

OMV Petrom observations and comments on the final draft of the Terminal Use Agreement proposed by the Operator of the Alexandroupolis Independent Natural Gas System, Gastrade S.A. and subject to public consultation by RAE – The Regulatory Authority for Energy in Greece

General comments:

1. Considering the fact that there are many clauses referring to other documents and also the fact that these documents should be crosschecked when analyzing, we would like to reiterate that, for consistency purposes, the full package of the final documents should have been made available for analysis (i.e. Tariff Code (TC), Inter – User Agreement (IUA), etc.).
2. As a general observation from commercial perspective and also based on the draft of IUA received from Gastrade, we can comment that we would have expected a different approach with a sense of simplifying back office work, with the terminal operator acting more like a "central counterparty" which is able to settle the positions of all the Users, enabling us to avoid managing different contractual business relations with any potential User of the Terminal which may become a Borrower or a Lender, as the case may be. At a certain point, a business relation (even only invoicing procedure) may not be possible due to reasons such as Compliance, Sanctions, etc. Such different approach may also be settled through different payment terms established by the Terminal Operator between Borrowers and Lenders, avoiding thus any extra financial costs implied by a "clearing house" mechanism.
3. Moreover, as a general comment from Tax perspective, the currently described mechanism in the TUA, TAC and IUA (as stated before, the last being a draft provided by Gastrade) may generate various difficulties from a tax perspective at the level of the Terminal Users. Therefore, OMV Petrom proposes that the applicable Greek tax related obligations at the level of the Users (e.g. tax registration, issuance of invoices, applicability of taxes / duties) for each particular type of transaction (e.g. Retainage, replenishment of Operational Heel using the LNG Cargo unloaded by the Users, borrowing and lending of LNG between the Users) are thoroughly analyzed and also confirmed (e.g. with Greek tax authorities) in order to have additionally clarity in this respect. In case the envisaged mechanism entails a high level of complexity for the Users in fulfilling the applicable Greek tax obligations, OMV Petrom recommends that alternative solutions are found in order to address these issues.

As also previously mentioned when providing comments in relation to the TAC, our tax consultants informed us that the Terminal Users would have the obligation to issue invoices to the Terminal Operator in relation to the transfer of title to LNG (from the Users to the Operator) as a consequence of LNG Retainage and/or replenishment of the LNG Operational Heel (in case of using the LNG cargo unloaded by the Users in the Terminal). More specifically, these operations would normally be considered as taxable transactions for VAT purposes and, in addition, the Terminal Operator might have to be assimilated to an end user from an excise duty perspective (therefore, also generating excise duty registration and compliance obligations at the level of the Users). We note that, even if the mechanism will be implemented without the need to issue invoices on every transaction (but only at year end), the annual invoices to be issued by the Users to the Operator (e.g. for Retainage / Operational Heel) will still lead to the tax obligations previously described.

In light of the above, we reiterate our previous recommendation to analyze any potential alternatives in order to avoid the transfer of title for the LNG Retainage / LNG Operation Heel and the possibility for the Terminal Operator not to be considered as an end user from an excise tax perspective - e.g. the possibility that, based on the nature of the Terminal Operator's license, LNG Retainage / Operational Heel to be considered as used into the production process (transformation of LNG into natural gas).

Separately, as regards to the LNG Borrowing and Lending, we understand that each distinct borrowing and lending between the Users (i.e. including the return of borrowed inventory) will be made through a transfer of gas resulted from regasification (i.e. "Regasified LNG") - and not through the transfer of the physical LNG stored in the Terminal before regasification. We note that this also influences the applicable VAT treatment – more specifically, in this case, each lending (and the return of borrowed inventory) between the Users should normally be seen, for VAT purposes, as a delivery of natural gas through a gas distribution system (instead of a standard local supply of goods which takes place in Greece). Same as above, we recommend that the related tax obligations at the level of the Users (e.g. issuance of monthly invoices for each distinct B&L transaction between the Users) are thoroughly analyzed and, if the case, potential alternatives are found in order to address the difficulties which may arise from a tax perspective.

No.	Article as per the proposed TAC draft	Proposed changes by OMV Petrom SA	Comments
1.	<p>3.3 Failure to Satisfy Conditions; Damages payable to Terminal Operator</p> <p>[...]</p> <p>(b) Upon termination of this Agreement pursuant to clause 3.3(a), Terminal Operator shall be entitled to encash the Terminal User's Guarantee provided by such defaulting Terminal User as liquidated damages. It is clarified that the Terminal User's Guarantee may be insufficient to cover the damages incurred to the Terminal Operator, and that Terminal Operator's remedies shall not be</p>	<p>OMVP proposes the elimination of: "It is clarified that the Terminal User's Guarantee may be insufficient to cover the damages incurred to the Terminal Operator, and that Terminal Operator's remedies shall not be limited drawing against the Terminal User's Guarantee".</p>	<p>OMVP considers that, if the amount is seen as liquidated damages for failure to observe the conditions in 3.2 (b), then this should be the penalty previously set by the Parties.</p>

	limited drawing against the Terminal User's Guarantee.		
2.	<p>6.2 Capacity Fees</p> <p>[...]</p> <p>(f) If the Services are not made available by Terminal Operator to Terminal User, due to action or inaction solely the responsibility of Terminal Operator/Affiliate or its contractors then the Capacity Fee payable by the Terminal User will be proportionally reduced to account for the corresponding reduction in Prevailing Nomination; unless the Services are not provided for reasons attributable to:</p>	OMVP proposes the elimination of the following points in letter (f): i), ii), iv), v).	<p>OMVP considers that the capacity fee should also be proportionally reduced in case of terminal maintenance which reduces the Services made available to the Terminal User.</p> <p>OMVP considers that a FM case suspends the obligations of all the Parties.</p> <p>If case point iv) is not eliminated, it should be detailed and linked to the IUA.</p> <p>Regarding point v), OMVP considers that such case can only apply if it involves Terminal User's fault, therefor we propose to eliminate it.</p>
3.	<p>6.3 Use it or Lose it</p> <p>[...]</p> <p>(e) If, with regard to any Day, after selling all Unreserved Capacity, Terminal Operator is able to resell the Unused Capacity, then Terminal Operator will reimburse accordingly the Terminal User for the pro rata portion of the Unused Capacity, sold to another User, less the Administrative Fee, by providing an invoice setting out the gross amount of reimbursed Capacity Fees (less the gross amount of the Administrative Fee).</p>		<p>It should be clarified that the Administrative Fee should be mentioned as a separate line on the respective invoice – and the tax treatment would be applied in accordance with the applicable tax rules for each distinct type of transaction (i.e. reimbursement of Capacity Fees vs. Administrative Fee).</p>
4.	<p>7.2 Commercial Operation Date</p> <p>(a) The Commercial Operation Date is expected to occur within the twelve (12) month</p>		<p>OMVP considers that the FID should be a fixed date. OMVP noticed that the FID date was not included in the definition section, all the terms being rather flue.</p>

	period commencing twenty-four (24) months after FID Date (the “First Window Period”); and shall be determined as follows:		
5.	<p>7.2 Commercial Operation Date</p> <p>(b) The Terminal Operator may at any time prior to the occurrence of the Commercial Operation Date notify the Terminal User in writing that it has determined (acting reasonably) that the completion of commissioning of the Terminal has or is likely to be delayed (such notice being a “Commissioning Delay Notice”). If the Terminal Operator issues a Commissioning Delay Notice, then the Window Period or date defined in the latest Notification issued by Terminal Operator shall be extended by a period equal to the period by which completion of commissioning of the Terminal has been, or is likely to be, so delayed.</p>		OMVP considers that a limited term for Commissioning delay notice is still needed, the 36 months term is rather large.
6.	<p>8.5. LNG Operational Heel</p> <p>[...]</p> <p>(b) If, acting as a Reasonable and Prudent Operator, Terminal Operator identifies a need to replenish the LNG Operational Heel, then Terminal Operator shall have the right to replenish the LNG Operational Heel using, at its discretion, LNG from any LNG Cargo unloaded at the Terminal, by any User.</p>		<p>In case the Terminal Operator replenishes the LNG Operational Heel using LNG from the LNG Cargos unloaded by the Users at the Terminal, the Users would have to issue invoices to the Terminal Operator for the respective transactions (sales).</p> <p>From commercial and fiscal perspective we consider that is necessary to insert provisions regarding the settlement / invoicing method between the Terminal Operator and the Terminal User for this quantity.</p>
7.	10. RETAINAGE		The Terminal Users would have to issue invoices to the Terminal Operator for this type of transaction (sale). From commercial and fiscal perspective we

			consider that is necessary to insert provisions regarding the settlement / invoicing method between the Terminal Operator and the Terminal User for this quantity.
8.	12. INVOICING & PAYMENT 12.1 Invoices		The current version of Article 12.1 does not include any provisions in respect of the invoices to be issued by the Terminal Users to the Terminal Operator (please see our above comments in relation to articles 8.5 (b) and 10).
9.	14. LIABILITIES		OMVP requests a mirror liability clause (indemnities and liability cap included). From a liability perspective, OMVP considers the contract as being unbalanced, therefore we propose mirror liabilities clauses.
10.	15.2 Events of Force Majeure [...] (d) acts or omissions of a Governmental Authority and/or RAE;	OMVP proposes the elimination of letter (d).	OMVP considers that this as not being a FM event.
11.	15.2 Events of Force Majeure [...] (k) adverse weather conditions affecting an LNG Carrier in transit, if such adverse weather conditions are not also present in proximity to the Terminal at the same time as the LNG Carrier is in proximity of the Terminal;	OMVP proposes the elimination of letter (k).	
	20. APPLICABLE LAW		OMVP recommends that a neutral law be applicable across all the documents involved in this business.

12.	Schedule 3 Credit Support	In par. 1, to add "(except a court order)" after "any denial of liability by the Terminal User or any other order" (row7).	So that it can be clear that the Bank cannot violate a court decision contrary to the execution payment.
13.	Schedule 3 Credit Support	In par. 9, to delete "except that the supporting document requirement of article 15(a) is hereby excluded".	This clause requires the Beneficiary of the guarantee to declare that the demand for payment is the result of the non-fulfillment of the contractual obligations by the Applicant (OMV Petrom) and to indicate the non-compliance of the obligations by the Applicant within the contract.