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# USAID ENERGY POLICY PROGRAM

## MONTHLY REPORT FEBRUARY 2015

LEGAL ADVISORY SUPPORT FOR  
LNG PROCUREMENT

**March 2015**

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## MONTHLY REPORT - FEBRUARY 2015

### LEGAL ADVISORY SUPPORT FOR LNG PROCUREMENT

Submission Date: March 11, 2015

Contract No: AID-EPP-I-00-03-00004

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## MEMORANDUM

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<b>To:</b>	Akbar Yusuf, Masood Bhatti, Jim Hicks, Tahawar Hussain, AEAI	<b>Date:</b>	11 March 2015
<b>From:</b>	Heike Trischmann, WFW	<b>Our Ref:</b>	55013624v1
<b>Cc:</b>	Andrew Baird		

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### Monthly Report - February 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-2 (effective 01 January 2015) 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 HMCGBNR and Andalib Alavi 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) Individual tailor made direct agreements based on the generic direct agreement;
  - (iii) FSRU option agreement; and

- (iv) fixed assets option agreement.
- (b) Since our last monthly report for January 2015, we have progressed to execution of some of the agreements and prepared further redrafts of the draft agreements (in the case of the PQA direct agreement and prepared new draft waiver letters in respect of agreements set out under point 1.(a)(i) to (iv) above. Please see latest copies and 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 (“EVTL”), the pipeline construction contract with AU Engineering (“AUE”) and the EPC contract with China Harbour Engineering Company Limited (“CHEC”), and (ii) sending of each tailored direct agreement to the relevant counterparty for their comments.

Regarding the PQA direct agreement, WFW were informed by LMA in mid February that in one of the all party meetings in Islamabad the PQA had refused to enter into a direct agreement with the lenders but agreed to sign a direct agreement with SSGC. This means that the parties had to restructure this agreement into 2 – one to be signed between the PQA, SSGC and EETPL and another one, once the lenders and EETPL have finalised their finance agreements, between SSGC, EETPL and the lenders. The requirement under the LSA to fulfil conditions subsequent by the Long-stop Date is only in respect of direct agreements with SSGC, therefore the agreement with the lenders may be negotiated after the Long-stop Date. WFW have now prepared a PQA direct agreement that is somewhat simplified from its original version and has all references to the lenders removed. SSGC has commented on it in the affirmative. Comments from the lenders are still outstanding. Once comments from the lenders are received and incorporated, the draft direct agreement will be tabled again to the PQA. Please see relevant correspondence and draft attached.

With respect to the EVTL direct agreement, this has now been signed by all the parties. Please see attached.

As also previously reported, in January Engro asked us to reconsider the requirement for direct agreements for both of the construction contracts with AUE and CHEC, wanting us to drop the requirement for such an agreement altogether. Engro told us that it 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 communicated that they did not insist on direct agreements because they are covered under the finance agreements. WFW considered the matter and concluded that at this stage in the project these contracts had mostly been performed apart from a 1 year warranty period during which only the benefit of the relevant warranties would be assignable to SSGC, if EETPL defaulted under any of the project agreements, including the LSA. WFW therefore prepared a waiver letter for SSGC in respect of a requirement for full direct agreements and a letter for each construction company agreeing to assign the benefit under their contracts should the relevant default arise. Each of AUE and CHEC have signed

their respective letter and the waiver letter is now with SSGC for signature, which signature, LMA (on behalf of SSGC) concluded, requires board approval.

- (ii) The FSRU charter direct agreement has now been signed by all parties. Please see the attached copy signature pages. In accordance with English law, these original agreements will be assembled by WFW when the original signature pages have been received which have been sent by the parties by courier.
  - (iii) The FSRU option agreement has now been signed by all parties. Please see the attached copy signature pages. In accordance with English law, these original agreements will be assembled by WFW when the original signature pages have been received which have been sent by the parties by courier.
  - (iv) The fixed assets option agreement has now been signed by all parties. Please see the attached copy.
- (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. In February two further extension agreements were signed by the parties, Amendment Agreement No. 2 extending the Long-stop Date to 31 January 2015 and Amendment Agreement No. 3 extending it further to 28 February 2015. Amendment Agreement No. 3 states that the parties may extend the Long-stop Date only one more time. Please see the relevant copies attached.
- (d) As previously reported, in relation to the obligation for SSGC to obtain the necessary rights of way (ROW) EETPL requires to enter into the project agreements and to operate the infrastructure, from an analysis undertaken by LMA on behalf of SSGC, it transpired that the underlying lease agreement with one of the land owners, Pakistan Steel Mills, did not allow for the rights to the land on which part of the 24" pipeline was constructed under the lease to be subleased to EETPL. Apparently, SSGC is considering asking EETPL for a waiver of the requirement to furnish a lease agreement that allowed for the rights to be subleased/ a sub-lease of these rights. Please see a package of board documents that WFW drafted or helped drafting which explains the matter further.
- (e) Clause 4.1(g) of the LSA requires all permits and NOCs which the Operator (EETPL) requires to be able to provide to the Customer (SSGC) 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 from ETPL to EETPL and a confirmation from MP&NR and Ministry Ports and Shipping that EETPL does not need to undertake further steps in relation to an NOC from the MOD. We have asked MP&NR and now also PSO for help in this matter. We attach further Emails and see also the relevant passage in the board papers in this respect.
- (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 resent this report to the new LNG team at SSGC twice over but again. We never received any comments or questions on it neither from SSGC nor LMA. It has recently transpired that SSGC Legal never received a copy of these agreements nor of the due diligence report. This has now been rectified. Please see the relevant Emails attached.
- (g) 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 previously reported, the last draft of the LNG Sales and Purchase Agreement (“**LNG SPA**”) between Pakistan State Oil (“**PSO**”) and Qatargas was sent out in early February 2015. That redraft was prepared by WFW and FGE mainly on the instructions of the Minister P&NR’s advisers, the Mavericks, and MD ISGS and contained a large number of provisions that WFW and FGE advised to be highly unusual in the industry as well as a number of issues that had previously been rejected by Qatargas and that had now been reopened by the Government of Pakistan.

In response of that draft of the LNG SPA, meetings took place in Doha on 17 February 2015, during which Qatargas basically rejected PSO’s/Government of Pakistan’s amendments. Please see the combined WFW/FGE trip report Email attached.

A further redraft was received from Qatargas on 22 February 2015 that had Qatargas’ response in relation to the price reopener and the credit provisions still outstanding.

A further redraft to that was prepared by WFW and sent by PSO to Qatargas on 9 March 2015. Please see the relevant drafts attached.

- (b) No progress has been made in relation to the commissioning cargo(es). The Email to Qatargas attaching the latest redraft of the SPA stated that PSO now wishes to take a commissioning cargo on QG vessels to arrive in Karachi around 18 to 20 March 2015. However, in further calls from MD ISGS and from EETPL that same day, we understand that the Minister has changed his mind again since then and still favours the commissioning cargo to be delivered on the FSRU upon the FSRU’s arrival. We attach the relevant Emails to that respect.
- (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.

