



Introduction

Gas Trade Review is a publication in which the shipping and contractual issues relevant to the global LNG trade and the European pipeline trade with natural gas are analyzed.

In this edition, you can read about the following topics:

- **The Saga Of Commissioning The Calcasieu Pass LNG Facility**
- **Setting The Commercial Operations Date In LNG Offtake Contracts**

If you have any comments about the matters reviewed in this edition, please address them to editor@commoditylaw.eu

The Saga Of Commissioning The Calcasieu Pass LNG Facility



by Vlad Cioarec, International Trade Consultant

Calcasieu Pass LNG Project is the first LNG facility built with modules. The modular liquefaction trains, gas pre-treatment units and power plant were fabricated by Baker Hughes at a factory in Avenza, Italy and then delivered sequentially to the project site to be installed on the foundations prepared by the EPC contractor.

In the case of the LNG facilities built with modules, it is necessary to test first the performance of the individual equipments once they are installed and subsequently, after the project construction completion, to test the entire LNG facility. This is the reason why the commissioning period for LNG facilities built with modules is longer than in the case of the LNG facilities built on-site.

The necessity to test the performance of the individual equipments upon installation allowed the project developer, Venture Global, to start the production of LNG on 19 January 2022 long before the project construction completion in February 2023.

Unlike the LNG projects built entirely on-site that have two or three large-scale liquefaction trains, the Calcasieu Pass LNG facility has eighteen mid-scale liquefaction trains configured in nine liquefaction blocks. Each block has two liquefaction trains.

At the time when the first LNG cargo was delivered from the Calcasieu Pass LNG facility on 1 March 2022, only three of the nine liquefaction blocks were authorized for commissioning (performance testing). For the other six liquefaction blocks, the US Federal Energy Regulatory Commission approved the commissioning sequentially between March and July 2022.

At the time, the project developer, Venture Global, stated that the LNG facility would officially start the commercial operations in the first quarter of 2023.

Force Majeure Declaration And Disputes With The Foundation Customers

Calcasieu Pass LNG project developer, Venture Global, has sold out the project's nameplate production capacity under eight LNG offtake contracts with FOB delivery terms. Of these, six contracts have a validity of twenty years, one contract has a validity of five years and the last one has a validity of three years.

All the offtake contracts provide that Venture Global's obligation to start the deliveries of LNG commences from the commercial operations date and that such date shall be notified by Venture Global only after all the equipments of the LNG facility have passed the required performance and reliability tests.

In the summer of 2022, following Gazprom announcements that it will cut off the gas supply to the EU countries, the European market demand for LNG imports increased significantly. The Dutch TTF day-ahead (spot) gas price, that serves as the benchmark price for European imports of LNG, rose initially to 145 €/MWh at the end of June 2022, then to 200 €/MWh at the end of July 2022 and ultimately, to 316 €/MWh on 26 August 2022, an all-time high¹.

This was the reason why in August 2022, notwithstanding that the construction works at the Calcasieu Pass LNG facility were not yet fully completed, the offtakers, mostly European companies, started putting pressure on Venture Global to declare the commercial operations date for the Calcasieu Pass LNG facility in order to take advantage of the low price in the offtake contracts and resell the LNG cargoes at the high spot price in Europe.

1 See the European Commission's Quarterly Report on European Gas Markets covering the second quarter of 2022: https://commission.europa.eu/system/files/2022-10/quarterly_report_on_european_gas_markets_q2_2022_final_0.pdf

Venture Global declined to comply with the offtakers' request arguing that the project was still in the construction phase and part of the equipments required further testing for the LNG facility to be declared fully operational.

After the completion of the project construction works in February 2023, when the entire LNG facility was tested, some of the equipments, particularly the gas pre-treatment units and the heat recovery steam generators of the power plant, failed to pass the required performance tests. The faulty equipments required extensive repairs and replacements in order to attain the designed levels of performance for reliable long-term operations.

For this reason, on 28 March 2023, instead of declaring the commercial operations date as the offtakers expected, Venture Global declared force majeure under the offtake contracts.

In the force majeure notice given to offtakers on 28 March 2023, Venture Global estimated that the remediation works would be completed in the first quarter of 2024. Subsequently, this period was extended twice, initially until 31 December 2024, and then until June 2025. Finally, on 17 February 2025, Venture Global notified the foundation customers that the Calcasieu Pass LNG facility will officially start the commercial operations on 15 April 2025².

The offtakers disputed that the necessity of making repairs and replacing parts of some equipments justified the force majeure declaration and a delay to the declaration of the commercial operations date. One by one, the offtakers started arbitration proceedings against Venture Global, claiming contractual damages of billions of dollars for lost profits due to the delay in declaring the commercial operations date. The project offtakers contended that Venture Global deliberately delayed the start of commercial operations in order to take advantage of the high spot prices in Europe and earn large profits from selling LNG as commissioning cargoes in the spot market at their expense³.

Even though Venture Global claimed that some equipments of the Calcasieu Pass LNG facility did not function optimally, between 28 March 2023, the date of force majeure declaration, and 31 March 2025, the Calcasieu Pass LNG facility had produced and delivered almost 270 LNG cargoes at spot market prices, thereby Venture Global earning profits of billions of dollars that allowed it to reduce the Calcasieu Pass LNG Project development and construction costs as well as to fund the construction of the Plaquemines LNG Project.

If the arbitrators consider that the reasons invoked by Venture Global were not sufficient to declare force majeure and thereby, delay for so long the declaration of the commercial operations date, the offtakers' claims will be upheld. Furthermore, if the offtakers can provide evidence in the arbitration proceedings that Venture Global deliberately delayed the start of the commercial operations, the deliberate delays in the commissioning of the LNG facility could be considered by the arbitrators a wilful misconduct. In such case, \$1.4 billion liability cap stated in the offtake contracts will no longer be applicable and the arbitrators can award damages in excess of the liability cap.

Venture Global Stance In Arbitration Proceedings

Venture Global stated that the risks of subsequent power outages justified the force majeure declaration and the postponement of the declaration of the commercial operations date until the remediation of the power generation problem.

2 See Venture Global announcement “Venture Global announced that it has notified its long-term customers that its Calcasieu Pass facility will commence commercial operations on April 15, 2025.”:
<https://ventureglobal.com/2025/02/17/venture-global-announces-commencement-of-commercial-operations-at-calcasieu-pass/>

3 See Reuters' report “LNG developer Venture Global spars with customers over cargoes”:
<https://www.reuters.com/business/energy/lng-developer-venture-global-spars-with-customers-over-cargoes-2023-06-09/>

Venture Global contended that although the Calcasieu Pass LNG facility continued to produce and deliver LNG between March 2023 and March 2025, it did not function at the designed levels of performance required for long-term operations and therefore, it was not actually fully operational. The fact is that the project's offtake contracts provide that Venture Global's obligations to deliver LNG become effective on the commercial operations date of the Calcasieu Pass LNG facility and such date does not occur unless and until:

- (i) all of the equipments comprising the LNG facility have been completed and commissioned, including any ramp-up period;
- (ii) the LNG facility is capable to produce and deliver LNG in sufficient quantities and necessary quality to allow Venture Global to perform all of its obligations under the project's offtake contracts; and
- (iii) Venture Global has notified the offtakers regarding the start of commercial operations.

At the time of the force majeure declaration, Venture Global submitted a report to the US Federal Energy Regulatory Commission about the status of the Calcasieu Pass LNG facility in which it informed about the performance deficiencies of the gas pre-treatment units and the heat recovery steam generators of the power plant. The US Federal Energy Regulatory Commission not only approved the remediation plans and the repair work, but in 2024 it also approved Venture Global's request to extend the validity of the construction authorization order with an additional year.

During 2024, the US Federal Energy Regulatory Commission performed regular inspections at the Calcasieu Pass LNG project site, each time noting in their reports the progress made by Venture Global in the remediation of the faulty equipments. Those reports were then provided to the offtakers in order to be able to evaluate themselves the reasons for the one-year extension request to the validity of the construction authorization order⁴.

In the arbitration proceedings, Venture Global contended that the remediation work took so long because the original heat recovery steam generators were manufactured using a previously unproven fabrication method that has led to substantial water leaking and the equipment vendor had to re-manufacture replacement parts using a proven fabrication method.

As regards the offtakers' contention that Venture Global deliberately delayed the start of commercial operations in order to take advantage of the gas spot prices in Europe where it delivered most of the commissioning cargoes, that contention would have made sense if Venture Global had declared force majeure in the summer of 2022, when the TTF day-ahead gas price reached an all-time high, 316 €/MWh. However, starting from September 2022, the TTF day-ahead gas price dropped considerably. In March 2023, when Venture Global declared the force majeure, the TTF day-ahead gas price was in the range of 40 and 50 €/MWh⁵. Furthermore, after March 2023, the TTF day-ahead gas price continued to decline. During April, May and June 2023, the average TTF day-ahead gas price was 35.2 €/MWh⁶. During July, August and September 2023, the average TTF day-ahead gas price was 33.1 €/MWh⁷. In January 2024, the average TTF day-ahead gas price was 29.9

4 See Reuters report "US orders Venture Global LNG to provide customers documents about problems" by Curtis Williams <https://www.reuters.com/business/energy/us-orders-venture-global-lng-provide-customers-documents-about-problems-2024-06-10/>

5 See the European Commission's Quarterly Report on European Gas Markets covering the first quarter of 2023: https://energy.ec.europa.eu/document/download/a5f95b08-bde8-4203-a4b3-018964451cdd_en?filename=Quarterly_Report_on_European_Gas_markets_Q1_2023.pdf

6 See the European Commission's Quarterly Report on European Gas Markets covering the second quarter of 2023: https://energy.ec.europa.eu/document/download/2f4134db-2015-49fa-9abd-1139a71115d1_en?filename=New_Quarterly_Report_on_European_Gas_markets_Q2_2023.pdf

7 See the European Commission's Quarterly Report on European Gas Markets covering the third quarter of 2023: https://energy.ec.europa.eu/document/download/64002c8c-5961-4ef2-a576-80ad135fbdde_en?filename=New_Quarterly_Report_on_European_Gas_Markets_Q3_2023.pdf

€/MWh, in February 2024, 25.7 €/MWh, in March 2024, 26.8 €/MWh⁸, in April 2024, 29.2 €/MWh, and in May 2024, 31.7 €/MWh⁹.

Of course, selling LNG cargoes at whatever the price in the spot market is much more profitable than selling them at the very low prices under the long-term offtake contracts. The flip side to that coin is that Venture Global could lose its credibility in the LNG industry and have difficulties in finding customers for other LNG projects¹⁰.

8 See the European Commission's Quarterly Report on European Gas Markets covering the first quarter of 2024: https://energy.ec.europa.eu/document/download/c26261bd-aa50-462b-912a-9c4d2a712ae4_en?filename=New%20Quarterly%20Report%20on%20European%20Gas%20Market%20Q1%202024.pdf

9 See the European Commission's Quarterly Report on European Gas Markets covering the second quarter of 2024: https://energy.ec.europa.eu/document/download/26ae2fd9-4a52-44fe-a1fc-1583656a7218_en?filename=New%20Quarterly%20Report%20on%20Gas%20markets%20Q2%202024_final.pdf

10 See Reuters' report "Total CEO says company rejected Venture Global as LNG supplier over lack of trust" written by America Hernandez and Curtis Williams <https://www.reuters.com/business/energy/total-ceo-says-company-rejected-venture-global-lng-supplier-over-lack-trust-2025-02-06/>

Setting The Commercial Operations Date In LNG Offtake Contracts



by Vlad Cioarec, International Trade Consultant

The commercial operations date is the first day when an LNG project shall be considered capable to deliver LNG in sufficient quantities and necessary quality to allow the project company to perform all of its obligations under the offtake contracts.

The LNG offtake contracts concluded for greenfield projects such as Calcasieu Pass do not stipulate a commercial operations date because such date cannot be known or even determined accurately at the time such contracts are agreed. Instead, the LNG offtake contracts require sellers to notify within specified timeframes increasingly narrow window periods during which the LNG project is expected to become commercially operable.

The first window period is set in function of **the conditions precedent fulfillment date**¹, particularly the date when the project company issues to the EPC contractor the notice to proceed for the construction of the LNG facility, and **the expected duration of the EPC contract for the LNG facility**, taking into consideration not only the time necessary to perform the engineering, procurement and construction works, but also the time required for the commissioning of the LNG facility.

The contractual deadlines for the notification of the narrowed window periods are set based on the milestones in the project construction schedule.

At the first contractual deadline, the seller has to narrow down the first window period to a 270 days' period, which is the second window period.

At the second contractual deadline, the seller has to narrow down the second window period to a 180 days' period, which is the third window period.

At the third contractual deadline, the seller has to narrow down the third window period to a 90 days' period, which is the fourth window period.

At the fourth contractual deadline, the seller has to narrow down the fourth window period to a 60 days' period, which is the fifth window period.

Ultimately, the seller has to narrow down the fifth window period to a 30 days' period, which is the final window period, and subsequently, it has to communicate to buyer the commercial operations date, i.e. the date when the LNG project is expected to become operational.

At each contractual deadline, the seller shall notify a window period based on the information available at the time.

Unforeseen delays could occur. It is not uncommon for the unproven new technology to cause delays to the construction completion or commissioning of the LNG facility, but not on the scale that occurred in the case of the Calcasieu Pass Project.

The breakdown and/or the necessity to make repairs or alterations to any of the equipments of the LNG facility can constitute an event of force majeure only if it is so stipulated in the offtake contracts.

It is necessary to stipulate expressly in the offtake contracts which events can be considered force majeure events and which events will not constitute force majeure events.

1 The offtake contracts concluded by the LNG project developers as sellers with the project offtakers shall not become effective until the satisfaction or waiver of conditions precedent, such as the LNG project developer receiving the necessary authorizations for the construction and operation of the LNG project, the LNG project developer making a final investment decision for the project based on the financing commitments provided by the lenders, and the issuance by the LNG project developer of the final notice to the EPC contractor to proceed for the construction of the LNG facility. The date when the last of the conditions precedent is satisfied is referred to as the "conditions precedent fulfillment date".

If the breakdown and/or the necessity to make repairs or alterations to any of the equipments of the LNG facility is specified as a force majeure event in the offtake contracts and such event occurs and delays the commissioning of the LNG facility, each mentioned window period and the commercial operations date may be deferred, but not indefinitely. If the seller (project company) declares force majeure during the project construction and/or commissioning and thereby the window periods are extended, the extended period cannot exceed the contractually specified time period, usually not more than 24 months. If the seller fails to notify buyer the commercial operations date by the end of such period, the buyer may terminate the offtake contract.