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USAID ENERGY POLICY PROGRAM

MONTHLY REPORT APRIL 2015

LEGAL ADVISORY SUPPORT FOR
LNG PROCUREMENT

May 2015

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Submission Date: May 16, 2015

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

Order No: AID-391-TO-12-00002

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MEMORANDUM

To:	Akbar Yusuf, Masood Bhatti, Jim Hicks, Tahawar Hussain, AEAI	Date:	16 May 2015
From:	Heike Trischmann, WFW	Our Ref:	55389845v1
Cc:	Andrew Baird, WFW		

Monthly Report - April 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-002 (effective 01 April 2015) and Task Order-3 (effective 01 April 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) commissioning of the EETPL terminal in accordance with the provisions of the LSA; and
- (3) 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 2014. We have previously reported on the progress we made on the above referred to tasks in the period from August 2014 to March 2015. In this memo, we set out below the work we have carried out during the month of April 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 continued to discuss (mainly by Email) the open issues directly with SSGC’s legal department and its external legal counsel, Liaquat Merchant Associates (“**LMA**”) and with Sheikh Imran-ul-Haque, Andalib Alavi and Sohail Kassamali on behalf of EETPL/Engro, as well as in a number of calls within our WFW team. These open issues continue to be:
 - (i) the PQA direct agreement between the Port Qasim Authority (“**PQA**”), EETPL and SSGC (without the lenders);

- (ii) the grant to SSGC of the relevant rights over land from Pakistan Steel Mills on behalf of EETPL; and
 - (iii) the transfer of the certificate of no objection (NOCs) from the Ministry of Defence (MOD) from EETPL's parent company to EETPL as the Operator under the LSA.
- (b) In accordance with clauses 4.1€ and (f) of the LSA, EETPL has to negotiate and obtain signatures of various direct agreements and option agreements in relation to the project assets and project documents. As reported in our last monthly report for March 2015, we have now executed the majority of the required agreements and are awaiting signature of a number of other draft documents, including the PQA direct agreement. These were all sent to you as part of previous monthly reports, however, please see the salient points of progress on these documents below.
- (i) Regarding the PQA direct agreement, as previously reported, after various attempts to create a document that was agreeable to PQA, PQA (their external lawyer, Mr Isani) had drafted their own agreement which was amended by WFW in agreement with and with input from SSGC and EETPL and sent to PQA for approval. After a long silence we called Mr Isani and found out that he had approved our amendments some time back but that had never been officially communicated by him or PQA to us or any of the stakeholders. Despite Mr Masood Bhatti working with WFW to ensure that this document be signed at the earliest opportunity, we are still awaiting progress on this matter. Please see the latest Email in this regard.
 - (ii) As also previously reported, in March 2015 SSGC agreed with EETPL to waive the requirement for a full direct agreement in respect of the construction contracts with AUE (for the Connecting Pipeline) and CHEC (for the jetty and relevant unloading facilities) because the only outstanding benefit under those agreements that could be transferred at this stage was the benefit of the warranties the construction companies had given to EETPL in respect of their work and that could be claimed under if any breach had occurred during the 12-month warranty period starting from hand over. Instead, the construction companies agreed to assign these warranties to SSGC in case of an EETPL default. WFW's waiver letter to that respect was approved for signature by SSGC's board of directors on 17 March 2015. We don't know whether this waiver letter has in fact been signed and issued by SSGC to EETPL. We have asked SSGC for an update.
 - (iii) The EVTL direct agreement is **closed**. A duly signed and dated copy has previously been enclosed.
 - (iv) The FSRU charter direct agreement is **closed**. A duly signed and dated copy has previously been enclosed.
 - (v) The FSRU option agreement is **closed**. A duly signed and dated copy has previously been enclosed.
 - (vi) The fixed assets option agreement is **closed**. A duly signed and dated copy has previously been enclosed.
- (c) Clause 4.1(d) of the LSA sets out SSGC's obligation to obtain (on EETPL's behalf) the necessary rights of way (ROW) EETPL requires to enter into the project agreements and to operate the infrastructure. As previously reported, the only outstanding ROW is a lease agreement between Pakistan Steel Mills as the owner of the land on which the Custody Transfer Station (CTS) between the Connecting Pipeline and the SSGC Branch Pipeline (both as defined in the LSA) are located that is wide enough to allow for the rights to the land to be subleased to EETPL. Although we have never seen a copy of it, we believe that SSGC currently has a lease agreement in place but that does not allow the

sublease to a third party. As previously reported, in accordance with clause 4.2 of the LSA, SSGC has asked EETPL for a waiver from the requirement to furnish a lease agreement that allows for the land rights to be subleased/ a sub-lease of these rights. We have not seen a copy of the letter of request nor do we know whether EETPL has given such a waiver (if asked for) but have asked SSGC for a status report.

- (d) Clause 4.1(g) of the LSA requires all permits and NOCs which the Operator (EETPL) needs to be able to provide to the Customer (SSGC) the services under the LSA to be in the name of the Operator. The only outstanding issue, which we had previously believed to be closed, is the transfer of the relevant NOC from the Ministry of Defence (MOD) the request for which the MOD dismissed as too technical and legal and which no other Ministry or GOP entity (including MP&NR) seems to want to be responsible for. As a result of further discussions with MP&NR, WFW, SSGC and EETPL, a letter was sent by MP&NR to SSGC on 17 March 2015 for SSGC to raise its concerns directly with MP&NR and request relevant actions. We believed SSGC to not have responded to this letter within the given deadline and therefore considered the matter closed but it recently transpired that there has been some further correspondence between the MP&NR and SSGC on this issue. However, in accordance with AEAL's instructions, we did not follow this up any further as this is an issue strictly between the GOP and its stakeholders and not an area international legal consultant should/need to get involved in. We will report on this again, if new information happens to come to our attention.
- (e) Clause 4.1(e) of the LSA requires EETPL to provide copies of all Project Documents (as defined in the LSA) for SSGC's review. In October 2014, we prepared a due diligence report on these documents for SSGC's attention and, where necessary, action. We never received any comments or questions in respect of it so, we don't know whether the report was actually ever read and any of the actions followed, however, we consider this issue closed.
- (f) The Long-stop Date as defined in the LSA is the date before which all the conditions listed in clause 4.1 of the LSA should have been fulfilled or waived. This date was extended by amendment agreements 1, 2 and 3 to 28 February 2015. Amendment Agreement No. 3 states that the parties may extend the Long-stop Date only one more time. In their board meeting on 17 March 2015 SSGC's board of directors approved the further extension of the Long-stop Date to 30 March 2015. We have not seen a copy of the signed amendment agreement No. 3 so don't know whether it has in fact been signed nor do we know what agreement the parties may have reached regarding extension of the Long-stop Date beyond the end of March 2015 but have asked SSGC for a status report.

2. LNG supply agreements and tender procedures

Our work in respect of this task during April 2015 involved the following:

- (a) As previously reported, after the meetings in Doha on 1/2 April 2015 the next redraft of the LNG Sales and Purchase Agreement ("LNG SPA") between Pakistan State Oil ("PSO") and Qatargas was sent by PSO to Qatargas on 10 April. Since then, QG and PSO tried twice to arrange follow up meetings during April 2015 which did not materialise. Instead, the parties exchanged 2 further redrafts on what appeared to be largely the same points for clarification. Further meetings on the terms of the LNG SPA took place eventually on 7th and 8th May 2015 in Islamabad. During the meetings the parties agreed all but 4 points and the agreed draft is still subject to the approval of QG's internal finance and legal departments as their relevant people could not join the Islamabad meetings in person. The 4 outstanding points are:
 - (i) Price (which was discussed but not agreed during separate meetings),

- (ii) the issue of whether PSO/GOP would be able to send QG an official letter that compounding in Pakistan was anti-Islamic so that the 3 references in the LNG SPA to compounding interest upon payment default could be removed,
 - (iii) the relevant conditions precedent under the LNG SPA,
 - (iv) confirmation by PSO that PQA had agreed to recalculation of the port tariff for LNG carriers and reduce or cap that tariff at US\$285,000 per LNG carrier per calling at Port Qasim. Please see the latest draft and relevant Email attached.
- (b) In April 2015 (and although after the event) WFW together with FGE also helped finalising the arrangements regarding the commissioning cargo. We previously forwarded a copy of the signed LNG waiver agreement that needed to be put in place to be able to undertake commissioning in the proposed way which differed from that set out under the LSA. We still have not been able to obtain a copy of the signed subcharter agreement for the commissioning cargo, however, we have asked EETPL for a copy of this.
- (c) In April 2015 WFW together with FGE also helped to prepare and finalise the arrangements for the FOB import of a further 4 cargoes using the FSRU as a shuttle LNG carrier. Again, the cargoes were sold by Qatargas and the FOB MSPA that PSO and Qatargas had signed for the commissioning cargo. WFW's work regarding these 4 new FOB cargoes involved the review of and preparing amendments to EETPL's redrafts of the FSRU subcharter agreement and the LSA waiver agreement that had been prepared for the commissioning cargo as well as advising PSO in relation to their terms. Please see the signed versions of both agreements.
- (d) As previously reported, the Master Sale Purchase Agreement ("**MSPA**") was finalised amongst all the Pakistani stakeholders in January 2015. However, we reconsidered certain provisions in response to discussions we had with Qatargas on the LNG SPA and sent a redraft to PSO on 8 April 2015 for their consideration, and where necessary also the consideration of SSGC and SNGPL. This now forms part of the tender package for spot cargoes during the months of July through October that WFW and FGE were helping PSO and the GOP put together, drafting and revising and advising on various PSO comments and suggested redrafts. Apart from the MSPA, the package comprises the main bid document that sets out the rules of the tender, a confidentiality agreement, a confirmation notice for each of the 4 cargoes and it attaches the terminal regulations for the EETPL import terminal (which WFW and FGE were not involved in preparing, negotiating or revising). We attach the latest drafts that was sent earlier today.
- (e) We had various calls with FGE and PSO/ODC and internally within WFW, particularly on the tender process and documents to move these matters forward and update each other on progress.
- (f) We wrote a large number of Emails in support of the above.

