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USAID ENERGY POLICY PROGRAM

MONTHLY REPORT JANUARY 2015

LEGAL ADVISORY SUPPORT FOR
LNG PROCUREMENT

February 2015

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MEMORANDUM

To:	Akbar Yusuf, Masood Bhatti, Jim Hicks, Tahawar Hussain, AEAI	Date:	11 February 2015
From:	Heike Trischmann, WFW	Our Ref:	54636764v1
Cc:	Andrew Baird		

Monthly Report - January 2015

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 December 2014. In this memo, we set out below the work we have carried out during the month of January 2015 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 and discussed them directly with SSGC’s external legal counsel, Liaquat Merchants Associates (“**LMA**”), Tariq Nasir of the Pakistan lawfirm HMCBNR on behalf of EETPL/Engro, Allen & Overy on behalf of Excelerate, and in some cases with White & Case on behalf of Engro’s lenders, 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 December 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. Please see the salient points of progress on these documents below.
 - (i) As previously reported, the generic direct agreement was finalised between EETPL, SSGC and the lenders during the Karachi meetings in December 2014.

As also previously reported, 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 of each tailored direct agreement to the relevant counterparty for their comments.

Regarding the direct agreement with the PQA, it is our understanding that after some continued reluctance the PQA is now considering the relevant draft direct agreement and promised their feedback for the second week of February. As of the date of this report we have not had any feedback. Also, it transpired that EETPL has sent an older version to the PQA and other counterparties that had not yet been agreed between EETPL and SSGC and we are currently ascertaining which copy was actually sent to the PQA. We hope that it was the draft we agreed during the Karachi meetings but EETPL is to update WFW on this. We attach the relevant Email.

We also previously reported that the generic direct agreement as agreed between EETPL, SSGC and the lenders during the meetings in Karachi were supposed to be tailored and sent to EVTL, AU Engineering and China Harbour. We were not copied in such correspondence and therefore did not know when these drafts were sent and which drafts were actually sent. It transpired in mid-January that none of these counterparties received the agreed drafts and Tariq Nasir and WFW prepared the relevant up to date drafts together and it was agreed that the counterparties would be sent these updated drafts. Please see the attached Email.

Regarding the EVTL direct agreement, it has now come to our attention that EVTL was sent an old November draft and SSGC was asked to sign this. We clarified with Tariq Nasir that this was not the draft agreed with the lenders. Engro then asked us to make further changes to this agreement which we have just agreed. We await further developments on this. Please see the attached Email.

As previously reported, 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. WFW review the underlying agreements and came to the conclusion that these agreements did not merit the requirement for a direct agreement. Please see the relevant Email attached.

When we sent our conclusion on these agreements, Engro asked us to reconsider the requirement for direct agreements for both of the construction contracts with AU Engineering and China Harbor in the same way, wanting us to drop the requirement altogether. Engro told us that is was facing difficulties getting the construction companies to sign these direct agreements although each of these companies agreed in their underlying contracts that they would sign a direct agreement with SSGC. Also, the requirement for direct agreements in respect of each of these construction contracts is set out in the LSA. WFW

contacted the lenders on this as they previously agreed that direct agreements were needed. The lenders have recently communicated that they did not insist on direct agreements because they are covered under the finance agreements and WFW is now considering the way forward on this to give SSGC the maximum protection under the circumstances. Please see the relevant Email correspondence attached.

- (ii) The FSRU charter direct agreement has now been finalised by all parties and the lenders. Please see the attached draft.
 - (iii) The FSRU option agreement has now been finalised by all parties and the lenders. Please see the attached draft agreement.
 - (iv) The fixed assets option agreement has now been finalised by all parties and the lenders. 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 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 was extended to 31 December 2014. No further extension has to our knowledge been agreed by the parties in writing. WFW was present at a meeting in which Chairman SSGC verbally agreed with CEO EETPL to extend the Long-stop Date to 31 January 2015 but the LSA requires any such amendments to be in writing. We have been chasing SSGC, ISGS and the MP&NR for updates.

The extension of the Long-stop Date in relation to the rights of way (ROW) was more complex. The relevant side letter by SSGC to EETPL dated 21 October 2014 states that a small part of the ROW 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. As part of the recent meetings in Islamabad early February 2015, SSGC updated us that the pipeline had been constructed and was currently being tested this week starting 9 February. However, from an analysis undertaken by LMA, it transpired that the underlying lease with one of the land owners, Pakistan Steel Mills, for land on which part of the pipeline was constructed had still not been signed by the parties but that it was in fact needed in order to sublet the land to EETPL. We are still following up on this.

- (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. These NOCs and permits are now also a condition precedent under the Qatargas SPA. The relevant transfers that are still required are from OGRA for the transmission licence of ETPL to EETPL and a confirmation from MP&NR and Ministry Shipping that EETPL does not need to undertake further steps in relation to an NOC from the MOD. We have asked MP&NR for help in this matter. We attach the relevant 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 twice over but again, we have not received any comments from them. We have now also provided summaries of the new agreements referred to under point 1.(b)(i) sixth paragraph of this report. Please see the relevant Emails attached.
- (f) As you can imagine, we wrote a large number of Emails in support of the above and conducted a small number of conference calls both from our London office as well as when we were travelling in Doha.

2. LNG supply agreements and tender procedures

Our work in respect of this task during January 2015 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. In response to that letter, meetings were called in Doha. On 19 January 2015, FGE and WFW met with PSO to finalise PSO’s LNG SPA redraft. The team met with Qatargas Marketing on 20 and 21 January 2015. On 22 January 2015 several meetings took place between MD PSO and MD ISGS and Qatargas’ head of Marketing, as well as between the Minister MP&NR and his Qatari counterpart. FGE and WFW were then briefed on the main points that had been discussed in these meetings but were not party to the meetings.

Further meetings were called in Doha in the following week, on 27 January 2015 between PSO, FGE, WFW and Qatargas and on 28 January 2015 between PSO, ISGS, WFW, Qatargas Marketing and Qatargas Shipping, PQA and CEO EETPL. This was followed by two break-out meetings: one between PQA, CEO EETPL and QG Shipping and one by MD PSO, MD ISGS and Qatargas Marketing. On 29 January 2015, MD PSO and MD ISGS had a breakfast meeting with FGE and WFW but none of the points discussed during the closed door meeting were revealed.

Further meetings were called in Islamabad in the following week. On 2 February the Minister P&NR met with PSO, ISGS, FGE and WFW as well as the newly appointed advisers to the Minister, the Mavericks, to go through any outstanding points on the LNG SPA. On 3 February 2015, PSO met with PQA, SSGC and MD ISGS to discuss open issues on the wider project. On 4 and 5 February PSO, ISGS, the Mavericks, FGE and WFW met with Qatargas Marketing to discuss open issues and without the Qatargas team to develop the LNG SPA further.

Please see attached our two trip reports.

- (b) No progress has been made in relation to the commissioning cargo(es). Qatargas is indifferent as to whether the cargo/es will be purchased FOB at Ras Laffan and transported to Port Qasim in the FSRU or delivered on a Qatargas vessel to the FSRU at Port Qasim. WFW have advised that contractually the cleanest way would be for Qatargas vessels to deliver the cargo/es DES at Port Qasim. The Minister favours the charter of the FSRU and the purchase of the commissioning cargo/es by a third party FOB at Ras Laffan outside the contractual framework of the LSA. We understand that the third party is supposed to be a, or a group of, CNG retailers. We have previously advised the Minister as to the risks he will be taking in undertaking this third party use of the FSRU and that this would be impossible to conduct “outside” the LSA. We repeated our advice during the Islamabad meetings.
- (c) The Master Sale Purchase Agreement (“**MSPA**”) has now been finalised. However, we may reopen certain provisions in response to discussions we had with Qatargas Marketing on the LNG SPA.
- (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.

