Engineering and the EPC contract with China Harbour, and (ii) sending to each counterparty for their comments.

As previously reported, in advance of the Karachi meetings we prepared a tailored direct agreement in respect of the implementation agreement and land lease and a summary note of its contents and effect for the PQA. The note was provided to the PQA during our time in Karachi, however, the PQA regards itself as a governmental authority which will not be required to sign this direct agreement. During the Karachi meetings we updated EETPL of this position and in a subsequent Email we encouraged EETPL to check some statements in this regard that were made by the PQA.

During the Karachi meetings, we amended the PQA direct agreement further together with EETPL and agreed that this draft should be forwarded to the PQA for their further comments. We have had written confirmation that this was done but we have not seen the relevant letter/Email to that respect.

During the Karachi meetings, we also agreed with EETPL that they would prepare tailored draft direct agreements for EVTL, AU Engineering and China Harbour which should be shared with us and then forwarded to the relevant counterparties. We have now had written confirmation from Tariq Nasir on behalf of EETPL that these drafts have been prepared and we were provided with copies thereof although our comments or confirmation had not been sought before sending these to the relevant counterparties. The relevant Email / letter attaching that draft direct agreement was, however, not forwarded to us.

In addition and much to our surprise, shortly after the Karachi meetings we received an Email from Allen & Overy on behalf of Excelerate with 2 additional draft direct agreements, which had apparently been sent to them on our behalf. We conducted various phone calls with Allen & Overy and Excelerate on these during which we clarified that we had no knowledge of the underlying agreements to which these direct agreements relate and that we could therefore not have requested draft direct agreements in relation to them. We have subsequently been provided with copies of the underlying agreements and are currently evaluating whether these require direct agreements and whether the LSA and the relevant option agreements need to be amended to refer to the relevant underlying agreements and to provide SSGC with the necessary right and process to enable it to novate these underlying agreements to itself or another party nominated by GOP. However, during our correspondence/ conversation with Exclerate/their US lawyers, FD LAW, it transpired that Excelerate has concerns over EETPL's resolve to sign these direct and option agreements. Apparently, Excelerate anticipates that EETPL will try not to sign these, thereby circumventing SSGC's right of step-in and takeover of the relevant agreements/infrastructure, which would ultimately allow EETPL to default under the time charter with Excelerate but not allow GOP to rescue to the project. We are therefore working with Excelerate to ensure these agreements will be signed by 31 January 2015.

Please see attached the relevant Emails / draft documents.

(ii) As previously reported, the <u>FSRU charter direct agreement</u> was finalised between EETPL, SSGC and Excelerate during October and November and, evidently, sent to the lenders but without our knowledge nor were we provided with the relevant Email/letter requesting lenders' comments. We subsequently received some comments from Tariq Nasir (with an explanation that they had, apparently, been received from the lenders) and some of these comments were agreed by us and Excelerate and incorporated in the draft direct agreement. Excelerate had reservations on some other amendments the lenders had apparently requested and provided alternative drafting. We never received Tariq Nasir's or the lenders' confirmation on that alternative drafting.

Just before the Karachi meetings, Tariq Nasir provided a clean copy of this agreement which also contained comments by the lenders. We had to prepare a comparison ourselves to identify these comments which is very bad practice. When trying to compare this draft to our latest agreed draft it transpired that the lenders must have commented on an earlier draft but we don't know which one as the draft did not contain a date. This is also surprising as they had previously provided comments on an earlier draft. We have asked Tariq Nasir/EETPL for clarifications but have received none.

Together with Excelerate we commented on this latest set of lenders' comments but this is very unsatisfactory as we don't know what further comments the lenders may have on our later draft. We have already complained to Tariq about the mismanagement of this and requested a full mark-up by the lenders of the latest draft direct agreement that had been agreed between EETPL, Excelerate and SSGC. We have had no update on this. In addition, the lenders have again stated that any comments from them are only preliminary and subject to further review of the document. As the document has now been agreed by all its counterparties, Excelerate and WFW rejected this comment by the lenders and requested a full and final set of comments from them.

Please see attached latest draft.

(iii) The <u>FSRU option agreement</u> was generally agreed during the month of October. The only outstanding point on this document was to finalise some wording that needed to be inserted to reflect the position under the fixed assets option agreement. This has now been inserted and agreed by Excelerate. The draft agreement was sent to the lenders for comments. We requested a full and final set of comments. Please see the attached draft agreement.

(iv) The provisions of the <u>fixed assets option agreement</u> were the main topic of negotiations during the Karachi meetings. During these meetings, the draft option agreement was agreed between EETPL and SSGC and subsequently sent to the lenders for their comments. Again, we requested a full and final set of comments. Please see the attached draft agreement.

(c) The Long-stop Date as defined in the LSA was extended by an extension and amendment agreement on 21 October 2014 and two side letters to it. The side letter by SSGC to EETPL states that a small part of the rights of way that SSGC should have obtained some time ago, had not yet been contractually transferred to it and therefore SSGC had to give the promise that it would construct the pipeline for which this right over the relevant land was needed, by 15 December 2014 otherwise this may impact the overall timelines of the project. We had been given an update by SSGC that this deadline would be achieved and the relevant Email was provided to you as part of our November report. We have today received an Email from Imran Sheikh that requests copies of the relevant rights of way. We have contacted SSGC for clarifications.

The Long-stop Date in relation to the transfer of permits to EETPL (see clause 4.1(g) of the LSA) and in relation to the direct and option agreements had been extended to 31 December 2014. We are providing an update on the permit and Certificates of No Objection (NOCs) transfer in the next paragraph but in relation to the direct and option agreements the Long-stop Date will have to be extended again. As part of the Karachi meetings, it was agreed that the Long-stop Date should not be extended further than 31 January 2015, although EETPL had requested an extension to end of May or even SSGC's waiver of this condition. We prepared a respective draft agreement and sent it to LMA for discussion and finalisation with SSGC. We also mentioned this to SSGC directly. We have not had any update on this since then. Please see attached the relevant draft agreement and Emails.

(d) Clause 4.1(g) of the LSA requires all permits and NOCs 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. The relevant confirmation of transfers have now been provided and been confirmed by our lawyers, Vellani & Vellani and by LMA. One NOC is still outstanding and we are chasing this. Therefore, the Long-stop Date may also have to be extended in relation to this condition subsequent. We attach the relevant documents and Emails.

(e) 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. We have resent this report to the new LNG team at SSGC but again, we have not received any comments from them. We will have to undertake a review and provide summaries of the new agreements referred to under point 1.(b)(i) sixth paragraph of this report.

(f) 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 December 2014 involved the following:

(a) As a result of the meetings between Pakistan State Oil ("**PSO**") and Qatargas that took place in Doha on 16th November 2014 to discuss the provisions of the LNG Sale and Purchase Agreement ("**LNG SPA**"), PSO had prepared a letter requesting certain amendments to the LNG SPA. The letter apparently went through various approval processes within GOP before it was finally sent to Qatargas on 19 December 2014. A copy of this letter was forwarded to us and AEAI by Rob Smith of FGE. We are currently awaiting Qatargas' response.

(b) No progress has been made in relation to the commissioning cargo(es). However, as part of the Karachi meetings PSO, SSGC and WFW discussed various different options of securing a commissioning cargo(es) either from Qatargas (with or without the involvement of Excelerate) and through a tender.

(c) The third day of the Karachi meetings (17 December) was devoted to the Master Sale Purchase Agreement ("**MSPA**"). We discussed a number of technical issues and outstanding comments from tax advisers as well as financial teams of both PSO and SSGC. As a result, WFW prepared a further redraft that was sent to SSGC, SNGPL, PSO and FGE for final comments. We have not yet received any response to this. Please find attached the relevant Email and redraft.

(d) We had various calls with FGE to move these matters forward and update each other on progress.

(e) We wrote a large number of Emails in support of the above.

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