TRADUCCIÓN PÚBLICA / CERTIFIED TRANSLATION ----------

[There appears a seal in every page of the document from page 1 to page 527 that reads: Chamber of Commerce Internationale. Cour Internationale d'Arbitrage. International Court of Arbitration. International Chamber of Commerce.] ----------

[There appears a seal on page N° 1 and page N° 527 that reads: CERTIFIED TRUE COPY OF THE ORIGINAL. PARIS, 12/08/13 [August 12, 2013]. There appears an illegible signature. Jose Ricardo FERIS. Deputy Secretary General. ICC International Court of Arbitration] ----------

ICC – INTERNATIONAL CHAMBER OF COMMERCE. ----------

The world business organization ----------

International Court of Arbitrarion – Cour Internationale d'arbitrage ----------

AWARD----------

ICC Inernational Court of Arbitration – Cour international d'arbitrage de la CCI----------

38 Cours Albert 1er, 75008 Paris, France. ----------

Tel +33 (0) 1 49 53 28 28 Faxes +33 (0) 1 49 53 29 29 / +33 (0) 1 49 53 29 33----------

E-mail arb@iccwbo.org Website www.iccarbitration.org----------

ICC INTERNATIONAL COURT OF ARBITRATION----------

CASE No. 16232/JRF/CA----------

YPF S.A.----------

(Argentina) ----------

vs/ ----------

1. AES URUGUAIANA EMPREENDIMENTOS S.A. ----------

(Brazil)----------

2. COMPANHIA DE GAS DO ESTADO DO RIO GRANDE DO SUL----------

(Brazil)----------

3. TRANSPORTADORA DE GAS DEL MERCOSUR S.A.----------

(Argentina) ----------

This document is a certified true copy of the Partial Award rendered in conformity with the Rules of Arbitration of the ICC International Court of Arbitration. ----------

Arbitration CCI No. 16232/JRF/CA ----------

YPF S.A. (Argentina)----------

Plaintiff and Counterclaim Defendant ----------

Against----------

AES URUGUAIANA EMPREENDIMIENTOS S.A. (Brazil)----------

COMPANHIA DE GAS DO ESTADO DO RIO GRANDE DO SUL (Brazil)----------

Defendant No. 1 and 2, Counterclaimant and Cross-claim Defendant by Defendant 3 ----------

AND ----------

TRANSPORTADORA DE GAS DEL MERCOSUR SA (Argentina) ----------

Defendant No.3, Counterclaimant and Cross-claimant against Defendants No.1 and 2 ----------

PARTIAL AWARD ----------

Rendered by an Arbitral Tribunal integrated by: ----------

Prof. Gabrielle Kaufmann-Kohler (President)----------

Prof. Roque J. Caivano (co-arbitrator)----------

Prof. Alejandro M. Garro (co-arbitrator)----------

CONTENTS----------

TABLE OF ABBREVIATIONS ----------

A/S-AF	AESU/Sulgás Closing Argument dated January 13, 2012
A/S-MCPP	AESU/Sulgás Brief on Previous Procedural Issues dated November 22, 2010
A/S-MD	AESU/Sulgás Opening Brief dated July 01, 2011
A/S-Replication	AESU/Sulgás Replication dated September 23, 2011
Addendum to Mission Statement	Addendum to Mission Statement dated April 6, 2011
AES Eletropaulo	Eletropaulo Metropolitana Eletricidade de Sao Paulo S.A., power distributor of the State of Sao Paulo (Brazil)
AES Sul	Distribuidora Gaucha de Energía Elétrica, company affiliated to AESU, power distributor of the State of Rio Grande del Sur (Brazil).
AESU	Aes Uruguaiana Empreendimentos S.A. (Brazil)
AESU Arbitration	Arbitration CCI No. 16202/JRF
Agreement or Gas Supply Agreement	Natural gas sales agreement entered into by and between YPF, AESU, Sulgás and TGM, among others, on September 28, 1998
ANEEL	Brazilian electricity Regulatory Agency, federal electricity regulatory organism from Brazil.
Annex A -_/S-_	Annex submitted by AESU/Sulgás
Annex AL-_/SL-_	Legal annex submitted by AESU/Sulgás
Annex T-_	Annex submitted by TGM

Annex TL-_	Legal annex submitted by TGM
Annex Y-_	Annex submitted by YPF
Annex YL-_	Legal annex submitted by YPF
AS-MC	AESU/Sulgás Reply Brief dated September 09, 2011
AS-Rejoinder	AESU/Sulgás Rejoinder dated October 7, 2011
CEEE	Companhia Estadual de Distribuicao de Energía Eletrica
CEEE-D	Companhia Estadual de Distribuicao de Energía Eletrica
Complementary Agreements	(i) First Conflict Resolution Agreement (ii) Supplementary agreement (iii) Second Conflict Resolution Agreement (iv) Payment agreement
Court	International Court of Arbitration
DOP	*Deliver or pay* penalty under the Gas Supply Agreement
ENARGAS	Ente Nacional Regulador de Gas of Argentina (National Gas Regulatory Body)
ENARSA	Argentinean state company Energía Argentina S.A.
First Conflict Resolution Agreement or First CR Agreement	First Conflict Resolution Agreement dated August 31, 2004, entered into by and between YPF, AESU and Sulgás
Gas Act	Gas Act Nº 24.076, published in the Argentinean Official Gazzete on June 12, 1992

GCA	Gaffney, Cline & Associates
Hydrocarbons Act	Hydrocarbons Act Nº 17.319, published in the Argentinean Official Gazzete on June 30, 1967
ICC	International Chamber of Commerce
Master agreement	Master Agreement for the execution of a Natural Gas Sales Agreement entered into by and between YPF, Petrobras, TGN y CEEE on November 18, 1996.
MEP or MEyP	Ministry of Economy and Production of the Republic of Argentina, currently known as Ministry of Economy and Public Finance of the Republic of Argentina
Mission Statement	Mission statement dated October 11, 2010
MMBTU or MM/BTU	Millions of British thermal units
MME	Ministry of Mines and Energy of Brazil
MPFIPyS or MINPLAN	Ministry of Federal Planning, Public Investment and Services of the Republic of Argentina
ONS	Nacional Electric System Operator of Brazil (Operador Nacional do Sistema Eletrico)
OSE	Energy Substitution Operation
Participants to the Gas Supply Agreement	Sulgás, AESU, TGN, TGM and PD
Parties to the Gas Supply Agreement	YPF and Sulgás (after its assignment by Petrobras)
Payment agreement	Payment Agreement dated February 20, 2006, and its amendment dated March 10, 2006, both entered into by and between YPF, AESU and Sulgás.

PD	Petrobras Distribuidora S. A.
Petrobras	Petroleo Brasilero SA
PPA	Power Purchase Agreement or Consolidated Agreement No. CEEE/07:83/97-09372 entered into by and between AESU and CEEE on September 19, 1997, and signed on September 30, 1998 by CEEE-D, AES Sul y RGE
PPT	Brazilian Thermoelectricity Priority Program
RGE	Rio Grande Energia S.A.
Rules	Rules of Arbitration of the International Chamber of Commerce
SE	Energy Secretariat
SEC	*US Securities and Exchange Commission*
Second Conflict Resolution Agreement or Second CR Agreement	Second Conflict Resolution Agreement dated February 20, 2006, and its amendment dated March 10, 2006, both entered into by and between YPF, AESU and Sulgás.
SSC	Fuel Under-Secretariat of the Republic of Argentina
Sulgás	Companhia De Gas Do Estado Do Rio Grande Do Sul (Brazil)
Supplementary Agreement	Supplementary Agreement dated February 10, 2006, and its amendment dated March 10, 2006, both entered into by and between YPF, AESU and Sulgás.
TGM	Transportadora De Gas Del Mercosur SA (Argentina)

TGM Arbitration	Arbitration CCI No. 16029/JRF
TGM-AF	TGM Closing Arguments dated January 13, 2012
TGM-MC	TGM Reply Brief dated September 9, 2011
TGM-MD	TGM Opening Brief dated July 01, 2011
TGM-Rejoinder	TGM Rejoinder dated October 07, 2011
TGM-Replication	TGM Replication dated September 23, 2011
TGN	Transportadora de Gas del Norte SA
TOP	*Take or pay* penalty under the Gas Supply Agreement
Tr.	Hearing transcription
Transportation Service Agreement	Transportation Service Agreement entered into by and between YPF and TGM on September 30, 1998
Uruguayana Power Station, Uruguayana Power Plant or UTE Uruguaiana	Thermoelectric plant located near the city of Uruguaiana, Brazil, operated by AESU
Vienna Convention or CISG	1980 UN Convention on Contracts for the International Sale of Goods
Y-AF	YPF Closing Arguments dated January 13, 2012
Y-MC	YPF Reply Brief dated September 9, 2011
Y-MD	YPF Opening Brief dated July 01, 2011
YPF	YPF S.A. (Argentina)
YPF Arbitration	This arbitration CCI No. 16232/JRF/CA
Y-Rejoinder	YPF Rejoinder dated October 07, 2011
Y-Replication	YPF Replication dated September 23, 2011

I. INTRODUCTION ----------

1. This arbitration arises from the accumulation of three parallel arbitrations initiated under the protection of the International Court of Arbitration (hereinafter referred to as the "Court") of the International Chamber of Commerce (hereinafter referred to as “ICC”), to wit: (i) this arbitration CCI No. 16232/JRF/CA (hereinafter referred to as the "YPF Arbitration"), initiated by YPF against AESU, Sulgás and TGM (as defined below); the arbitration CCI No. 16029/JRF, initiated by TGM against YPF (hereinafter referred to as the "TGM Arbitration"); and (ii) the arbitration CCI No. 16202/JRF, initiated by AESU and Sulgás against YPF (hereinafter referred to as the "AESU Arbitration"). As a result of this accumulation, the parties to this arbitration are both plaintiffs and defendants. ----------

A. THE PARTIES ----------

1. YPF ----------

2. The original plaintiff of this arbitration is **YPF S.A. (Argentina) ("YPF")**, a public corporation established in the Republic of Argentina, with principal place of business at: ----------

Department of Legal affairs ----------
To the attention of: Mauro Dacomo Pinto, Daniel Alfonso Suárez Vázquez, Bárbara Vons Simon ----
Avenida Macacha Güemes 515, Piso 31 ----------
(C 11 06BKK) Ciudad Autónoma de Buenos Aires ----------
Republic of Argentina ----------

Emails: mdacomop@ypf.com ----------
dasuarezv@ypf.com ----------
vons.simon.barbara@ypf.com ----------

For these proceeding purposes, YPF establishes domicile at: ----------

Perez Alati, Grondona, Benites, Arnsten & Martinez de Hoz (h) ----------
Suipacha 1111, Piso 2 ----------
(C1008AAW) Ciudad Autónoma de Buenos Aires ----------
República Argentina ----------

3. TGM filed a counterclaim against YPF in this YPF Arbitration. As a result of this arbitration accumulation described in paragraph 1, AESU and Sulgás have also filed a counterclaim against YPF. ----------

2. AESU and Sulgás ----------

4. The first defendant of this arbitration is **AES URUGUAIANA EMPREENDIMENTOS SA (Brazil) (hereinafter referred to as "AESU")**, a company established in the Federal Republic of Brazil, with principal place of business at: ----------

Rodovia BR 472, Km. 576, Municipio de Uruguaiana ----------
Estado do Rio Grande do Sul, CEP. 97500-970 ----------
República Federativa de Brasil ----------

For these proceeding purposes, AESU establishes domicile at: ----------

Cabanellas, Etchebarne, Kelly & Dell'Oro Maini ----------
San Martin 323, Piso 17 ----------
(C1004AAG) Ciudad Autónoma de Buenos Aires ----------
República Argentina ----------

5. The second defendant in this arbitration is **COMPANHIA DE GAS DO ESTADO DO RIO GRANDE DO SUL (Brazil) ("Sulgás")**, a company established in the Federal Republic of Brazil, with principal place of business at: ----------

Trav. Francisco Leonardo Truda 40, 13 andar, Of. 131 ----------
90010-050 Porto Alegre ----------
República Federativa de Brasil ----------

6. Sulgás is represented in this arbitration by AESU. For these proceeding purposes, it establishes domicile at: ----------

Cabanellas, Etchebarne, Kelly & Dell'Oro Maini ----------
San Martin 323, Piso 17 ----------
(C1004AAG) Ciudad Autónoma de Buenos Aires ----------
República Argentina ----------

7. As a result of this arbitration accumulation described in paragraph 1, AESU and Sulgás have filed a counterclaim against YPF. TGM has filed a cross-claim against them. ----------

3. TGM ----------

8. The third defendant in this arbitration is **TRANSPORTADORA DE GAS DEL MERCOSUR SA (Argentina) ("TGM"),** a company established in the Republic of Argentina, with principal place of business at: ----------

Don Bosco 3672, Piso 4 ----------

(C1206ABF) Buenos Aires ----------

República Argentina ----------

For these proceeding purposes, TGM establishes domicile at: ----------

Cainzos, Fernández & Premrou Abogados ----------

Avenida Roque Sáenz Pena 938, Piso 3 ----------

(C1035AAR) Ciudad Autónoma de Buenos Aires ----------

República Argentina ----------

9. GM filed a counterclaim against YPF and cross-claims against AESU and Sulgás. ----------

B. PARTIES' REPRESENTATIVES ----------

1. YPF representative ----------

10. YPF is represented in this arbitration by: ----------

Mariano Grondona ----------

José Martinez de Hoz (h) ----------

Pablo Rueda ----------

Tomas Lanardonne ----------

María Julia Milesi ----------

Perez Alati, Grondona, Benites, Arnsten & Martinez de Hoz (h) ----------

Suipacha 1111, Piso 2 ----------

(C1008AAW) Ciudad Autónoma de Buenos Aires ----------

República Argentina ----------

Telephone: (+5411) 4114-3000 ----------

Fax: (+ 5411) 4114-3001/2 ----------

Emails: mfg@pagbam.com.ar ----------

pr@pagbam.com.ar ----------

tl@pagbam.com.ar ----------
mjm@pagbam.com.ar ----------

2. AESU and Sulgás Representative ----------

11. AESU and Sulgás are represented in this arbitration by: ----------

Alejandro Carlos D'Onofrio ----------
Julio Kelly ----------
Marcelo Etchebarne ----------
Julia Lacava ----------
Martin Solvey ----------
Cabanellas, Etchebarne, Kelly & Dell'Oro Maini ----------
San Martin 323, Piso 17 ----------
(C1004AAG) Ciudad Autónoma de Buenos Aires ----------
República Argentina ----------
Telephone: (+ 5411) 4114-5500 ----------
Fax: (+ 54 11) 4114-5555 ----------
Emails: a.donofrio@cekd.com ----------
j.kelly@cekd.com ----------
m.etchebarne@cekd.com ----------
j.lacava@cekd.com ----------
m.solvey@cekd.com ----------

3. TGM Representative ----------

12. TGM is represented in this arbitration by: ----------

Leonardo F. Fernández ----------
María Mercedes Premrou ----------
Cainzos, Fernández & Premrou Abogados ----------
Avenida Roque Sáenz Peña 938, Piso 3 ----------
(C1035AAR) Ciudad Autónoma de Buenos Aires ----------
República Argentina ----------
Telephone: (+ 54 11) 5252-0822 ----------
Fax: (+ 54 11) 5252-0822 (Ext. 20) ----------

Emails: lfernandez@cfpabogados.com.ar ----------

mpremrou@cfpabogados.com.ar ----------

C. ARBITRAL TRIBUNAL ----------

1. First co-arbitrator ----------

13. On its session dated October 29, 2009 and pursuant to Section 10(2) of the ICC Rules of Arbitration (hereinafter referred to as the "Rules"), the Court directly appointed **Prof. Roque J. Caivano** as co-arbitrator, who accepted the position on October 15, 2009. Prof. Caivano contact information is the following: ----------

Prof. Roque J. Caivano ----------

Bouchard 454, Piso 8 ----------

(C1106ABF) Ciudad Autónoma de Buenos Aires ----------

República Argentina ----------

Telephone: (+ 5411) 4311-6020 ----------

Fax: (+5411)4311-2552 ----------

Cell phone: (+ 54 9 11) 4538-5207 ----------

Email: roque.caivano@cabcbue.com.ar ----------

2. Second co-arbitrator ----------

14. On its session dated October 29, 2009 and pursuant to Section 10(2) of the ICC Rules of Arbitration, the Court directly appointed **Prof. Alejandro Miguel Garro** as co-arbitrator, who accepted the position on October 16, 2009. Prof. Garro contact information is the following: -------

Alejandro Miguel Garro ----------

Columbia University Law School ----------

435 West 116th Street ----------

New York, New York 10027-4080 ----------

United States of America ----------

Telephone: (+ 1) 212 854-2692 ----------

Fax: (+ 1) 212 854-7946 ----------

Email: garro@law.columbia.edu ----------

3. President ----------

15. On its session on October 29, 2009 and pursuant to Section 10(2) of the ICC Rules of Arbitration, the Court directly appointed **Prof. Francisco Orrego Vicuña** as President of the Tribunal based on a proposal of the National Committee of Chile. Prof. Orrego Vicuña resigned to the position of President of the Tribunal on February 12, 2010. Said resignation was accepted by the Court on its session on February 18, 2010. ----------

16. On its session on April 8, 2010 and pursuant to Section 12(4) of the Rules, the Court directly appointed **Prof. Antonio Crivellaro** as President of the Tribunal. Prof. Crivellaro resigned to the position of President of the Tribunal on June 10, 2010. Said resignation was accepted by the Court on its session on July 1, 2010. ----------

17. Afterwards, on its session on July 22, 2010 and pursuant to Section 12(4) of the Rules, the Court directly appointed **Prof. Gabrielle Kaufmann-Kohler** as President of the Tribunal, who accepted the position on July 28, 2010. Prof. Kaufmann-Kohler contact information is the following: ----------

Gabrielle Kaufmann-Kohler ----------

Lévy Kaufmann-Kohler ----------

3-5 rue du Conseil-Général ----------

P.O. Box 552 ----------

CH-1211 Ginebra 4 ----------

Switzerland ----------

Telephone: (+ 41) 22 809-6200 ----------

Fax: (+ 41) 22 809-6201 ----------

Email: gabrielle.kaufmann-kohler@lk-k.com ----------

4. Administrative Secretary of the Tribunal ----------

18. After receiving her *curriculum vitae*, the parties expressed their consent to the appointment of the lawyer Sabina Sacco as Administrative Secretary of the Tribunal, who confirmed her independence from the parties and whose contact information is the following: ----------

Sabina Sacco ----------

Lévy Kaufmann-Kohler ----------

3-5 rue du Conseil-Général ----------

P.O. Box 552 ----------

CH-1211 Ginebra 4 ----------

Switzerland ----------

Telephone: (+ 41) 22 809-6200 ----------

Fax: (+ 41) 22 809-6201 ----------

Email: sabina.sacco@lk-k.com ----------

D. ARBITRATION AGREEMENTS ----------

19. This dispute arises from the relationships between YPF, Sulgás, AESU and TGM as Parties (YPF and Sulgás) and Participants (AESU and TGM) to the natural gas sales agreement (hereinafter referred to as the "Agreement" or "Gas Supply Agreement") dated September 28, 1998, and from the relationships between YPF and TGM as a result of the Transportation Service Agreement entered into by them on September 30, 1998 (hereinafter referred to as the "Transportation Service Agreement with TGM" or "Transportation Service Agreement"). ----------

20. Section 20.0 of the Gas Supply Agreement states that: ----------

"20.2) ARBITRATION ----------

a) All disputes among the PARTIES or between two or more PARTICIPANTS or between one or both PARTIES and one or more PARTICIPANTS arising from the interpretation and/or execution of this AGREEMENT, except for those which shall be submitted to an EXPERT WITNESS pursuant to the AGREEMENT or that the PARTIES and PARTICIPANTS involved agree to submit to an EXPERT WITNESS, shall be definitely solved according to the Conciliation and Arbitration Rules of the International Chamber of Commerce by three (3) arbitrators appointed pursuant to said Rules. ----

The PARTIES and PARTICIPANTS expressly waive to any other venue or jurisdiction which may correspond to them for the solution of any dispute among them. ----------

b) The place of the arbitration shall be Montevideo –Uruguay- or any other place that the PARTIES and PARTICIPANTS involved agree upon. ----------

The arbitration language shall be Spanish [*castellano*]. ----------

c) The arbitration award shall be issued in writing and shall be definite, binding upon the PARTIES and the PARTICIPANTS involved, and non-appealable, except for motion for clarification and/or motion for annulment set forth in Section 760 of the Code of Civil and Commercial Procedure of the Republic of Argentina (Special Appeals). ----------

The award shall decide on the manner in which the arbitration costs, expenses and reasonable professional fees shall be borne. ----------

The execution of any award which is not complied with may be brought before any court having jurisdiction over the PARTIES and/or PARTICIPANTS; stating, however, that any Special Appeal

shall be exclusively filed before the courts of the Republic of Argentina and pursuant to the laws of said country. ----------

The execution of the arbitration award shall be suspended until: ----------

(i) the term to file said Special Appeals has expired, without having performed said filing, or a final and non-appealable court order in relation to said Special Appeals has been rendered". -------

21. This clause was also introduced for reference purposes in each of the following "Complementary Agreements": (i) First Conflict Resolution Agreement dated August 31, 2004, entered into by and between YPF, AESU and Sulgás; (ii) Supplementary Agreement dated February 10, 2006, and its amendment dated March 10, 2006, both entered into by and between YPF, AESU and Sulgás; (iii) Second Conflict Resolution Agreement dated February 20, 2006, and its amendment dated March 10, 2006, both entered into by and between YPF, AESU and Sulgás; and (iv) Payment Agreement dated February 20, 2006, and its amendment dated March 10, 2006, entered into by and between YPF, AESU and Sulgás.[1] ----------

22. On the other hand, section 10.2 of the Transportation Service Agreement states that: ----------

"10.2) ARBITRATION ----------

All disputes arising from the interpretation and execution of the Firm Transportation Service Agreement shall be subject to and shall be definitely solved pursuant to the Conciliation and Arbitration Rules of the International Chamber of Commerce by three (3) arbitrators appointed pursuant to said Rules. The Parties expressly waive to any other venue or jurisdiction which may correspond to them for the solution of any dispute among them. The place of the arbitration shall be the city of Montevideo, Uruguay, or any other place which the Parties may agree upon. The arbitration language shall be Spanish [*castellano*]. The arbitration award shall be issued in writing and shall be definite, binding upon the PARTIES and non-appealable, except for motion for clarification and/or motion for annulment set forth in Section 760 of the Code of Civil and Commercial Procedure of the Republic of Argentina ("Special Appeals"). The award shall decide on the manner in which the arbitration costs, including expenses and reasonable professional fees, shall be borne. The execution of any award which is not complied with may be brought before any court having jurisdiction over the Parties that, pursuant to the award, shall make payments or enforce an action or that has jurisdiction over said Parties assets; stating, however,

[1] Although AESU and Sulgás refer to these agreements as "Conflict Resolution Agreements", to facilitate the Tribunal statement, the Tribunal shall refer to them as it has been done up to now, that is to say, as "Complementary Agreements". This word choice shall imply neither a value judgment nor any acknowledgement of these content agreements.----------

that any Special Appeal shall be exclusively filed before the courts of the Republic of Argentina and pursuant to the laws of said country. The execution of the arbitration award shall be suspended until: (i) The term to file said Special Appeals has expired, without having performed said filing, or (ii) a final and non-appealable court order in relation to said Special Appeals has been rendered. Notwithstanding the foregoing, any dispute arising between the Parties under the Firm Transportation Service Agreement and which also constitutes a dispute under the Gas Supply Agreement subject to arbitration under the Gas Supply Agreement shall be solved pursuant to arbitration under the Gas Supply Agreement and the arbitration award issued in relation to said arbitration shall be binding upon the Parties for the purposes of said dispute arising from the Parties under the Firm Transportation Service Agreement". ----------

II. PROCEDURAL HISTORY----------

23. As previously mentioned in paragraph 1, this proceeding arises from the accumulation of three cases under the ICC protection: (i) this YPF arbitration (CCI Case No. 16232/JRF), initiated by YPF against AESU, Sulgás and TGM; TGM Arbitration (CCI Case No. 16029/JRF), initiated by TGM against YPF; and (ii) AESU Arbitration (CCI Case No. 16202/JRF), initiated by AESU and Sulgás against YPF. ----------

24. On December 29, 2008, TGM filed an arbitration complaint against YPF, initiating TGM Arbitration. ----------

25. On March 26, 2009, AESU and Sulgás filed an arbitration complaint against YPF, initiating AESU Arbitration. ----------

26. On April 6, 2009, YPF filed an arbitration complaint against AESU, Sulgás and TGM, initiating this YPF Arbitration. AESU and Sulgás filed an Answer to YPF Complaint on June 12, 2009, while TGM filed an Answer to YPF Complaint, a Counterclaim against YPF and a Cross-claim against AESU and Sulgás on June 15, 2009. YPF filed its Answer to TGM Counterclaim on August 18, 2009, and AESU and Sulgás filed the Answer to TGM Cross-claim on August 14, 2009. ----------

27. Previous to the signature of the Mission Statement, YPF requested the consolidation of this YPF Arbitration with TGM and AESU Arbitrations. Based on the lack of an agreement among the parties, on its session on September 17, 2009, the Court decided to dismiss the consolidation request and, therefore, decided not to include the complaints filed on TGM and AESU Arbitration into this arbitration. ----------

28. As explained on the abovementioned section I.C, the Court, on its session on October 29, 2009 directly appointed as co-arbitrators to Prof. Roque J. Caivano and to Prof. Alejandro Miguel

Garro. After these appointments and subsequent resignations of Prof. Francisco Orrego Vicuña and Prof. Antonio Crivellaro, on its session on July 22, 2010, the Court directly appointed as President of the Tribunal to Prof. Gabrielle Kaufmann-Kohler, date on which the Tribunal was constituted. ----------

29. The Tribunal held a conference call with the parties on September 23, 2010 to discuss about YPF consolidation request, as well as other procedural issues, and discuss about the calendar for the arbitration. As a result of this conference, on October 11, 2010, the parties and the Tribunal signed the Mission Statement and the Tribunal issued the Rules governing the Proceedings. Pursuant to section 24(1) of the ICC Rules of Arbitration, the six-month period for the issuance of the final award began as from said date. The Mission Statement was communicated to the Court on its session on November 18, 2010. ----------

30. Pursuant to Procedural Order Nº 1 dated October 22, 2010, the proceeding was bifurcated into two stages: The first stage about litispendence and previous procedural issues, and a second one about the merits of the matter, if applicable. ----------

31. Pursuant to the agreed upon procedural calendar, on November 22, 2010, AESU and Sulgás filed their Brief on Previous Procedural Issues, and TGM filed its Litispendence Brief, along with the corresponding documentation and legal annexes. ----------

32. On December 20, 2010, YPF filed its Counter Brief on Previous Procedural Issues as an answer to TGM requests, its Counter Brief on Previous Procedural Issues as an answer to AESU and Sulgás requests, along the documents and legal annexes of both filings and a legal opinion signed by Prof. Bernard Hanotiau. ----------

33. That same day, TGM filed its Reply Brief to AESU and Sulgás Objections against TGM Cross-Claim, along with the corresponding legal documentation. ----------

34. Through a letter dated December 23, 2010, the Tribunal notified the parties that it was not necessary to hold a hearing on litispendence objections and other preliminary procedural objections. ----------

35. On February 16, 2011, the Tribunal sent a letter to the parties which suggested holding a procedural meeting to discuss about different coordination and cooperation alternatives among the tribunals of the three parallel arbitrations. The parties accepted this proposal through the letters dated February 25 and 28, 2011.----------

36. Through the letter dated March 25, 2011, the Court notified the Tribunal that on its session dated March 10, 2011, it had decided to extend, pursuant to section 24(2) of the ICC Rules of Arbitration, the term to render the final award to June 30, 2011. ----------

37. On April 6, 2011, the procedural meeting was held between the Tribunal and the parties in the city of Buenos Aires, Argentina. During this meeting, and as indicated in the Addendum to the Mission Statement signed on the same date, the parties: ----------

a. Accumulate in this YPF Arbitration the complaints and defenses filed in AESU and TGM Arbitrations which had not been filed in this YPF Arbitration. ----------

b. Dismiss the procedural defenses and claims previously stated in YPF Arbitration; ----------

c. Agree to terminate AESU and TGM Arbitrations. For this purpose, AESU, Sulgás and YPF dismissed the actions of AESU Arbitration through a joint letter dated April 11, 2011, and TGM and YPF dismissed the actions of TGM Arbitration through a joint letter dated April 14, 2011; and -

d. Agree to bifurcate again the proceeding, into a first stage, to determine if any non-compliance is attributable to any of the parties affecting its liability, and a second stage, if applicable, focused on damages calculation borne by the breaching party. This agreement was set forth in the Procedural Order Nº2 as explained in the following paragraph. ----------

38. On May 6, 2011, the Tribunal issued a Procedural Order Nº 2, which included the parties' agreement to bifurcate again the proceeding and set a new calendar for the parties' proceedings.

39. Pursuant to the procedural calendar established in the Procedural Order Nº 2, on July 1, 2011, the parties sent their Opening Briefs: ----------

a. YPF submitted its Opening Brief along with: ----------

- Antonio Boggiano legal opinion; ----------
- Tomas Hutchinson legal opinion; ----------
- Hugo Martelli legal opinion; ----------
- Report of the expert Carlos Bastos; ----------
- Report of Mercados Energéticos; ----------
- Teodoro Marcó testimony; ----------
- Luis Santos testimony; and ----------
- Legal documents and annexes. ----------

b. AESU and Sulgás sent their Opening Brief along with: ----------

- Opinion of the expert Francisco Mezzadri; ----------

- Garcia Lema y Bougain legal opinion; ----------
- Rafael Bielsa opinion; ----------
- Opinion of the expert Juan Lisi; ----------
- Opinion of the counsulting firm AGM Finanzas; and ----------
- Legal documents and annexes. ----------

c. TGM filed its Counterclaim Opening Brief against YPF and its Cross-claim Opening Brief against AESU and against Sulgás along with: ----------

- Raul Bertero expert opinion and its annexes; ----------
- Report of the expert Francisco A. Mezzadri; and ----------
- Legal documents and annexes. ----------

40. Through the letter dated July 5, 2011, the Court notified the Tribunal that on its session dated June 16, 2011, it had decided to extend, pursuant to section 24(2) of the ICC Rules of Arbitration, the term to render the final award to March 31, 2012. ----------

41. On September 09, 2011, the parties filed their Reply Brief: ----------

a. YPF submitted its Reply Brief along with: ----------

- Antonio Boggiano complementary legal opinion; ----------
- Tomas Hutchinson complementary legal opinion; ----------
- Hugo Martelli complementary legal opinion; ----------
- Aida Kemelmajer de Carlucci legal opinion; ----------
- Complementary report of the expert Carlos Bastos; ----------
- Complementary report of Mercados Energéticos;----------
- FIEL report;----------
- Gaffney & Cline report; ----------
- Dante Kogan testimony; ----------
- Alejandro Fernández testimony; and ----------
- Legal documents and annexes. ----------

b. AESU and Sulgás sent their Reply Brief with the following documents: ----------

- Expert report of Chris Moore dated September 1, 2011 ("Moyes & Co."); ----------
- Expert report of Alieto Aldo Guadagni dated September 1, 2011 ; ----------

- Complementary report of Francisco Mezzadri y Asociados consulting firm dated September 7, 2011; ----------
- Report known as "Technical and regulatory arguments" from Abdo, Ellery & Asociados consulting firm dated September 1, 2011; ----------
- Expert report of Carlos Lapuerta dated September 9, 2011; ----------
- Dr.Rafael Bielsa report dated September 8, 2011; ----------
- Report known as "*Actuación de la planta termoelectrica de Uruguaiana en el Mercado Brasilero*" {"Thermoelectric Uruguaiana plant performance in the Brazilian Market"} from Engenho consulting firm dated August 2011; ----------
- Opinion of the Brazilian Law Firm Ulhoa Canto dated September 5, 2011 ("Ulhoa Canto N°1" legal opinion); ----------
- Opinion of the Brazilian Law Firm Ulhoa Canto dated September 08, 2011 ("Ulhoa Canto N°2" legal opinion); ----------
- Ana Maria Merlino Opinion, Sworn Brazilian translator; ----------
- Ricardo de Abreu Sampaio Cyrino testimony September 8, 2011; and ----------
- Legal documents and annexes. ----------

c. TGM filed its Reply Brief to YPF Complaint along with: ----------

- Dr.Rodolfo Barra legal opinion; ----------
- Engineer Raul Bertero Expert Report; and ----------
- Legal documents and annexes. ----------

42. On September 5, 2011, YPF sent a letter to the Tribunal explaining that it had attempted to agree upon the modification of the procedural calendar with the other parties. Specifically, YPF suggested the elimination of the last set of pleadings (Replication and Rejoinder), without achieving an agreement. After considering TGM and AESU and Sulgás comments submitted on September 8, 2011, the Tribunal confirmed the procedural calendar set forth in the Procedural Order Nº 2 through a letter dated September 12, 2011. ----------

43. On September 22, 2011, the Tribunal issued the Procedural Order Nº5, whose purpose consisted in solving the procedural issues established by the parties in their Opening Brief and Reply Brief such as pleadings reference and evidence submitted by the parties prior to the accumulation of complaints, the additional evidence requested by AESU and Sulgás and the appearance of AESU and Sulgás experts on the hearing. ----------

44. On September 23, 2011, the parties filed their Replications: ----------

a. YPF submitted its Replication along with: ----------

- Replication report of Mercados Energéticos; ----------
- FIEL Complementary report; ----------
- Gaffney & Cline complementary report; ----------
- Legal documents and annexes. ----------

b. AESU and Sulgás sent their Replication with the following documents: ----------

- Second Expert report of Chris Moore dated September 23, 2011 ("Moyes & Co."); ----------
- Complementary Expert report of Carlos Lapuerta dated September 21, 2011 (The Brattle Group); ----------
- Second complementary report of Francisco Mezzadri y Asociados consulting firm dated September 23, 2011; ----------
- Complementary report of AGM Finanzas dated September 23, 2011 ; ----------
- Dr.Alberto J. Bueres legal opinion dated September 23, 2011; ----------
- Opinion of the translator Teresa Zenteno dated September 21, 2011; ----------
- Dr.Enrique Barreira legal opinion; ----------
- Engenho second report; and ----------
- Legal documents and annexes. ----------

c. TGM filed its Replication to the Counterclaim and cross-claim answers with: ----------

- Engineer Raul Bertero Expert Report; and ----------
- Legal documents and annexes. ----------

45. On October 07, 2011, the parties sent their Rejoinders: ----------

a. YPF filed its Rejoinder along with: ----------

- Index of legal documents and annexes; ----------
- Rejoinder report of Mercados Energéticos; ----------
- FIEL second complementary report;----------
- Gaffney & Cline second complementary report; ----------
- Dante Kogan second testimony; ----------
- Legal documents and annexes. ----------

b. AESU and Sulgás sent their Rejoinder with: ----------

- Third Expert Report of Chris Moore dated September 30, 2011; ----------
- Alieto Aida Guadagni report dated October 3, 2011; ----------
- Francisco Mezzadri Complementary report No.3 dated October 7, 2011; ----------
- Complementary legal opinion of Dr.Alberto Manuel Garcia Lema dated October 6, 2011; --------
- Carlos Ari Sundfeld opinion dated September 30, 2011; and ----------
- Legal documents and annexes. ----------

c. TGM filed its Rejoinder with: ----------

- Engineer Raul Bertero complementary report; and ----------
- Legal documents and annexes. ----------

46. On October 17, 2011, the Tribunal and the parties were involved in a conference call to discuss about issues related to the hearing on the merits of the matter. The agreements made on this conference call were included by the Tribunal on the Procedural Order Nº 6 dated October 27, 2011, which also included the Tribunal resolution on those issues which the parties failed to reach an agreement. ----------

47. On December 7, 2011, the Tribunal issued the Procedural Order Nº 7, whose purpose was to solve some procedural issues related to the experts' reports offered by AESU and Sulgás. ----------

48. In addition to said pleadings, the parties exchanged correspondence related to each one's documentation requests. Specifically: ----------

a.Pursuant to Procedural Order Nº2, on April 29, 2011, the parties exchanged the following documentation requests, through the submission of Redfern Tables: ----------

i.YPF filed a documentation request to AESU, another one to Sulgás and another one to TGM. -----

ii. AESU and Sulgás jointly filed a documentation request to YPF and another one to TGM. ----------

iii. TGM filed a documentation request to YPF and another one jointly to AESU and Sulgás. ----------

b.On May 6, 2011, the parties filed their objections to the other parties' documentation requests before the Tribunal. Based on the fact that YPF general objections required an answer, AESU and Sulgás filed a replication on May 9, 2011. TGM filed a replication to YPF and AESU and Sulgás objections on May 10, 2011.----------

c.On May 10, 2011, the parties exchanged the requested documentation which was not objected. The parties notified the Tribunal about these pleadings on May 10 and 11, 2011.----------

d.Through the Procedural Order Nº3 dated May 23, 2011, the Tribunal decided on the parties disputes related to the documentation requests. The Tribunal decision was reflected on Redfern Tables attached to the Procedural Order. ----------

e.The Procedural Order Nº 4 dated July 13, 2011 confirmed that on June 3, 2011, pursuant to the Procedural Order Nº3, the parties had provided most of the documentation whose production had been ordered by the Tribunal. ----------

f.During the subsequent weeks, the parties and the Tribunal exchanged additional correspondence related to the failure to provide of certain documentation. Particularly, through a letter dated July 27, 2011, the Tribunal decided that "in case any of the parties wish to make any comment related to these letters content or allegations regarding the implications of the submitted documentation (or its absence), they shall include them in their Replication". ----------

49. The hearing on the merits of the matter was held in the city of Montevideo, Uruguay, from December 15 through December 20, 2011. The following people participated in said hearing: ------

On behalf of YPF: ----------

Jose Martinez de Hoz ----------

Pablo Rueda ----------

Maria Julia Milesi ----------

Tomas Lanardonne ----------

Maria Fiorencia Villaggi ----------

Jimena Vega Olmos ----------

Alex Maculus ----------

Luis Maria Clouet ----------

Victoria Vasalo ----------

Daniel Suárez Vázquez ----------

Bárbara Vons Simon ----------

Dante Kogan ----------

María Eugenia Pardo ----------

Sofia Bravo ----------

On behalf of AESU and Sulgás: ----------

Julio Kelly ----------

Marcelo Etchebarne ----------

Martin Solvey ----------

Julia Lacava ----------

On behalf of TGM: ----------

Magdalena Gravino ----------

Marcelo Brichetto ----------

Pablo Erias ----------

Leonardo F. Fernandez ----------

Maria Mercedes Premrou ----------

50. Mr. Jose Martinez de Hoz (h) [son], Mr. Pablo Rueda and Mrs. Maria Julia Milesi, on behalf of YPF, addressed the Tribunal during the oral arguments. Mr. Julio Kelly and Mr. Marcelo Etchebarne, on behalf of AESU and Sulgás, addressed the Tribunal during the oral arguments. Mr. Leonardo F. Fernandez and Mrs. Maria Mercedes Premrou, on behalf of TGM, addressed the Tribunal during the oral arguments. ----------

51. YPF examined the following experts offered by AESU and Sulgás: ----------

Carlos Lapuerta (The Brattle Group) ----------

Isabel Lustosa (Ulhoa Canto) ----------

Mario Miranda Abdo (Abdo, Ellery & Associados) ----------

Chris Moore (Moyes & Co., Inc.) ----------

Daniel Marx (AGM Finanzas) ----------

Juan Bruno (AGM Finanzas) ----------

Alieto Guadagni ----------

Francisco Mezzadri----------

Alejandro Garcia Lema ----------

Alberto Bueres ----------

Enrique C. Barreira ----------

52. On the other hand, AESU and Sulgás examined the following experts offered by YPF: ----------

Carlos Skerk (Mercados Energéticos) ----------

Cesar Guzzetti (Gaffney, Cline & Associates) ----------

53. Furthermore, during the hearing, the experts Chris Moore and Cesar Guzzetti were confronted. ----------

54. A hearing transcript was prepared and distributed among the parties. The parties submitted a corrected version of the hearing transcript on January 18, 2012.----------

55. On January 13, 2012, the parties simultaneously filed their Closing Arguments. ----------

56. On January 19, 2012, YPF sent a letter stating that AESU and Sulgás and TGM Closing Arguments constituted a new set of pleadings, since they included new evidence and requesting their elimination from the file. YPF also requested that AESU and Sulgás submitted to the Tribunal a copy of the fifth and sixth *addenda* to the PPA (*power purchase agreement*) between AESU and RGE distributor. AESU and Sulgás and TGM sent both letters on January 26, 2012 making comments on YPF letter. ----------

57. Through a letter dated February 9, 2012, the Tribunal decided to maintain the controversial quotes and legal annexes in the file, and to also maintain the parties' comments related to the evidence included in their letters dated January 19 and 26, 2012. The Tribunal also ordered AESU and Sulgás to submit to the Tribunal a copy of the fifth and sixth *addenda* to the PPA between AESU and RGE. Through letter dated February 15, 2012, the Tribunal extended this order to include the negotiated agreement between AESU and RGE. ----------

58. Through the letter dated March 16, 2012, the Court notified the Tribunal that on its session dated March 15, 2012, it had decided to extend, pursuant to section 24(2) of the ICC Rules of Arbitration, the term to render the final award to July 30, 2012. ----------

59. On April 16, 2012, Argentina announced the nationalization of the majority interest of the Spaniard company Repsol in YPF. After this notice, on April 19, 2012, the President of the Tribunal sent a letter to the parties informing about the arbitrations (in process and terminated) in which the Republic of Argentina is a party and in which the President acts or has acted as arbitrator. Neither of the parties filed an objection as regards this notice. ----------

60. On April 19, 2012, AESU and Sulgás sent two letters requesting the incorporation of two new facts: (i) the issuance by the government of Argentina of the Executive Order 530/2012 by virtue of which the YPF temporary intervention was ordered with the purpose of "ensuring the company continuation, the preservation of their assets and shareholder's equity, the fuel supply and guarantying the covering of the country needs" and (ii) YPF direct appearance before the judicial court due to the recent revocation of licenses in different provinces. ----------

61. Furthermore, AESU and Sulgás requested the incorporation of a third fact through a letter dated April 24, 2012: A bill on hydrocarbons sovereignty which declares the expropriation of the 51% of YPF shares. ----------

62. Based on the Tribunal invitation to YPF and TGM to express their position on the admissibility of the documents provided by AESU and Sulgás, TGM stated in its letter dated April 27, 2012 that it had no objection to their incorporation to the arbitration proceeding. On the other hand, YPF

expressed, on its letter dated April 27, 2012, its opposition to the incorporation of said facts and to the incorporation of the submitted annexes of documents to the file. ----------

63. Through letter dated May 1, 2012, the Tribunal informed the parties that it considered that the documents and arguments related to the facts alleged as new were not part of the file. Notwithstanding the foregoing, it stated that, in case, during its deliberation, the Tribunal considers that it may need said information, it could reopen the proceeding to admit these facts and new documents. ----------

64. On June 14, 2012, AESU and Sulgás sent a letter in which they informed the Tribunal about another new fact and requested its incorporation to the file: a YPF report dated June 1, 2012 (the "Mosconi Report", attached as Annex A137/S137) in which, according to AESU and Sulgás, YPF acknowledges the facts alleged by AESU and Sulgás in this arbitration. ----------

65. The Tribunal acknowledged receipt through a letter dated June 19, 2012 and invited YPF and TGM to submit their comments on this not later than June 29, 2012.----------

66. On June 29, 2012, YPF sent a letter requesting the Tribunal to consider its communication dated April 27, 2012 as ratified, to dismiss the incorporation of the new fact alleged by AESU and Sulgás and to also dismiss the incorporation of the annexes of documents to the file. On the same date, TGM sent a letter requesting the Tribunal to admit the incorporation to the arbitration proceeding of the facts and materials provided by AESU and Sulgás. ----------

67. On June 30, 2012, AESU and Sulgás sent a letter indicating certain topics of YPF letter and requesting the Tribunal to accept the incorporation of the new fact. On July 3, 2012, YPF submitted a letter requesting to set aside AESU and Sulgás letter from the file for being inadmissible. ----------

68. Through the letter dated July 25, 2012, the Court notified the Tribunal that on its session dated July 19, 2012, it had decided to extend, pursuant to section 24(2) of the ICC Rules of Arbitration, the term to render the final award to October 31, 2012. ----------

69. Through letter dated August 16, 2012, the Tribunal informed the parties that it considered that the documents and arguments related to the fact alleged as new were not part of the file. Notwithstanding the foregoing, it stated that, in case, during its deliberation, the Tribunal considers that it may need said information, it could reopen the proceeding to admit these new facts and documents. Furthermore, the Tribunal dismissed YPF request to set aside AESU and Sulgás letter dated June 20, 2012 from the file. On the other hand, the Tribunal also requested the parties an estimation of the value of their complaints, that the parties sent, based on the

Tribunal instructions, on August 27, 2012. AESU and Sulgás, on their letter of that date, requested again the Tribunal to include the new facts and related documents into the file and to consider them during its deliberation to preserve their right to be heard, and stating that, otherwise, the Award validity could be affected. AESU and Sulgás also requested the Tribunal to consider these new facts when establishing the costs. ----------

70. On September 14, 2012, the Tribunal sent a letter to the parties sustaining the decisions issued in their letters dated May 1 and August 16, 2012 related to its decision not to include the new facts alleged by AESU and Sulgás into the file. Specifically, the Tribunal stated that: ----------

"[...] the Tribunal up to now considers that the arguments and documents related to the facts alleged as new are not part of the file. However, in case, during its deliberation, (which is currently in process) the Tribunal considers that the parties arguments in relation to these new facts alleged (and the documents related to them) are relevant for its decision for the merits of the matter, the Tribunal may reopen the proceeding in relation to these new facts and documents to admit them". ----------

71. During its deliberation, the Tribunal established that the arguments and documents related to the facts alleged as new by AESU and Sulgás were not necessary for the decisions on liability that the Tribunal has to make in this Partial Award. Indeed, as detailed in Chapter VII of this Partial Award, in relation to the dispute between YPF and AESU/Sulgás, the Tribunal could decide "whether any of the parties incurred in any breach which may compromise their liability" (paragraph 2.2 of the Procedural Order Nº2) without being based on the new facts and documents alleged by AESU and Sulgás. This does not exclude, however, that these facts and documents alleged as new may be relevant in the next stage, whose purpose is "the calculation of damages borne by the breaching party" (paragraph 2.2 of the Procedural Order Nº2). ----------

72. Through the letter dated October 24, 2012, the Court notified the Tribunal that on its session dated October 18, 2012, it had decided to extend, pursuant to section 24(2) of the ICC Rules of Arbitration, the term to render the final award to December 31, 2012. ----------

73. On December 21, 2012, the Court notified the Tribunal through a letter that on its session dated December 19, 2012, it had decided to extend, pursuant to section 24(2) of the ICC Rules of Arbitration, the term to render the final award to February 28, 2013. ----------

74. On January 2, 2013, TGM sent a letter in which it stated the last term extension indicated by the Court for the issuance of the award and expressed its confidence in that said decision would be rendered within the indicated term. The Tribunal answered said letter on January 9, 2013. ------

75. Through the letter dated February 28, 2013, the Court notified the Tribunal that on its session held on the same date, it had decided to extend, pursuant to section 24(2) of the ICC Rules of Arbitration, the term to render the final award to April 30, 2013. ----------

76. On April 10, 2013, the Tribunal ordered the closing of the preliminary investigation of the proceeding. ----------

77. Through the letter dated April 24, 2013, the Court notified the Tribunal that on its session dated April 18, 2013, it had decided to extend, pursuant to section 24(2) of the ICC Rules of Arbitration, the term to render the final award to May 31, 2013. ----------

78. Through letter dated April 26, 2013, based on the fact that the Tribunal closed the preliminary investigation of the proceeding without having rendered a decision on the new facts indicated through letters dated April 19, April 24 and June 14, 2012, AESU and Sulgás ratified the provisions of their letter dated on August 27, 2012 related to the effect on the validity of the award in case the award is adverse to AESU and/or Sulgás. For this reason, AESU and Sulgás made "the broadest reserve of rights, including, but not limited to, object the partial award on liability in case the latter is adverse to AESU and/or Sulgás, as well as any other subsequent act accordingly performed". ----------

79. Through letter dated April 29, 2013, also based on the fact that the Tribunal closed the preliminary investigation of the proceeding without having included to the file the new facts alleged by AESU and Sulgás and their related documents, TGM informed the Tribunal that, "pursuant to section 33 of the ICC Rules of Arbitration and to section 5.3 of the Rules governing the Proceedings, TGM continuation in this proceeding shall not imply the consent to the decision rendered by the Arbitral Tribunal and communicated on April 10, 2013 related to the closing of the preliminary investigation of the proceeding without the inclusion of the above mentioned new facts and documentation; therefore, TGM makes the broadest express reserve to, if applicable and if considered appropriate, object and appeal said decision as well as those which have been accordingly rendered or which may be rendered". ----------

---

III. FACTS----------

80. The following description is designed to provide a general view of the relevant facts as long as necessary to decide on the parties' liability based on the claims filed. The Tribunal shall refer to other facts, as applicable, on the discussion about the parties' arguments. ----------

81. The facts described below have been alleged by the parties, and the Tribunal has established that they are proved in the file or they have not been refuted by the opposite party. The Tribunal has proved the cases in which a fact is in dispute. ----------

A. CONTRACTUAL FRAMEWORK----------

1. Concept of Uruguayana Project----------

82. On April 9, 1996, Argentina and Brazil signed the Protocol of Intentions on Power Integration (Annex AL6/SL6) which stated the following on its recital number 3 and in sections 1 and 4: ---------

"Considering the significant natural gas reserves of the Republic of Argentina and the needs of the Federal Republic of Brazil, particularly of the State of Rio Grande do Sul, in case of the implementation of new alternatives of power provision to a market in which the demand has registered high rates of annual growth. ----------

[...]----------

1°.- Both governments within the laws of each country undertake to establish conditions which allow power and gas transactions freely entered into by and between the companies of both countries, based on the principle of treatment symmetry and they also undertake to grant authorizations, licenses or licenses of operation, gas pipelines exploitation and power transmission network necessary for exploitation and import activities, avoiding discriminatory practices. ----------

[...] ----------

4°.-Both governments undertake to analyze in depth the legal, technical, operational and business studies related to the placement of the natural gas of the Republic of Argentina in the power grid of the Federal Republic of Brazil and specifically in the State of Rio Grande do Sul, based on paragraph 1º of this Protocol of Intentions. ----------

Thus, the government of the Federal Republic of Brazil in a first stage shall promote the establishment of a Thermoelectric Power Plant supplied by Argentinean natural gas to be installed in the Brazilian city of Uruguaiana". ----------

83. In 1996, YPF (a company from Argentina holder of hydrocarbon exploration and exploitation rights on different hydrocarbon areas of Argentina), Petróleo Brasilero SA ("Petrobras", state company established in Brazil holder of hydrocarbon import rights in Brazil), Transportadora de Gas del Norte S.A. ("TGN", a company from Argentina holder of the license of natural gas transport by high pressure gas pipelines in the center and north of Argentina), and Companhia

Estadual de Distribuicao de Energia Elétrica ("CEEE", state company established in Brazil responsible for the power distribution in the state of Rio Grande del Sur, Brazil), started a feasibility project on export of natural gas produced in Argentina destined to the State of Rio Grande del Sur, Brazil, for its subsequent utilization as fuel in a thermoelectric power station to be built in the vicinity of the city of Uruguaiana, Brazil (hereinafter referred to as "Uruguayana Power Station"), whose building and operation, along with the execution of a power sales agreement would be subject to a bidding process awarded to an independent producer by CEEE. YPF calls this project the “Uruguayana Project”, and if necessary, the Tribunal shall use this term to facilitate the understanding of the facts. ----------

84. In this context, on November 18, 1996, YPF, Petrobras, TGN and CEEE signed the “Master Agreement for the execution of a Natural Gas Sales Agreement” (hereinafter referred to as “Master Agreement”, Annexes Y-23, T-I-1). By virtue of the Master Agreement, the parties agreed to negotiate the execution of a natural gas sales agreement, after the award of the bidding process for the building and operation of the Uruguayana Power Station by CEEE. ----------

85. The Master Agreement included the basic conditions for the execution of the natural gas sales agreement, and particularly, the following ones: ----------

a. The place of provision of natural gas would be the Argentinean-Brazilian border on the bridge which connects the cities of Paso de los Libres (Argentina) and Uruguayana (Brazil) (Clause 1.5 of the Master Agreement); ----------

b. YPF would be responsible for the hiring of TGN company for the building and maintenance of the necessary gas pipeline and the shipper for the gas transportation from Neuquén to the point of delivery (Clause 1.7 of the Master Agreement); ----------

c. Petrobras would pay to YPF for the gas received at the point of delivery the gas price plus the gas transportation fee from Neuquén to the Point of Delivery (Clause 1.8 of the Gas Master Agreement); and ----------

d. YPF would be responsible for the daily provision to Petrobras at the point of delivery of the agreed upon amounts or, otherwise, for the payment of the penalties which would be defined in the agreement; provision known as delivery or pay (Clause 2.4 of the Master Agreement). ----------

86. The Master Agreement additionally stated that "the starting date for the gas supply to Petrobrás shall be indicated in the Gas Sales Agreement entered into by and between Petrobras and YPF –whose negotiations shall be performed along with the awardee of the bidding process

for the building of the thermoelectric power station to be installed in the city of Uruguayana, State of Rio Grande do Sul, Brazil- in order to consider a cross-guarantee system, through which YPF, Petrobras, TGN and the awardee of the bidding process assume the liabilities and are responsible for the corresponding obligations of possible delays of the contractually assumed commitments. Anyway, all the parties shall perform their best efforts to provide the natural gas at the Point of Delivery and to initiate the consumption on December, 1998". (Clause 4.1 of the Master Agreement). ----------

2. The Power Purchase Agreement by and between CEEE and AESU----------

87. As indicated in the Master Agreement, by the end of the year 1996, CEEE called an international competitive bidding for the building of the Uruguayana Power Station and the execution of a sales agreement of electric energy and power to be generated by said Power Station based on the Argentinean natural gas imported by Petrobras. Based on the terms of this bidding process, (i) Petrobras would import natural gas from Argentina pursuant to a natural gas sales agreement which would be executed by YPF, (ii) Sulgás would sign with Petrobras a natural gas sales agreement whose natural gas would be imported from Argentina and whose terms and conditions would fully reflect the agreement between Petrobras and YPF, (iii) AESU would execute with Sulgás a natural gas sales agreement whose natural gas would be imported from Argentina and whose terms and conditions would fully reflect the agreement between Petrobras and Sulgás and (iv) AESU would execute a sales agreement of electric energy and power with CEEE under the Bidding terms and conditions and according to the economic offer made by the awardee of the Bidding process (CEEE Bidding Terms and Conditions, Annex Y-24). ----------

88. On April 2, 1997, CEEE awarded the sales agreement of electric energy and power under the bidding process (also known as "power purchase agreement") to AESU. ----------

89. On June 25, 1997, the Ministry of Mines and Energy of Brazil ("MME") authorized AESU to operate as a power generator as an "independent producer" and to install the Uruguayana Power Station and its corresponding transportation system. Furthermore, it authorized AESU to sell the electric energy and power to CEEE under the PPA terms (Ministerial Decision Nº 180 of the MME dated June 25, 1997, Annex Y-25). ----------

90. On September 19, 1997, CEEE and AESU entered into a sales agreement of electric energy and power (Consolidated Agreement Nº CEEE/07:83/97-09372 or "PPA", Annexes Y-27, A112/S112). By the end of the year 1997, CEEE was privatized; therefore, on September 30, 1998, the PPA was signed again with the three power distributors successors of CEEE: (i) Companhia Estadual de

Distribução de Energia Eletrica (CEEE-D); (ii) Distribuidora Gaúcha de Energia Eletrica, company affiliated to AESU, which belongs to the group 'The AES Corporation" (AES Sul); and (iii) Río Grande Energia SA (RGE).[2] ----------

91. By virtue of the original PPA, the above mentioned power distributors committed themselves to pay to AESU a component of the price for the "power" (devoted to the repayment of the capital investments, as the building of the power station and the transportation facilities and the transportation service cost), and a component of "energy" (devote to finance the costs of operation and maintenance and gas cost). ----------

92. The PPA originally included a *pass-through* system to the Brazilian power distributors of the cost of gas and of the terms and conditions and associated risks that AESU had assumed under other agreements of the commercialization chain. This *pass-through* included: (i) the transfer to the power distributors of the price paid by AESU for the Argentinean natural gas and transportation, including any increment of said components, and particularly, an increase in taxes (Sections 10.1, 10.2, 10.6 and 10.7 of the PPA, Annex Y-27); (ii) the automatic readjustment for the Exchange rates variances in said costs, since there was a symmetry in the currency of payment of the Gas Supply Agreement (Dollars) and the PPA (Reales) (Section 10.5 of the PPA, Annex Y-27) and (iii) the establishment of a force majeure event and suspension of AESU duties under the PPA, in case a force majeure event occurs under the gas sales agreement which would be entered into by and between Petrobras and YPF (Section 18.3 and 18.5 of the PPA, Annex Y-27). Particularly, section 18.3 of the PPA stated: ----------

"None of the parties shall neither be held liable nor be guilty for delays or non compliance with the obligations set forth in this AGREEMENT, when originated and extended over time, for the occurrence of an Act of God or Force Majeure event as defined in this Clause and in the Gas Supply Agreement entered into by and between PETROBRAS and YPF". ----------

93. The PPA also stated that AESU may terminate the PPA "if an Act of God or Force Majeure event occurs which remains in time for more than 365 (three hundred and sixty five) days". (PPA, section 32.3.4, Annex Y-27). ----------

3. Gas Supply Agreement ----------

94. On September 25, 1998, the authorization to export natural gas for YPF was approved through Resolution SE 465 (Annex YL-61). This Resolution established the following: ----------

[2] PPA amendments are in Annexes A113/S113 and A120/S120. ----------

SECTION 1°.- Grant to YPF SOCIEDAD ANONIMA an authorization to the export of natural gas produced on its Export Licenses of NEUQUÉN BASIN, to the FEDERAL REPUBLIC OF BRAZIL, pursuant to the commitments set forth in the last presentation of the natural gas sales agreement which YPF SOCIEDAD ANONIMA and PETROLEO BRASILEIRO SOCIEDAD ANONIMA PETROBRAS) plan to enter into (...), and with the characteristics of the firm transportation services indicated in the notes sent by TRANSPORTADORA DE GAS DEL NORTE SOCIEDAD ANONIMA and TRANSPORTADORA DE GAS DEL MERCOSUR SOCIEDAD ANONIMA (...), for a firm amount of up to TWO MILLION EIGHT HUNDRED THOUSAND CUBIC METERS PER DAY (2.800.000 m3/d), for a maximum period of TWENTY (20) years until the amount of EIGHTEEN THOUSAND THREE HUNDRED MILLION CUBIC METERS (18.300.000.000 m3) of natural gas is completed. --------

95. On September 28, 1998, YPF made an Irrevocable Offer of the Natural Gas Sales Agreement whose gas is produced in Neuquén Basin in the Republic of Argentina, to Petrobras, Sulgás, AESU, TGN, TGM and Petrobras Distribuidora S. A. ("PO"), who accepted it. Thus, this offer became the Natural Gas Sales Agreement (previously defined as the "Gas Supply Agreement" or the "Agreement"), which was signed by YPF and Petrobras acting as "Parties" and by Sulgás, AESU, TGN, TGM and PD acting as "Participants" as defined in the Gas Supply Agreement (Annexes Y-1, T-I-4, A11/S11).[3] ----------

96. Through the Gas Supply Agreement, YPF undertook to provide and sell to Petrobrás which also undertook to take and pay certain gas amounts under the conditions and terms set forth in the Agreement (section 2 of the Gas Supply Agreement). The initial term of the Agreement was for a period of 20 years (section 3 of the Gas Supply Agreement). The Agreement also included *"take or pay"* ("TOP") obligations for Petrobras, pursuant to which Petrobras undertook to buy a minimum annual amount of gas or to pay for the amounts not taken (section 4.3 of the Gas Supply Agreement) and the *"deliver or pay"* ("DOP") obligations for YPF, in which YPF undertook to pay certain penalties in case the later failed to comply with minimum gas deliveries (Section 14.1.2.1 of the Gas Supply Agreement). ----------

97. The Gas Supply Agreement included a supply guaranty in its section 3.4 pursuant to which: ----

YPF guarantees to PETROBRAS the NATURAL GAS supply under the conditions set forth in this AGREEMENT for the full TERM indicated in section 3.1 to which purpose YPF undertakes to: --------

---

---

[3] Subsequently, Sulgás replaced Petrobras through an assignment agreement entered into on September 30, 1998 (Petrobras-Sulgás Assignment, Annex A12/S12). ----------

i. make its best efforts in order to maintain its hydrocarbon exploitation license and everything necessary to comply with section 2 of the AGREEMENT, including the term extension of said licenses; ----------

ii. perform the maintenance, as long as it depends on YPF, of the exploitation authorization necessary for the gas export under the conditions agreed upon in this AGREEMENT. --------

98. Furthermore, the Gas Supply Agreement set forth the possibility of an early termination under the following conditions: ----------

a. For *YPF*: If YPF suspends the provision of gas for Petrobras failure to make any payment; for the non-completeness of the power station and/or gas pipeline and/or gas pipeline extension; and for the non-completeness of the approximation gas pipeline (Sections 3.5, 14.2.1, 14.2.3 and 14.2.4 of the Gas Supply Agreement); and ----------

b. For *Petrobras*: If YPF fails to comply with its obligation to provide gas to Petrobras for an uninterrupted period of 60 days or more or 75 interrupted days in a period of a year; if YPF fails to comply with its "deliver or pay" obligation for a period superior than 180 days; and for the non-completeness of the power station and/or the gas pipelines and/or the gas pipeline extension (Sections 3.5, 14.2.2 and 14.2.3 of the Gas Supply Agreement).

99. On September 30, 1998, Petrobrás assigned its rights and obligations under the Gas Supply Agreement to Sulgás (Petrobras-Sulgás Assignment, Annex A12/S12). On that same date, Sulgás and AESU signed a gas sales agreement (the “AESU-Sulgás Agreement”) through which Sulgás would sell to AESU the gas received from YPF and through which Sulgás also assigned some rights and obligations under the Gas Supply Agreement to AESU (Annexes Y-26, A13/S13). The AESU-Sulgás Agreement was succeeded by two modification agreements entered inyto on May 30, 2000 and June 22, 2004, respectively (Annexes Y-26, A13/S13). ----------

4. Transportation service agreements ----------

100. On September 30, 1998, YPF entered into two firm transportation service agreements: (i) a gas transportation service agreement with TGN (hereinafter referred to as the "TGN Transportation Service Agreement", Annex Y-3) from Neuquén Basin to Aldea Brasilera, Province of Entre Ríos in Argentina (hereinafter referred to as "Segment A of Transportation"); and (ii) another gas transportation service agreement with TGM (the "TGM Transportation Service Agreement" or simply the “Transportation Service Agreement”, Annexes Y-2 and T-I-5) from Aldea Brasilera to the point of delivery located in the international bridge which connects the cities of Paso de los Libres (Argentina) and Uruguayana (Brazil) (hereinafter referred to as

"Segment B of Transportation"). TGM had been established in 1997 for these purposes by a group of TGN shareholders (Annex T-I-2). ----------

101. Among the recitals of TGM Transportation Service Agreement, the parties acknowledge that "for the purpose of transporting natural gas to be provided by YPF to Petrobrás, YPF undertook the responsibility to transport natural gas, subject matter of the Gas Supply Agreement from Neuquén Basin to the Point of Delivery, having for said purpose to enter into both transportation service agreements, one with TGM (…) and the other one with TGN and/or hold in force said agreements as from the Date of the First Nomination and during the validity of the Gas Supply Agreement". (Recital 7 of the TGM Transportation Service Agreement). ----------

B. LEGAL FRAMEWORK IN ARGENTINA FOR GAS EXPORTS ----------

102. At a national level, in Argentina, the regulatory framework for natural gas exploitation and commercialization included the following rules: ----------

a. Act Nº 17.319, "Hydrocarbons Act" (Annex AL1/SL1). The obligations of the holders of exploitation licenses are set forth in sections 3, 6, 30, 31 and 32. Said sections state that the main purpose of national policy in this subject is to satisfy hydrocarbon needs of the country with the proceeds of its oilfields, through the maintenance of the reserves which ensure this aim (section 3). ----------

b. Executive Order 2778/90 (Annex AL2/SL2), through which YPF became a public corporation governed by private law. ----------

c. Act Nº 24.145 (Annex AL1/SL1), which approved the sale to the private sector of YPF corporate capital and granted the corresponding exploration licenses and exploitation licenses applicable to the areas and oilfields in which it operated at that time. ----------

d. Act Nº 24.076, "Gas Act" (Annexes YL-10, AL1/SL1, T-VI-2). Among others, this Act establishes that natural gas exports shall, on a case by case basis, be authorized by the National Executive Branch as long as the domestic supply is not affected (section 3). ----------

e. Executive Order 1738/92 (Annex YL-47), pursuant to which there were two types of natural gas export volumes: i) "Firm" or "maximum authorized" volumes; and ii) volumes exceeding the maximum amounts indicated in the authorizations (section 3.5). Only the second ones were subject to interruption in case of domestic supply problems. ----------

f. The “Shipment Ruling” established by ENARGAS Resolution Nº 716/98 (Annex YL-60), which indicates an order of priority for the use of the transportation system, in three categories: Permanent (residential and commercial consumptions), firm (shippers with firm transportation

service agreements) and interrupted (shippers with interrupted transportation service agreement) (Y-MD ¶42). YPF states that, pursuant to the rules in force when executing the Gas Supply Agreement, the gas carriers (such as TGN) may interfere in the natural gas shipment only when the transportation capacity of the transportation system (or part of it) is not sufficient to transport the total amount of gas nominated by petitioners and confirmed by providers. In this sole case, it was necessary to apply the "Shipment Ruling" of ENARGAS Resolution Nº 716/98. AESU and Sulgás do not argue this item. ----------

103. At an international level, the following agreements between Argentina and Brazil are highlighted: ----------

a. Treaty for Integration, Cooperation and Development between the Republic of Argentina and the Federal Republic of Brazil dated November 29, 1988 (Annexes YL-37, AL6/SL6). ----
b. Instruction of Priority of the Protocol on Energy Nº8 between the Republic of Argentina and the Federal Republic of Brazil dated March 16, 1990 (Annex YL-42) and particularly Annex V of the Protocol Nº8 (Energy) dated May 26, 1993 (Annex YL-49). ----------
c. Protocol of Intentions between the Republic of Argentina and the Federal Republic of Brazil on Power Integration dated April 9, 1996 (referred to in ¶82 *supra*) (Annex AL6/SL6). ----------
d. Memorandum of Understanding related to gas exchanges and gas integration between the States Parties of MERCOSUR dated December 7, 1999 (granted after the Gas Supply Agreement) (Annex AL6/SL6). ----------
e. Temporary Energetic Agreement dated 2005 between the Republic of Argentina and the Federal Republic of Brazil (subsequent to the execution of the Gas Supply Agreement) (Annex AL6/SL6). ----------

C. ORIGINS OF THE DISPUTE ----------

1. The economic crisis in Argentina ----------

104. In the year 2002, Argentina went through a kind of economic crisis. To deal with this crisis, the Government of Argentina intervened in numerous economic sectors, including the market of energy. In an aspect which is particularly relevant for this case, the government of Argentina intervened in the domestic wholesale prices of natural gas through a rate freezing, the compulsory pesification of agreements, the prohibition to gas distributors and to electric generators to transfer to their rates and to the prices of energy, respectively, the highest cost of

any increase of the gas price. It also pesified and froze the rates of the natural gas distribution and transportation services for the domestic market. Furthermore, it applied taxes to natural gas exports. Particularly: ----------

105. Through **Act Nº 25,561** dated January 6, 2002 (Annex YL-68), the state of public emergency was declared at a social, economic, administrative, financial and exchange level, the regime of the convertibility of the Argentinean peso was revoked and certain powers were delegated to the National Executive Branch until December 10, 2003[4] to establish the currency system between the peso and foreign currency and to establish exchange regulations. ----------

106. Through the **Executive Order 214/2002** dated February 3, 2002 (Annex YL-69), the reorganization of the financial system was established, converting into pesos all obligations to deliver a certain amount of money, of cause or origin whatsoever, expressed in American dollars.

107. Then, a process of renegotiation of the work and public services agreement began. The **Executive Order 293/2002** dated February 12, 2002 (Annex YL-70) created the Commission of Renegotiation of Public Works and Services Agreements for the renegotiation of the agreements whose subject matter, among others, consisted in the provision of gas transportation and distribution services[5]. ----------

108. Through **Resolution 8/2002** dated April 5, 2002 (Annex YL-71), the Energy Secretariat established the proceedings to which the schedule of the operation, the shipment of loads and the price calculation for the seasonal winter period of May/October 2002 shall be subject and the operating procedures of an Anticipated Spot Market. Nine months later, through **Resolution 1/2003** dated January 2, 2003 (Annex YL-76), the Energy Secretariat extended to the 2003 seasonal winter period the application of the proceedings for the previously established schedule, shipment of loads and price calculation, since it considered that the difficulties for the access of the generating agents to the financial markets had not been significantly reduced in relation to the existing ones to the date of the issuance of Resolution 8/2002. ----------

---

[4] Acts Nº 25.972, 26.077, 26.204 and 26.339 (Annexs YL-88, YL-94, YL-100 and YL-108) established several term extensions of the Act Nº 25,561 until December 31, 2008.----------

[5] Then, through Decree 311/2003 dated July 3, 2003 (Annex YL-78) the renegotiation processes were transferred to the Unit of Renegotiation and Analysis of Public Service Agreements.----------
Decree 1839/2002 dated September 16, 2002 (Annex YL-74) extended the term for the Ministry of Economy to provide the proposals of the renegotiation of agreements to the national executive branch. Furthermore, Resolution 62/2003 dated January 31, 2003 (Annex YL-77) extended for 60 days the term for the Ministry of Economy to provide the proposals of renegotiation of agreements to the national executive branch. ----------
Act Nº 25.790 dated October 1, 2003 (Annex YL-79) extended the term to carry out the negotiation of agreements until December 31, 2004.----------

2. First restrictions on gas exports ----------

109. At the beginning of the year 2004, a shortage of natural gas was observed when having to comply with the supply of the Argentinean domestic market and export commitments. This shortage became deeper over the following years. ----------

110. From the year 2004, the government of Argentina established a series of measures which, in YPF's opinion, turn the firm export authorizations and the firm transportation service agreements into interrupted, and subject them to the needs of the domestic demand supply. AESU and Sulgás argue this description of the government measures, stating that export authorizations were always subject to domestic demand. It is not argued that the Argentinean authorities assumed a more active role in the planning of natural gas shipments, and in such condition, established shipment criteria and terms which prioritized the domestic market. ----------

111. The first measures relevant to this case were issued through Executive Orders 180/2004 and 181/2004[6]. Executive Order **180/2004** dated February 13, 2004 (Annex YL-80) created a Regime of Investment in a basic gas infrastructure during the process of standardization of the public service (through a trust fund to deal with investments in gas transportation and distribution) as well as a gas electronic market. Section 31 of said Executive Order states that: ----------

"In case the ENERGY SECRETARIAT verifies (…) that the natural gas system may experience ***supply crisis situations*** or may generate this kind of situations on another public service, it may take all measures deemed necessary to have an appropriate level of service provision. ----------

In the case of natural gas users, ***the supply shall be guaranteed at least to:*** i) ***the Users of the Residential Service -R***, ii) ***the Users of the General Service -P*** whose monthly annual average of consumption places them in the first or second consumption scale of this category and, iii) ***the Users of the Service to Subdistributors -SBD*** in the same incidence as the users described in i) and ii) have in the subdistributor demand. The criteria to be used shall be previously disclosed to all the parties involved and clear and objective criteria of the assignment of rights and obligations shall be defined for all the parties in case of a potential emergency. These mechanisms shall be applicable only in emergency or supply crisis situations and cannot be extended for a period of time superior than the duration of the situation which originated them". (Emphasis added)----------

112. **Executive Order 181/2004** dated February 13, 2004 (Annex YL-81), on the other hand, empowered the Energy Secretariat to execute agreements with natural gas producers to establish a price adjustment at the entry point to the Transportation System acquired by the

[6] Both Decrees are based on Act Nº 24.076 dated June 12, 1992 (Gas Act). ----------

network gas distribution service providers and the implementation of protective methods in favor of the users of theses service providers initiating the direct acquisition of natural gas to the producers signing these agreements.[7] The recitals 6, 7 and 17 of the Executive Order stated: -------

"That considering the limitations arising from the economic and social emergency experienced by the REPUBLIC OF ARGENTINA, it is ***necessary to articulate some measures aimed at contemplating the unique characteristics of the natural gas production and commercialization and its connection with utilities***, and the need to issue reasonable economic signs to ensure the usual supply of said product and to promote investments in natural gas exploration and exploitation. ----------

That, based on the foregoing, ***the natural gas production and commercialization in the domestic market shall be reestablished based on the establishment of a standardization scheme, considering regulatory limitations affecting utilities***, subject matter of renegotiation and also considering that it is a non-economically regulated activity, and that in the medium and long term, the prices shall be established based on the free supply-demand interaction.

(...) ----------

That, to encourage a greater competitiveness in the market, it is convenient to empower the ENERGY SECRETARIAT reporting to the MINISTRY OF FEDERAL PLANNING, PUBLIC INVESTMENT AND SERVICES, to ***regulate the sale of gas between producers and between producers and companies controlled or related to them".*** (Emphasis added) ----------

113. On March 24, 2004, the Energy Secretariat issued the **Resolution 265/2004** (AnnexYL-82) through which the criteria to apply restrictions on natural gas exports were established and through which also the Fuel Under-secretariat was instructed to prepare a rationalization program of natural gas exports. The recitals 4, 5, 10, 11, 12, 19 and 21 and section 1 state as follows: ----------

"That Act N° 24,076 [Gas Act] establishes in its Section 3° that natural gas exports would be authorized as long as domestic supply is not affected. ----------

That, pursuant to the foregoing, the supply of the population energetic needs is the main purpose based on which the possibilities of our country to supply other markets can be

[7] Based on the measures of the energetic policy initiated with the issuance of Decree 181/2004, the standardization scheme of gas prices at the entry point to the gas transportation system, being documented through Agreements entered into by and between the Energy Secretariat and the natural gas producers. Through Resolution 1070/2008 dated September 19, 2008, (Annex YL-118), the Complementary Agreement with Natural Gas Producers signed on September 19, 2008 was ratified. Furthermore, through Resolution 1417/2008 dated December 16, 2008 (Annex YL-120), the values of basin prices were established for the consumptions as from November 1, 2008.----------

identified, having in mind said subordination, through any type of operation of gas export or electricity generated with gas which may be performed, since the domestic consumption shall always be prioritized. ----------

[...] ----------

That natural gas producers shall, according to Act N° 17,319 {Hydrocarbons Act}, make investments to develop their oilfields pursuant to section 31 and 32 of said act. **----------**

That, besides said provisions, ***natural gas producers who participate in the market of exports shall accordingly make constant investments to comply with their commitments with the domestic market and the export commitments***, which, pursuant to Act N° 24.076 [Gas Act] are subject to energetic needs of the domestic market. ----------

That, in the case of the natural gas production, there has been a ***strong decrease in investments in the different basins***, which has affected, for this year, the domestic supply needs of the users protected by the regulations on natural gas. ----------

[...]----------

That, based on the analysis and information of the ENERGY SECRETARIAT, a ***strong decrease in investments in the development and exploration of gas projects by producers has been verified and this occurs regardless of the need to comply with their obligations to supply the domestic market, as a condition previous to the export of natural gas*** and of electricity generated with natural gas. ----------

[...]----------

Section 1º.-Preventive ***measures shall be established to prevent a domestic supply crisis of natural gas*** and its consequences on the wholesale electricity supply: ----------

a) As from the validity of this resolution, ***the exports of natural gas surplus which are useful for the domestic supply shall be suspended.*** **----------**

b) Resolution N° 131 dated February 15, 2001 of the former ENERGY AND MINING SECRETARIAT at that time reporting to the former MINISTRY OF ECONOMY shall be suspended and reviewed, along with all proceedings to obtain the export authorizations filed before the ENERGY SECRETARIAT and those which may be possibly filed subsequent to the issuance of this measure, until the provisions set forth in section 10 of this resolution are complied with. ----------

c) The FUEL UNDER-SECRETARIAT reporting to the ENERGY SECRETARIAT shall be instructed to prepare a RATIONALIZATION PROGRAM OF NATURAL GAS EXPORTS AND OF THE USE OF THE TRANSPORTATION CAPACITY originally reserved for these purposes ----------

[...] ----------

These temporary measures set forth in this resolution shall be in force until the ENERGY SECRETARIAT may verify that there are injection conditions to the transportation system appropriate to supply the domestic market". (Emphasis added) ----------

114. In the exercise of the powers granted by Resolution 265/2004, the Fuel Under-secretariat issued **Provision 27/2004** dated March 29, 2004 (Annex YL-83) which approved the "Rationalization program of natural gas exports and of the use of the transportation capacity" set forth in Resolution 265/2004. This Program was aimed at applying "certain measures to ensure the domestic supply" (recital 3°) "which shall be documented based on useful natural gas cut-off and on the transportation capacity for exports" (recital 4°). ----------

115. The rationalization program was included in Annex I of Provision 27/2004. According to AESU and Sulgás expert, Alberto García Lema, through this rationalization program, "Restrictions are placed on exports based on the amounts registered during the first three quarters of the year 2003 (see chapter II, item 5 of the Program) and based on the indicated priorities (see its chapter I). And, pursuant to the producers' level of compliance with their obligations related to the domestic market supply, there are different gas prices (see chapter 111)"[8]. Specifically, the program indicated that: ----------

"1. This operational Program is exclusively applicable to: (i) ***natural gas volumes for exports*** and for the generation of electricity for exports, ***in the necessary amounts to complete the injection to the transportation systems to supply the domestic market***; and (ii) the transportation services connected to exports required for domestic supply ----------

2***. The operational program is devoted to ensure,*** as long as it is permitted by the transportation and/or distribution systems, ***the following consumptions: ----------***

(i). The supply of those users set forth in Section 31 of Executive Order N°180 dated February 13, 2004, ----------

(ii). The supply of SGP users (third consumption level) and of firm users (SGG –for their reserved capacity-, FT, FD and FIRME GNC) devoted to satisfy domestic demand. ----------

(iii). The natural gas supply of the thermal power plant with the purpose of preventing the interruption of electricity utility. ----------

The foregoing shall not exempt the providers of gas distribution services from their liability to manage their gas demand to ensure service provision. ----------

[8] First Legal Opinion of García Lema, ¶91. See also First Report of Hugo Martelli, ¶¶87-89.----------

3. The ***order of priority*** for the pre-selection of the suspension of the natural gas exports is established based on: (i) the level of compliance with the basic commitment of natural gas supply to the producers' domestic market, assumed by each producer when the corresponding authorization to export natural gas is granted, and (ii) the subsequent progress of the sales to the domestic market, differentiating the sales made to the providers of the distribution service from those made to direct users. ----------

4. The order of priorities for the effective documentation of the suspension of the natural gas exports, based on the pre-selection indicated in the previous paragraph, is established based on the suspension usefulness in operational terms for the supply of the domestic market. (...)" (Emphasis added) ----------

116. According to Carlos Bastos and Hugo Martelli, YPF experts, this program authorized the Government to limit gas exports, including those which had been previously authorized by the Government through firm export authorizations[9]. ----------

---

---

117. AESU and Sulgás agree that this program severely limited gas exports but they deny that the program has prevented exports[10]. They particularly state that the program, in its item 14, permitted operations of energy substitution: ----------

"14. For the purposes of making this Program flexible, it is stated that ***any producer whose authorizations to export Gas have been suspended can replace the natural gas, subject matter of the suspension, for equivalent energy***, as long as said operation does not imply a reduction in the supply of the equivalent energy for the domestic market and as long as said equivalent energy is useful, in operational terms for its specific purpose. The alternative energy shall be valued pursuant to guidelines set forth in the foregoing Chapter III and shall substitute the natural gas separated from exports once the equivalent energy may be physically provided by the user". (Emphasis added). ----------

118. AESU and Sulgás also highlight that recital 8° of Provision 27 indicated that "all producers involved in a suspension of exports have failed to comply, in a greater or lesser extent, with its joint obligations to supply the domestic market". According to AESU and Sulgás expert, this "ratifies that the measures which forced to enter into an agreement by and between the National Government and natural gas producers in relation with domestic users were taken due to, among

[9] First Report of C. Bastos, ¶ 223; First Report of Hugo Martelli, ¶¶ 87-88.----------

[10] A/S-MD ¶¶ 242-253; A/S-Replication, ¶ 499; 518.----------

other circumstances, the non-compliance by all the producers with their joint obligations to supply the domestic market and that led to the restrictions on exports". (First Legal Opinion of Garcia Lema, ¶90). ----------

119. During this period, the parties started to negotiate the creation of "winter periods" in the Gas Supply Agreement, where gas nominations and provisions would be reduced during the winter season. (Given the difference in seasons of energy needs in Brazil and Argentina, during the Argentinean winter AESU and Sulgás needed less gas). In this context, on March 27, 2004 AESU sent to YPF a proposal related to the volumes to be nominated during 2004 winter season (Annex Y-44): ----------

"As discussed, please find below our proposal regarding gas volumes to be delivered to AES Uruguaiana ("AES-U") during winter 2004. This proposal is non-binding and is conditional upon (i) AES-U confirming the availability of sufficient power in the Brazilian market to satisfy AES-U's power offtake obligations and (ii) the Brazilian electrical system operator accepting the proposed dispatch regime. This proposal also assumes that, subject to modifications to reflect the proposal below, all other terms of the existing gas supply contract remain in force and no Force Majeure event is declared in connection with reduced gas supply volumes. ----------

Subject to these conditions, AES-U is in a position to reduce its gas consumption to zero during the 90-day period during June through August 2004 inclusive. We have also proposed a partial reduction in AES-U's gas consumption for the month of May 2004. ----------

[...] ----------

NON-BINDING PROPOSAL ----------

A. For the period June-1 through August-31 inclusive: ----------

*AES-U does not consume any gas during this period and is relieved from payment for gas commodity. The respective contractual volume for this period, for each type of gas (i.e. 66 MMm3 Peak Gas; 27.6 MMm3 Additional Gas; and 131 MMm Base Gas), is subtracted from the annual take or pay ----------

* AES-U is relieved from the payment of gas transportation costs of segment A (therefore YPF will be free to use this gas transportation capacity released in segment A). ----------

* AES-U continues to pay the gas transportation costs of segment B. ----------

* YPF is relieved from deliver or pay obligation. ----------

B. For the period May 1 through May 31 inclusive: ----------

* AES-U's gas consumption is reduced to a maximum of 1.4MMm3/day during this period. The difference between this volume multiplied by the number of days of the period, and the Contracted Quantity of the period, for each type of gas (9.3 MMm3 Additional Gas; and 43.1 MMm3 Base Gas), is subtracted from annual take or pay. ----------

* AES-U is relieved from the payment of 1.4MMm3/day of gas transportation capacity released in segment A). ----------

* AES-U continues to pay the gas transportation costs of segment B." ----------

120. During April 2004, the Government of Argentina started to apply restrictions on natural gas exports to Brazil. Through **Resolution 208/2004** dated April 21, 2004 (Annex YL-84), the "Agreement for the Implementation of the Standardization Scheme of Natural Gas Prices at the Entry Point to the Transportation System established by Executive Order 181/2004" entered into by and between the Government and Argentinean producers of natural gas on April 2, 2004 was ratified. Through this agreement, producers committed additional volumes to the domestic market and the Government of Argentina promised to gradually increase prices pursuant to the proceeding set forth in the agreement and to occasionally release the wholesale price of the natural gas on December 31, 2006.----------

121. According to YPF expert, Hugo Martelli, "after the signing of the First Gas Supply Agreement, the Government established a local supply priority through instructions given by ENARGAS to carriers. Thus, transportation licensees were ordered to assign with preference to natural gas distributors the gas that each signing producer of the First Gas Supply Agreement injected to the system in each basin to ensure that the "first gas" that each signing producer injected in the system is assigned to comply with the additional volumes affected by each producer under the First Gas Supply Agreement. That is to say, although the First Gas Supply Agreement did not establish the priority of the volumes affected to the local market over the other local commitments or those export commitments with signing producers, the Government necessarily placed this priority through the orders given to carriers. [...] the local consumption priority was then legally established through Resolution SE 939/2005". (First Report of Hugo Martelli, ¶¶95-96). ----------

122. In this context, two regulatory orders from ENARGAS dated April 29, 2004 (Annex YL-122) instructed TGN to assign to certain local natural gas distributors 365,000m3/day of the transportation capacity hired for exports to the Uruguayana power plant. Said orders specifically stated: ----------

"The TRANSPORTADORA DE GAS DEL NORTE S.A. shall be ordered as from May 1, 2004 to temporarily assign REDENGAS SA for a year 105,000 m3/day of the YPF S.A. agreement for exports to the Uruguayana –Brazil power plant. ----------

[...] ----------

The TRANSPORTADORA DE GAS DEL NORTE SA shall be ordered as from May 1, 2004 to temporarily assign GasNEA S.A. for a year 260,000m3/day of the YPF SA agreement for exports to the Uruguayana –Brazil power plant. ----------

123. On April 22, 2004, YPF, referring to Note SCC 778[11] {of the Fuel Under-secretariat} requested Sulgás to inform daily volumes which planned to nominate during the month of April (Annex A15/S15). ----------

124. Through letter dated April 24, 2004 (Annex Y-45, A15/S15), YPF, referring to Note SCC 838[12] of the Fuel Under-secretariat informed Sulgás that said Under-secretariat ordered the suspension of the exports corresponding to YPF Authorization to Export for April 24, 25 and 26 for a volume of 1,100,000 m3/day. YPF stated that it considered that Note SCC 838 was not legitimate and that infringed its acquired rights and, therefore, YPF would object to it as with Provision SCC 27/04, but that, for reasons of strict need and in order to avoid greater damages to YPF, it was compelled to limit natural gas provision to Sulgás. YPF added that it considered that both Resolution SE 265/04, provision SCC 27/04 and the Note SCC 838 were acts of state which constituted an Act of God and Force Majeure event, and that therefore, YPF was released from any contractual or tort liability for the failure to provide gas. ----------

125. Through letter dated April 27, 2004 (Annex Y-46, Annex A15/S15), YPF informed Sulgás that through Note SCC 858[13], the Fuel Under-secretariat suspended as from April 27, 2004 and until further notice is given, the exports corresponding to YPF Authorization to Export for a volume of 1,100,000 m3/day. YPF repeated its affirmations related to the Note illegitimacy and its position that the Note and the provisions on which said Note is based constitute grounds for an Act of God or force majeure event.----------

126. Through letter dated May 3, 2004 (Annex A15/S15), YPF informed Sulgás that through Note SCC 933 dated April 31, 2004, the Fuel Under-secretariat dropped the suspension on exports related to YPF Authorization to Export up to a volume of approximately 1.050.000 m3/day. YPF repeated its affirmations related to the Note illegitimacy and its position that the Note and the

[11] Said note was not attached to the file.----------

[12] Said note was not attached to the file. ----------

[13] Said note was not attached to the file.----------

provisions on which said Note is based constitute grounds for an Act of God or force majeure event. ----------

127. Through letter dated May 5, 2004 (Annex Y-47, A15/S15), AESU dismissed YPF force majeure allegations, stating that YPF obligation to provide gas pursuant to the Gas Supply Agreement was an obligation of result. AESU stated that recitals of Resolution 265/04 indicated that the crisis may have been caused partly due to the decrease in investments in the different basins and that natural gas producers may not have complied with their investment obligations to preserve their commitments with the domestic market and their export commitments. Additionally, AESU indicated that the force majeure notice failed to comply with formal and operational requirements set forth in the Gas Supply Agreement and that, therefore, AESU considered it ineffective and inadmissible. ----------

128. Through letter dated May 10, 2004 (Annex A15/S15), YPF requested the Fuel Deputy Secretary to authorize YPF to provide to its export customers during the year 2004 natural gas for levels superior to the ones registered during the year 2003, complying with the maximum volume of the Authorization to Export. This request restated a previous one, which had been dismissed through Note SSC 929/2004[14]. ----------

129. Through letter dated May 14, 2004 (Annex A15/S15), YPF informed Sulgás that through Note SE 188[15], the Fuel Under-secretariat ordered YPF to suspend as from May 14, 2004 and until further notice is given, the gas exports corresponding to YPF Authorization to Export for a total volume of 1,050,000 m3/day. YPF repeated its affirmations related to the Note illegitimacy and its position that the Note and the provisions on which said Note is based constitute grounds for an Act of God or force majeure event. ----------

130. Through letter dated May 14, 2004 (Annex A15/S15), Sulgás notified YPF that between April 24 and April 30, 2004, the gas amount which YPF had received was inferior to the nominated one.

131. On May 21, 2004, through **Resolution SE Nº 503/04,** the Government established again supply priorities for domestic users and for the use of the transportation capacity, and authorized the Fuel Under-secretariat to daily redirect to the gas distribution companies the gas volumes which gas producers shall provide to local customers under existing agreements (Annex YL-85, First Report of Carlos Bastos, ¶212). ----------

132. On May 26, 2004, through **Executive Order 645/2004** (Annex YL-86), the Government of Argentina created a special tax on natural gas export in particular tariffs of the Mercosur

[14] Said note was not attached to the file.----------
[15] Said note was not attached to the file.----------

Common Nomenclature. This tax was established at 20% and the Ministry of Economy was authorized to modify its rate (Sections 1 and 2, Annex YL-86). ----------

133. Through **Resolution 659/2004** dated June 17, 2004 (Annex YL-87), the Complementary Program of Natural Gas Supply to the Domestic Market included in Annex I of said resolution was approved, which substituted the Program approved by Provision 27/2004. According to Dr. Martelli, this resolution created "a requirement mechanism of additional injection ("Redirectioning") through which the Energy Secretariat assumed the power to order at any time to a producer-exporter (and not to producers to exclusively sell their production to the domestic market) to inject additional volumes of natural gas to satisfy the domestic demand". Specifically, item 3 of the Program stated that: ----------

a.When the prioritized domestic demand identified in item 1could not be satisfied by the supplies identified in item 2(a), and there is available transportation and distribution capacity which may be physically used to supply the domestic market (item 2(b)), "the FUEL UNDER-SECRETARIAT shall order natural gas producers exporters to inject to the transportation or distribution system the additional volume of gas for the domestic market necessary to satisfy the demands mentioned in the foregoing item 1". (Item 3 of the Program). ----------

---

b.The use of these volumes of additional injection to the domestic market would be indicated by the Fuel Under-secretariat based on the requirements of ENARGAS and the Dispatch Management Agency [OED, for its acronym in Spanish] of the Argentine System of Interconnection [SADI, for its acronym in Spanish] (Item 4 of the Program). ----------

c. The order of priority for the determination of the companies which would be ordered to inject additional gas for the domestic market shall be determined pursuant to the proceeding indicated in item 5.1 considering the usefulness of the additional injection, in operational terms for the supply of the domestic market. (Item 5 of the Program). ----------

134. Recitals 7, 8, 12, 13, 14, 16, 17 and 18 state: ----------

"That the decisions made pursuant to the Provision of the FUEL UNDER-SECRETARIAT Nº 27 dated March 29, 2004, neither limited nor prevented the producer exporters from complying with their export commitments, any time Chapter IV, item 14 of Annex I of said provision authorized the producer to continue to export if the latter replaced an equivalent volume of effective energy in the domestic market. Thus, the failure to use by producers this prerogative

demonstrates the failure to perform an injection necessary to simultaneously supply both domestic and external markets. ----------

That all applied measures were aimed at addressing the problem of natural gas shortage, giving preference to the domestic supply, without unnecessarily limiting the export of natural gas volumes pursuant to the duly issued authorizations, fully complying with applicable laws and considering the tools and the situation of the natural gas market when these measures were issued. ----------

[...] ----------

That, therefore, ***it is necessary to apply and enhance the regime emerging from Section 1º, subsection c) of the Resolution of the ENERGY SECRETARIAT Nº 265 dated March 24, 2004 and of the Provision of the FUEL UNDER-SECRETARIAT Nº 27 dated March 29, 2004, through the preservation of the priority of supply to the domestic market***, pursuant to the rules in force and particularly, the supply of those consumptions that based on their characteristics and on the commitments assumed with the users of the system, correspond to uninterrupted types. ----------

That, based on the foregoing, under these present circumstances, ***it is necessary to establish a COMPLEMENTARY PROGRAM OF SUPPLY TO THE DOMESTIC MARKET***, hereinafter referred to as the "PROGRAM", which addresses the indicated domestic supply purposes, which considers the experience from the application of the FUEL UNDER-SECRETARIAT Provision Nº 27 dated March 29, 2004, which considers the new reality of the gas market and which permits to reduce, to the minimum possible, the effect on gas volumes for export. ----------

That the provision of gas to the domestic market by any producer and under any contractual condition constitutes the primary source of supply of this market, and, that, therefore, although it is convenient to analyze the collaboration in the supply to the providers of the natural gas distribution services and to the electricity generators of the domestic market that each producer has achieved, it is essential to consider, as a complementary source of supply to the domestic market, an injection of additional volumes by those producers who export natural gas, thus, increasing the domestic supply of gas. ----------

[...] ----------

That, on that understanding, and subject to the above mentioned priority of domestic supply, it is understood that the obligation of the producers exporters of natural gas to produce and provide all the volumes committed to supply both the domestic and external market, shall not result in detriment of the any of the parties who participate in the natural gas production and sale market.

That, therefore, the usage in the domestic market of the volumes committed to the external market, and based on the fact that said volumes were paid at prices that the producers have explicitly accepted to receive as set forth in the "Agreement for the Implementation of the Standardization Scheme of Natural Gas Prices at the Entry Point to the Transportation System established by Executive Order 181/2004", cannot result in any detriment of the latter. ----------

That, in this way, the temporary affectations on gas exports which may be necessarily established, in full compliance with the above mentioned rules in force and applicable to this subject, shall be reduced to the minimum, or even avoided, as long as the external market shall not require all gas volumes which producers exporters had undertaken to provide, and said temporary affectations shall be definitely eliminated when the production of natural gas is sufficient to supply both markets". (Emphasis added)----------

135. Through a letter dated June 17, 2004 (Annex A15/S15), YPF informed Sulgás that, pursuant to the Note SSC 1551 of the Fuel Under-secretariat, the suspension and the redirectioning of natural gas related to YPF Authorization to Export was dropped. ----------

136. Through letter dated July 5, 2004 (Annex A15/S15), YPF answered AESU's letter on May 5. YPF dismissed AESU accusations, indicating that the former had complied with all necessary investments and denied government related accusations. YPF insisted on the illegitimacy of Provision SCC 72/04 which at that time had already been revoked, and repeated that both Resolution SE 265/04, Provision SCC 27/04 and the administrative acts arising from them were acts of state which constituted an Act of God or Force Majeure event, and that, therefore, released YPF from any contractual or tort liability for the failure to provide gas. ----------

137. Also, through letter dated July 5, 2004 (Annex A15/S15), YPF informed Sulgás that YPF's provision of gas amounts inferior to the nominated ones during certain days of April, May and June, 2004, was caused by a force majeure event, specifically the application of Provision SCC 27/04 and the administrative acts arising from said Provision. Additionally, YPF demanded again to Sulgás the immediate payment of four debit notes, under the penalty of exercising its rights under sections 14.1.1 (suspension of gas provision) and/or 14.2.1 of the Agreement (termination). ----------

138. Through letter dated July 16, 2004 (Annex Y-48), YPF informed Sulgás that, as from said date, and pursuant to section 14.1.1 of the Gas Supply Agreement, suspended the provision of gas to Sulgás until the payment of the unpaid four debit notes for a total amount of US$ 34.072.115,04 is made. ----------

139. On said date (Annex Y-49), AESU answered YPF indicating that the unpaid invoices corresponded to TOP amounts which were under a negotiation process, with a meeting scheduled for July 21. AESU said that, considering that until that time AESU had not failed to pay gas invoices, and considering the existence of a negotiation process and that YPF had problems to supply gas, AESU believed that YPF letter failed to demonstrate good faith and collaboration which shall prevail in negotiations. As a result, AESU compelled YPF to restore gas supply under the penalty of holding it liable for damages on the grounds of its abusive attitude. ----------

3. First modifications to the Gas Supply Agreement ----------

140. In this context, in July and August 2004, AESU and Sulgás, on the one hand, and YPF, on the other hand, entered into the first modification agreements of the Gas Supply Agreement (the "Complementary Agreements"). Neither TGN nor TGM were parties or participants to these agreements. ----------

141. According to YPF, the purpose of these agreements was to adjust its commercial relationship to the interruption and the subordination to the right to export natural gas and also to apply the adjustments to the "winter period" that the parties have been negotiated. YPF also stated that the parties' intention was to keep the Gas Supply Agreement in full force and effect despite the interruptions of the gas provision. ----------

Finally, YPF indicates that these agreements also benefited AESU and Sulgás since the debt caused by TOP held with YPF, a part of which was discharged, was renegotiated. (Y-MD, ¶¶265-279). ----------

142. AESU and Sulgás state that these agreements were caused by YPF non-compliance with its obligations to provide gas and indicate that there has never been an agreement between the parties related to whether YPF was justified to allege that the Government of Argentina measures prevented YPF from supplying gas and, therefore, could be considered as a force majeure event which released YPF from any liability under the Gas Supply Agreement. AESU and Sulgás do not argue that these agreements also apply the adjustments to the winter period and acknowledge that the purpose of said agreements was to renegotiate its TOP debt. (A/S-MD, ¶¶ 21 and ss.; 160 and ss.) ----------

143. On July 23, 2004, YPF, AESU and Sulgás entered into a **Temporary Agreement** (Annexes Y-50, T-I-7), which establishes that during a negotiation period: ----------

a. AESU and YPF shall bear in equal parts the cost of Segment A and B of Transportation (section 3);----------

b. No TOP obligation shall be accrued for AESU/Sulgás (section 4), and ----------

c. YPF shall waive to terminate the Agreement for the failure to pay the TOP debit notes in conflict (section 6.2). ----------

144. On August 10, 2004, the parties agree to extend the negotiation period to August 24, 2004 (Annex Y-51, T-I-8).----------

145. On August 31, 2004, YPF, AESU and Sulgás entered into the **First Conflict Resolution Agreement** (Annex Y-52, T-I-9). By this Agreement, the parties made some mutual licenses and regulated their obligations during two types of periods: ----------

a. The "2004 Period", between April 23 and September 15, 2004, and ----------

b. The "Special Periods" (winter period) between May 16 and September 15, of 2005, 2006 and 2007 ("2005/2006/2007 Special Periods"). ----------

146. Firstly, AESU obtained a TOP debt discharge of approximately US$ 4 million from YPF out of US$ 34,072,115.04 and obtained financing from YPF to pay the said debt balance (US$ 29,996,473.13) (section 3). It is important to mention that the parties agree that this debt was substituted by novation for all previous debts including, among others: ----------

"4. Old debts. The parties state that AESU Debt includes any compensation for the Parties' obligations, therefore, through their substitution by novation, whether acknowledged or not, and that there are no claims between them under the Restriction, Claim, TOP Obligations, Deliver or Pay obligations, Force Majeure Allegations, Suspension and Dismissal of the Suspension of this Agreement execution". ----------

147. Additionally, the parties established the following special rules during the validity of this Agreement: ----------

a. *Take or Pay*: YPF waived to collect TOP during the winter period, both in the 2004 Period and in the 2005/2006/2007 Special Periods, which permitted AESU to reduce its fixed costs during a period in which it shall not prospectively nominate the minimum amount of the Gas Supply Agreement (section 5.1). ----------

b. *Deliver or Pay*: ----------

i. AESU waived to collect DOP during the 2004 Period, which permitted YPF to avoid penalties for the gas provision failures already performed or to be performed during this year (section 5.2). -----

ii. For the 2005/2006/2007 Special Periods, YPF obligation to pay DOP was maintained, but YPF undertook to pay the penalty even in those cases where the failure to provide gas was caused by

the restrictions imposed by the Government of Argentina. (section 7.1, replacing section 14.1.2.1 of the Gas Supply Agreement as follows: ----------

"14.2.1.1.) DELIVER OR PAY. ----------

Except in case of a YPF ACT OF GOD OR FORCE MAJEURE event, in case of YPF non-compliance with its obligation to provide gas, at the POINT OF DELIVERY, the DAILY SCHEDULED AMOUNT, whether total or partial non-compliance, YPF shall pay Sulgás as sole and complete compensation the difference between the variable cost of the Power Station generation (duly documented by AESU) and the actual and documented cost of the energy that AESU had to buy through one or more energy sales agreement to compensate for its failure to generate for omission to deliver to YPF . In case AESU does not enter into one or more agreements to obtain alternative energy which cannot generate for the lack of gas and shall buy energy in the spot market, YPF shall pay as sole and complete compensation the difference between the variable cost of the Power Station generation (duly documented by AESU) and the actual and documented price of the energy acquired by AESU in the spot Market, plus actual and documented penalties, which AESU is obliged to pay for the failure to have an agreement. It is understood that Sulgás and AESU shall make all reasonable efforts to mitigate any cost to be compensated by YPF. ----------

Notwithstanding the foregoing, YPF, with spirit of contribution, also undertakes to pay the previously mentioned penalty for failing to provide at the POINT OF DELIVERY the DAILY SCHEDULED AMOUNT, in case the provision deficiency is caused by a restriction imposed upon YPF by the Energy Secretariat or the Fuel Under-secretariat, or any other competent authority, pursuant to Resolutions SE N° 265/2004, 659/2004 or the ones that may replace them in the future, restrictions which YPF considers AN ACT OF GOD OR FORCE MAJEURE EVENT but AESU does not consider them as such". ----------

iii. For all the Periods, a limitation of YPF full liability for DOP was established (US$ 8.9 million for every Special Period, US$ 12 million for each year of the agreement) (section 7.2). ----------

iv. AESU and Sulgás waived to record any day of gas deficiency for the purposes of section 14.2.2 (i) of the Agreement (right of termination). ----------

c. Transportation: ----------

i. During the 2004 Period, Sulgás and YPF shall bear the costs of Segment A and B of transportation by halves (section 8.1). ----------

ii. During the 2005/2006/2007 Special Periods, Sulgás shall pay Segment A of Transportation in proportion to the actually nominated gas volume, according to the formula set forth in section 8.2 of the Agreement. ----------

iii. During the years 2005/2006/2007 (not only during the winter period), Sulgás shall pay Segment B of Transportation in proportion to the actually nominated gas volume. However, Sulgás undertook to nominate a minimum gas volume every month, in spite of fully paying Segment B in case of non-compliance (sections 8.3-8.5). ----------

d. Waiver to terminate the Agreement: AESU waived to terminate the Gas Supply Agreement based on deficiencies in gas provision (section 10): ----------

"During the Term of the Agreement, Sulgás and AESU waived to record any day of YPF gas supply deficiency for the purposes of Section 14.2.2 (i) of the Agreement, and at all times, during the Term of the Agreement, waive to the right to terminate the Agreement under the terms of Section 14.2.2 (i) of the Agreement". ----------

e. Obligation to negotiate in good faith: In case there is a change in the rules of the Brazilian electric market which prevents AESU from complying with its obligations, the parties agree to "negotiate in good faith a satisfactory solution based on the spirit and balance of this Agreement" (section 11.1). ----------

4. Additional restriction on gas exports during the year 2005----------

148. Between January and May, 2005, YPF informed Sulgás about new restrictions on gas export. -

149. Particularly, through letter dated February 14, 2005 (Annex A15/S15), YPF informed Sulgás that, through Note SCC 234 (attached to the letter), the Fuel Under-secretariat ordered YPF to inject additional volumes of gas to the domestic market by virtue of Resolution SE 265/2004 and Resolution SE 659/2004, as from February 14, 2005, and until further notice is given. YPF indicated that these rules and this note constituted an act of state and, therefore, an act of God and force majeure event which released them from the liability under the Agreement. ----------

150. Through letter dated February 25, 2005 (Note AES-URUG-OD-021/05, Annex A15/S15), AESU expressed its surprise in relation to these new interruptions, considering the recent execution of the Conflict Resolution Agreement, dismissed the force majeure allegation and requested YPF to immediately resume the supply of gas, stating that: ----------

"(i) YPF committed to effectively provide natural gas, (ii) the failure to supply natural gas depends necessarily on natural gas producers exploiting oilfields, (iii) the allegation of an alleged act of god or force majeure event, supposedly unforeseen and irresistible and which prevents them from

supplying gas is based on the resolutions and situations extremely well-known by YPF when signing the Conflict Resolution Agreement through which contradicts the understanding of said agreement and the legitimate expectations created when executing said agreement; and, (iv) no prohibition is imposed upon YPF by the Energy Secretariat and/or its dependent entities to comply with its contractual obligations, as long as both the resolutions invoked by YPF and the notes executing them grant YPF supply alternatives which allow the compliance with the agreement with AES Uruguaiana". ----------

151. After this correspondence exchange, YPF and AESU began a new period of negotiations. In this context, on March 11, 2005, AESU sent YPF a temporary proposal to renegotiate gas volumes to be provided and a waiver of penalties, along with YPF commitment to dispatch alternative fuel to AESU, at YPF's cost. Through letter dated March 14, 2005, YPF dismissed this proposal, indicating that it is not substantially connected to the Mechanism of Substitution suggested by YPF, and that AESU pretended to be exempted from the costs and its operation (Annex A15/S15).

152. Through letter dated May 16, 2005, YPF dismissed the terms of the Note AES¬URUG-OD-021/05, stating the causes, the unforeseeable and avoidable nature of the restrictions and the YPF impossibility to comply with its obligations under the Gas Supply Agreement and also indicating its reasonable and appropriate operation. Additionally, YPF dismissed AESU construction of the First Conflict Resolution Agreement (Annex Y-56). ----------

153. On May 12, 2005, the Government of Argentina issued the **Resolution 752/2005** (Annex YL-89),[16] which takes the Agreement for the Implementation of the Standardization Scheme of the Natural gas prices at the Point of delivery to the Transportation System (above mentioned). According to Alberto García Lema, AESU and Sulgás expert, this resolution established "additional protective mechanisms for the benefit of different consumer groups, extending the group of users of the domestic market included in the previous rules. For said purposes, a Regime of standardized "Irrevocable Offers" was designed and implemented for new great users to make offers to purchase natural gas complemented with an additional injection mechanism, through which gas volumes were assigned to producers-exporters to be used by those users in case said offers were not accepted". (First Legal Opinion of García Lema, ¶123. See also First Report of Hugo Martelli, ¶101; First Report of Carlos Bastos,¶¶ 226-235.) ----------

154. Particularly, the recital 27 and section 28 established:----------

---

[16] This resolution was then modified by Resolutions SE 925/2005 and 1886/2006.----------

"that [...] it is necessary to clearly establish the prohibition to use natural gas produced in the domestic market by parties unauthorized to export, to compensate volumes not produced by producers exporters of natural gas, as long as it implies a reduction in the offer of the energy available for the domestic market. ----------

[...] ----------

Section 28. A natural gas exporter shall not acquire natural gas produced in the country for exports, as there are standardized Irrevocable Offers (to purchase natural gas at the Entry Point to the Transportation System) which have deserved the application of the Permanent Additional Injection mechanism". ----------

155. On August 4, 2005, the **Resolution SE 939/2005**, which approved the complementary regime of dispatch of natural gas transportation and distribution, which provides for the functioning of the natural gas spot market which operates in the electronic gas market, was issued. This resolution established that the gas injection to the transportation system shall follow the order of priority appearing below: ----------

(i) Firstly, the volumes reserved by the undersigned producers under the First Gas Supply Agreement; (ii) secondly, the Redirection made to the producers pursuant to Resolution SE 659/2004; (iii) thirdly, the recovery of certain "injection deviation"; (iv) fourthly, the volumes confirmed to direct distributors and shippers under fixed-term agreements executed outside the framework of the First Gas Supply Agreement; (v) fifthly, the volumes corresponding to spot transactions carried out in the Mercado Eletrónico del Gas (MEGSA); and (iv) sixthly, the volumes confirmed under the existing export agreements. As explained by Martelli, this meant that "once all previously mentioned local volumes were covered, the gas dispatch for exports was authorized". As a consequence, "[t]his rule formally established the situation of export subordination existing as from April 2004 with ENARGAS participation in the natural gas dispatch through TGN and TGS Carriers, the rules related to the Redirection and the reassignment of the transportation capacity available in the TGN and TGS Carriers (Resolution SE 503/2004)". (First Report of Hugo Martelli, ¶103, see also First Report of Carlos Bastos, ¶214) ----------

156. YPF's expert, Carlos Bastos, explains: ----------

"Thus, the Government of Argentina increasingly participated in the daily operation of gas dispatch, since the purpose was to redirect exports to those users of the domestic market that the Government was interested in supplying. ----------

The regime of dispatch priorities changed over time, but it always prioritized residential consumptions whose prices were kept frozen as from 2004 to the end of the year 2008 in which moderate increases were authorized. Furthermore, this regime placed exports on the last place of dispatch and attributed carriers the responsibility and the obligation to execute it. It should be observed that 90% of the gas produced in Argentina is injected into the transportation system operated by TGN and TGS. ----------

Carriers were prohibited from exporting abroad gas affected by an export restriction. That is to say, they were also directly affected by the restrictions which prevented them from transporting the reserved gas abroad."[17] ----------

157. Meanwhile, Brazil and Argentina were on a process of debates on the situation of gas export to Brazil. The Brazil-Argentina Joint Commission held a meeting on May 3, 2005. The Minutes of the Meeting (Annex Y-55) reflects the debate related to the Uruguayana Project: ----------

"I -UTE Uruguaiana ----------

The Energy Secretariat of Argentina explained the gas supply conditions for UTE Uruguaiana for the period from 2005 to 2007, focused on the following aspects: ----------

-transportation capacity ----------

-natural gas availability----------

In relation to the transportation capacity, it was informed that there are no restrictions on the values of up to 2.6 MM m^3/day for summer periods (between August 16 and May 15). In winter terms (between May 16 and August 15) the available transportation capacity is limited to 1.00 MM m^3/day. ----------

---

[17] First Report of Carlos Bastos, ¶¶215-217. In relation to the carriers' restrictions, Dr.Bastos refers to Resolution SE N° 882/2005, which in its section 4 states: "(...) licensees and assignees of the natural gas transportation system shall refrain from receiving natural gas for the purpose of its transportation and delivery, at the entry points of the transportation systems operated by them, when it could not be verified that these volumes are covered by purchase instruments duly registered and/or expressly authorized within the framework of MERCADO ELECTRONICO DE GAS (MEG) and/or expressly authorized by the ENERGY SECRETARIAT reporting to the MINISTRY OF FEDERAL PLANNING, PUBLIC INVESTMENT AND SERVICES, and/or by the FUEL UNDER-SECRETARIAT reporting to the ENERGY SECRETARIAT. Said situation shall be understood when the MERCADO ELECTRÒNICO DE GAS (MEG) SOCIEDAD ANÓNIMA (MEGSA) and/or the indicated government areas shall not informed a carrier about the existence of an instrument of these characteristics according to this Resolution". Dr.Bastos also refers to Item 1.1 of the Annex to the Note SE N° 1011/07, through which the Government implemented a "Shipment Ruling of the Demand Volumes of the Agreement (RSE 599/2007)", which prevents carriers from providing the transportation service of natural gas for export under a firm agreement until the total gas volume purchased (DOP) is confirmed or indicated by a Competent Authority (IAP-DDR-AI659) for the Domestic Market. ----------

In relation to the availability, it was informed that the guaranty of supply of any volume in summer periods (depends on the demand of the Argentinean Electrical system, but, currently, no availability is verified. As regards the winter term, there would be no guaranty of natural gas availability for UTE Uruguaniana. ----------

Additionally, the representatives of the Government of Argentina informed that the conditions of natural gas supply (production and transportation) shall be normalized as from January 2008. ------

It was also informed that the Government of Argentina may not currently interfere in the criteria of the usage of the balance available for exports, being the agents responsible for taking this decision. ----------

However, based on a request made by the Government of Brazil, the representatives of the Government of Argentina, by the recognition of the importance of the Brazil-Argentina relationship in relation to the energetic integration, agree to develop rules with the purpose of establishing a methodology for natural gas balances, supplying, on a priority basis, their domestic market. Thus, the Argentinean representatives undertook to provide until May 11, 2005, the "criteria" for the fair distribution of the natural gas surplus for export" as well as the values of said surplus in m^3/day for the period from 2005 to 2007". ----------

158. On December 9, 2005, Brazil and Argentina signed the **Memorandum of Understanding** on Energy Matters for the Temporary Period (Annex YL-92). According to YPF expert, Hugo Martelli, this Agreement "was intended to grant flexibility to natural gas exports from Argentina to Brazil based on the commitment assumed by Brazil to export electric energy to Argentina". (First Report of Hugo Martelli, ¶131). The Temporary Period covered the period from the date of execution of the Agreement and December 31, 2008, date from which the normal conditions of supply shall be reestablished. In this Agreement, Argentina undertook, during the periods between October and May of every year of the Temporary Period, to allow the export of a part of reserved gas volumes under previously authorized gas exports to Brazil. Argentina also committed to adapt its rules for the simultaneously incorporation of the energy substitution figure, to allow energy substitution for a minimum flow of 1,200,000 m^3/day of natural gas, considering as compensation the export from Brazil of the energy equivalent in electric energy (First Report of Hugo Martelli, ¶¶132-134). Specifically, section 4º of the Agreement established: -

"4º.-The Republic of Argentina shall adapt the specific rules on natural gas exports within the term set forth in Item 6º of this AGREEMENT {21 business days as from its signing}, not simultaneously incorporating the energy substitution figure and including as alternative energy

the one that may be provided upon the electric energy import from other countries. Based on said modifications and understandings in this AGREEMENT, an operation of energy substitution would be permitted in the periods from October to May for a minimum natural gas flow of ONE MILLION TWO THOUSAND CUBIC METERS/DAY (1,200,000 m^3/day) for the fiscal years of 2005 to 2008 inclusive, which shall not be required for the Argentinean domestic market, but based on the commitment of the compensation of the energy export from Brazil of the equivalent in electric energy (Megawatt hour) which may be produced by a gas turbine with similar technical characteristics to the one installed in the Thermal Power Plant AES URUGUAYANA with the previously reserved gas amount and at a reference price in the plant, compatible with the one obtained by the application of the agreements achieved by the agents for the gas exported, plus an additional covering all variable costs. Then, all costs, including the marketing cost, which shall permit the determination of the electric energy price interruptible on borders from the South System of Brazil which shall be borne by the Argentinean importer, shall be added. Said energy shall come from the available and non-dispatched thermal generation by the Brazilian system and from hydraulic generation in case there is spilled turbinable energy of the South System of Brazil. All costs involved in the operation including the transportation, sectorial charges and taxes shall be borne by the Argentinean buyer. Said import shall be performed either by an International Competitive Bidding under conditions similar to the ones operated and agreed upon by the authorities of the Parties in the fiscal year 2004 of interruptible electric energy import from Brazil or through traders authorized by the corresponding authorities of the Parties. Alternatively, the connections for the operation shall be the Garabi International Interconnections I and II and shall be documented in the periods June-August of the fiscal years 2006, 2007 and 2008 inclusive". -----

159. In connection with this Agreement between Brazil and Argentina, **Resolution 2022/2005** dated December 22, 2005 (Annex YL-93) partially modified the Complementary Agreement of Natural Gas Supply to the Domestic Market which had been approved through Resolution 659/2004. Recitals 16 and 17 and section 8 of this Resolution state: ----------

"That the COMPLEMENTARY AGREEMENT OF NATURAL GAS SUPPLY TO THE DOMESTIC MARKET approved through Resolution Nº 659 of the ENERGY SECRETARIAT dated June 17, 2004, failed to duly cover the possibility of executing international agreements which permit the intertemporary energy exchange, to optimize the usage of available resources through the complement of different demand seasonalities of each country. ----------

As a consequence, it is necessary to make the corresponding modifications in item 5 of said Program. ----------

[...] ----------

SECTION 8° -Item 5 of the COMPLEMENTARY AGREEMENT OF NATURAL GAS SUPPLY TO THE DOMESTIC MARKET approved through Resolution Nº 659 of the ENERGY SECRETARIAT dated June 17, 2004, shall be substituted by the following one: ----------

'5. The order of priority to determine the companies which shall be ordered to inject additional gas into the domestic market shall be determined pursuant to the proceeding set forth in item 5.1) below, considering the profit in operational terms of the additional injection for the supply of the domestic market, and once the appropriate adjustments which permit to adequately contemplate the international agreements through which the intertemporary energy exchanges are documented are performed. ----------

5. New modifications to the Gas Supply Agreement----------

160. Pursuant to these rules, at the beginning of 2006, YPF, AESU and Sulgás entered into additional Complementary Agreements which modified some clauses of the Gas Supply Agreement. ----------

161. On February 10, 2006, YPF, AESU and Sulgás entered into the **Supplementary Agreement** (Annexes Y-58, T-I-12) through which the validity of the First Conflict Resolution Agreement was extended to December 31, 2009 and some clauses of this agreement were modified and particularly, the following ones: ----------

a. *Deliver or Pay*. Section 14.1.2.1 of the Gas Supply Agreement for Special Periods was modified to extend its application to winter periods of the years 2008 and 2009, and the DOP liability limits assumed by YPF were modified. YPF kept its DOP payment obligations in case of restrictions on exports applied by the Government of Argentina (section 4 of the Supplementary Agreement). ----

b. *Termination of the Agreement*. Section 10 of the First Conflict Resolution Agreement was substituted by the following: ----------

“During the Term of the Agreement, Sulgás and AESU waive to record any day of YPF gas supply deficiency for the purposes of Section 14.2.2 (i) of the Agreement, and to any event during the Term of the Agreement, the right to terminate the Agreement set forth in Section 14.2.2. (i) of the Agreement shall only be exercised by the Parties’ mutual agreement” (Emphasis added) --------

162. Additionally, as consideration of the obligations assumed by Sulgás and AESU in this Supplementary Agreement, YPF discharged US$ 7,500,000 of AESU debt due to previous TOP penalties (section 3). ----------

163. Finally, the parties highlighted the failure to agree as regards whether the failure to provide gas corresponds to an Act of God or force majeure event (section 7.2): ----------

"7.2. The Parties acknowledge and agree that any of the statements and/or provisions set forth in this Supplementary Agreement or in the CR Agreement cannot be construed as: ----------

(i) a waiver from any of the parties to the positions that each Party has assumed upon the failure to provide natural gas under the Agreement: nor (ii) a YPF representation, statement or warranty related to the provision of gas volumes, both during the summer and winter terms, in case of A YPF ACT OF GOD OR FORCE MAJEURE, regardless of the obligations expressly indicated in the Agreement and the CR Agreement (with its modifications and amendments) and this Supplementary Agreement. In any case, the Parties state that there are different opinions in the sense that YPF considers that the administrative acts ordered pursuant to Resolutions SE 265/2004, 503/2004 and 659/2004 (as amended by Resolution SE 1681/2005 and Resolution SE N° 752/2005) and/or Provision SSC N° 27/2004 and/or rules replacing them in the future constitute a YPF ACT OF GOD OR FORCE MAJEURE EVENT pursuant to the Agreement and their amendments: while AES considers that said administrative acts and the rules mentioned on which they are based shall not constitute a YPF ACT OF GOD OR FORCE MAJEURE EVENT which prevents YPF from complying with the gas supply pursuant to the Agreement and its amendments". ----------

164. On February 20, 2006, YPF, AESU and Sulgás entered into a **Second Conflict Resolution Agreement** (Annexes Y-59, T-I-10). The recitals of this agreement refer to AESU proposal of natural gas substitution, but its ruling part only reflects particular modifications to TOP, DOP and transportation obligations for specific periods between February and May, 2005. Additionally, the parties indicated again the existence of the failure to reach an agreement on the grounds of the force majeure event invoked by YPF (section 3.2): ----------

"3.2. The Parties acknowledge and agree that none of the statements and/or provisions included in this 2 CR Agreement or CR Agreement can be construed as: (i) a waiver from any of the parties to the positions that each Party has assumed when there was no natural gas provision under the Agreement; nor (ii) a YPF representation, statement or warranty related to the provision of gas volumes, both during the summer and winter terms, in case of A YPF ACT OF GOD OR FORCE

MAJEURE, under the agreement, regardless of the obligations expressly indicated in the Agreement, CR Agreement and this 2 CR Agreement(…)." ----------

165. On the same date, YPF, AESU and Sulgás entered into a Payment Agreement (Annex Y-60). In this Payment Agreement, the Parties: ----------

a. Renegotiated the payment of US$ 9.8 million owed by Sulgás to YPF for Segment B of Transportation (which Sulgás alleged that the latter could not make the payment due to the lack of authorization from the Central Bank of Brazil to send the money to YPF). ----------

b. In the recitals of this agreement, YPF stated that AESU and Sulgás owed the former US$1.7 million for export rights associated with the natural gas supply. AESU and Sulgás stated that they would analyze the issue and in case they consider it appropriate under the Agreement and its amendments they would pay said alleged debt. ----------

c. Modified some clauses of the First Conflict Resolution Agreement in relation to the payment of the Segment B of Transportation. Particularly: ----------

i. Clause 8.5 of the First CR Agreement, through which Sulgás undertakes to nominate a minimum monthly volume was eliminated. ----------

ii. Clause 8.6 of the First CR Agreement, through which Sulgás undertakes to pay all Segment B of Transportation in case Sulgás fails to comply with its obligation set forth in clause 8.5 was eliminated. ----------

iii. Clause 8.4 of the First CR Agreement was replaced by the following one: ----------

"8.4. Every MONTH of 2006, 2007, 2008 and 2009, Sulgás shall pay YPF the entire Segment B of Transportation, even in case of an ACT OF GOD OR FORCE MAJEURE EVENT of any of the PARTIES, or for any other reason,(unless AESU or Sulgás consider that they are not obliged to pay Segment B of Transportation for causes attributable to TGM or TGN, notifying YPF about their position and, as a consequence, YPF shall not pay Segment B of Transportation to TGM) and regardless of whether YPF has confirmed the nominations and/or provided the Gas for any reason (notwithstanding the above mentioned provisions on the causes attributable to TGM or TGN). -----

8.4.1 YPF shall monthly bill Sulgás the amounts owed of Segment B of the MONTH IN QUESTION on the next MONTH pursuant to clause 15.3.1 of the Agreement, and Sulgás shall pay said amounts on the last day of the MONTH of invoice receipt, or the next BUSINESS DAY if the former is a non-business day, pursuant to clause 15.3.2 of the Agreement, as long as YPF has provided NATURAL GAS volumes during the MONTH IN QUESTION. However, if YPF did not provide NATURAL GAS volumes during the MONTH IN QUESTION, and, for said reason, Sulgás cannot

make the monthly payment after its best efforts, YPF shall bill Sulgás the amounts owed of Segment B of said MONTH IN QUESTION within a period of 10 (ten) days upon the termination of the YEAR in question, and Sulgás shall pay for it within a period of 10 (ten) days upon the receipt of YPF invoice". ----------

d. Restated the existence of a disagreement on the force majeure event alleged by YPF and indicated that none of their statements or agreements implied a waiver of rights. ----------

6. New restrictions on gas exports (2006)----------

166. As per the letter dated April 15, 2006 (Annex Y-62), YPF informed AESU and Sulgás that as a consequence of the application of the method set forth in Resolution SE 752/2005 (Annex YL-89) and its regulation and amendments (including Resolutions SE 2022/2005 (Annex YL-93) and Resolution 275/2006), and in order to comply with the standardized and irrevocable offers of domestic market consumers, the competent authorities had asked YPF to apply new Permanent Additional Injection requirements that would affect the gas supply as from such date (Notes SSC 671, 697 and 728 of 2006, Annexes Y-67 and YL-165).[18] YPF held that this happened despite its efforts to minimize the impact of such requirements and pointed out that it had rejected those resolutions without governmental approval. Likewise, YPF repeated that those resolutions entailed force majeure events included in the Agreement. ----------

167. On May 4, 2006, YPF informed AESU and Sulgás about the new Permanent Additional Injection requirements affecting the gas supply as from such date (Notes SE 564 and 599, and Note SSC 865 of 2006).[19] YPF ratified the arguments posed in its previous letter (Annex A15/S15). -

168. As per the letter dated June 20, 2006 (Annex A15/S15), AESU answered both previous letters sent by YPF rejecting the force majeure declared by YPF and pointed out, in particular, that:---------

"a) the Additional Injection Orders that you have mentioned (and which are not attached to the Note) DO NOT limit exports under the export license granted by the Energy Secretariat as per Resolution No. 465/1998, but they order you to inject additional natural gas volumes to the domestic market; b) Resolution 659/04 keeps flexible measures in order that Producers could supply equivalent energy; and c) item 10 of Annex I of Resolution 659/04 sets forth that gas Producers shall "... produce or import and/or replace" the corresponding gas volumes to comply with their obligations and additional requirements needed to supply: the permanent domestic demand mentioned in items 1.1, 1.2 and 1.3 included in the above mentioned Annex I."----------

[18] Resolution 275/2006 is not included in the file. ----------

[19] Notes SE 564 and 599, and Note SSC 865 of 2006 are not included in the file.----------

7. Increases in gas exports tax and in gas royalties costs (2006-2007) ----------

169. As per **Resolution 534/2006** issued on July 14, 2006 (Annex YL-97), the Ministry of Economy and Production instructed the General Customs Administration to apply, as a base for the assessment of natural gas exports, the price fixed in the Master Agreement entered into by and between Argentina and Bolivia for selling natural gas and developing energy integration projects, signed on June 29, 2006 (Annex YL-96). This caused a 45% increase in the natural gas exports tax. Whereas clauses 11 and 13 specified that: ----------

"Therefore, it is possible to construe that the gas exports transaction price does not provide a suitable base for the assessment of such goods and that, as a consequence, it is necessary to instruct the General Customs Administration (...) to determine, in this case, the corresponding price of the taxable amount fixed by the MASTER AGREEMENT ENTERED INTO BY AND BETWEEN THE ARGENTINE REPUBLIC AND THE REPUBLIC OF BOLIVIA FOR SELLING NATURAL GAS AND DEVELOPING ENERGY INTEGRATION PROJECTS, signed on June 29, 2006, according to the provisions set forth in subsection a), section 748, of the aforementioned rule. It should also be considered that such price does not include the amounts corresponding to the taxes levied on exports for consumption.----------

[....] ----------

It is advisable to increase the export duties applicable to natural gas, by fixing them at FORTY-FIVE PERCENT (45%), in order to put its taxation in line with other hydrocarbon raw materials." ----

170. On July 27, 2006, the Federal Administration of Public Revenue issued the External Note 28/2006 (Annex YL-98) which sets forth that the taxable values per exported unit of gas should be determined as follows:----------

"3.- The GENERAL CUSTOMS ADMINISTRATION will apply for the appraisal of natural gas exports the price fixed for these goods in the above mentioned AGREEMENT, which by now is FIVE DOLLARS PER MILLIONS OF BTU (5 US$/MMBTU). ----------

4.- For the purposes of determining the applicable value, it should be considered that the price fixed in item 3) refers to the goods delivered in the border between the ARGENTINE REPUBLIC and the REPUBLIC OF BOLIVIA, and that it does not include the export duties."----------

171. On July 27, 2006, YPF informed AESU and Sulgás that, as a consequence of the provisions of Resolution 534/2006 and through the application of clause 13.1 of the Gas Supply Agreement, it would add to its monthly invoices the amount derived from export duties (Annexes Y-64, A15/S15). YPF pointed out that "final and unconditional payment of export duties (…) entails a

necessary condition for the continuance of the deliveries according to the Agreement. In other words, it would be neither possible nor reasonable that YPF S.A. continue exporting natural gas under the Agreement." Likewise, YPF added that:----------

"Additionally, within the framework of the communications sent by YPF (herein referred to), we would like to remember that the balance of the Agreement's provisions is broken as well as the purpose agreed by the parties when executing it. This is due to the regulations and rules issued by the Argentine Government, including but not limited to Resolution SE No. 265/2004, Provision SSC No. 27/2004, Resolution SE No. 659/2004 (amended by Resolution SE No. 1681/2004) and Resolution SE No. 752/2005 ("Restrictions")."----------

Under these difficult and grave circumstances, we ask you to immediately organize a work team formed by members representing the Buyer and YPF S.A. in order to achieve, as soon as possible, the following goals: ----------

(i) The comprehensive renegotiation of the Agreement which includes the Restrictions (which YPF ratifies as the regulatory force majeure cause) and the new regulatory and market conditions. -----

(ii) YPF S.A. compensation –payable by the Buyer- for the increase in royalties' payment that may arise from Resolution (534/2006) and for any other harmful effect that such compensation may cause.----------

172. As per the letter dated August 9, 2006 (Annexes Y-65, A15/S15), AESU (in its capacity as Sulgás's rights assignee):----------

a. Informed YPF that, according to the friendly terms of their commercial relationship, AESU would comply with the provisions of the Agreement provided that the contractual procedure set forth for such purposes were considered. However, AESU pointed out that before transferring the tax on AESU, the consultation mechanism to the competent authority set forth in clause 13.1 of the Gas Supply Agreement shall be adopted in the event that YPF considers that there was an amendment to the regulations related to the applicable taxes. AESU added that there were foundations for such consultation and included a brief outline on those foundations. As a consequence, AESU required YPF to send a draft including the consultation to the competent authority for its consideration.----------

b. Pointed out that before arranging any meeting, the parties must execute the contractual provisions of the case; and----------

c. Added that the legislation mentioned by YPF such as "Restrictions" had given rise to the amendments to the Agreement for its duly performance and that AESU did not understand how

the new Resolution ME 534/06 could affect the economic balance of the Agreement to the detriment of YPF. ----------

173. On September 1, 2006, YPF apparently replied to AESU[20].----------

174. On September 4, 2006, AESU rejected again YPF's interpretation of the application of Resolution ME 534/2006 to the Gas Supply Agreement for several reasons, including the fact that it was hierarchically less important than the Treaty on Energy Cooperation and Interconnection signed between Argentina and Brazil, AESU required again the submission of a consultation to the competent authority, as per clause 13.1 of the Agreement (Annex Y-66, A77/S77).----------

175. In the following months, the Federal Administration of Public Revenue amended the taxable values per exported unit of gas according to the following terms: ----------

a. External Note 50/2007 issued on July 10, 2007 (Annex YL-105) sets forth that: ----------

"3.- The GENERAL CUSTOMS ADMINISTRATION will apply for the appraisal of natural gas exports the price fixed for these goods in the above mentioned AGREEMENT, which is FOUR POINT FIVE SIX ZERO TWO DOLLARS PER MILLIONS OF BTU (4.5602 US$/MMBTU), between April 1 and June 30, 2007----------

4.- For the purposes of determining the applicable value, it should be considered that the price fixed in item 3) refers to the goods delivered in the border between the ARGENTINE REPUBLIC and the REPUBLIC OF BOLIVIA, and that it does not include the export duties."----------

b. The External Note AFIG-DGA 61/2007 issued on September 4, 2007 (Annex YL-106) sets forth that:----------

"3.- The GENERAL CUSTOMS ADMINISTRATION will apply for the appraisal of natural gas exports the price fixed for these goods in the above mentioned AGREEMENT, which is FIVE POINT ZERO EIGHT FOUR FIVE DOLLARS PER MILLIONS OF BTU (5.0845 USD/MMBTU), between July 1 and September 30, 2007. ----------

4.- For the purposes of determining the applicable value, it should be considered that the price fixed in item 3) refers to the goods delivered in the border between the ARGENTINE REPUBLIC and the REPUBLIC OF BOLIVIA, and that it does not include the export duties."----------

c. The External Note AFIG-DGA 89/2007 issued on December 3, 2007 (Annex YL-107) sets forth that:----------

"3.- The GENERAL CUSTOMS ADMINISTRATION will apply for the appraisal of natural gas exports the price fixed for these goods in the above mentioned AGREEMENT, which is SIX POINT ZERO

[20] Note: The letter is not included in the file; however, it is referred to in the letter sent by AESU on September 4, 2006, Annex Y-66, A77/S77.----------

ONE THREE FOUR DOLLARS PER MILLIONS OF BTU (6,0134 USD/MMBTU), between October 1 and December 31, 2007.----------

4.- For the purposes of determining the applicable value, it should be considered that the price fixed in item 3) refers to the goods delivered in the border between the ARGENTINE REPUBLIC and the REPUBLIC OF BOLIVIA, and that it does not include the export duties."----------

d. The External Note AFIG-DGA 11/2008 issued on February 13, 2008 (Annex YL-109) sets forth that:----------

"3.- The GENERAL CUSTOMS ADMINISTRATION will apply for the appraisal of natural gas exports the price fixed for these goods in the above mentioned AGREEMENT, which is SIX POINT NINE EIGHT THREE THREE DOLLARS PER MILLIONS OF BTU (6.9833 USD/MMBTU), between January 1 and March 31, 2008.----------

4.- For the purposes of determining the applicable value, it should be considered that the price fixed in item 3) refers to the goods delivered in the border between the ARGENTINE REPUBLIC and the REPUBLIC OF BOLIVIA, and that it does not include the export duties."----------

8. Continuation of restrictions on natural gas exports ----------

176. On April 10, 2007, YPF informed AESU and Sulgás that the authorities had increased the volumes required to YPF through the mechanism of permanent additional injection set forth in Resolution SE 752/2005 and that, as a consequence, YPF was forced to affect the gas supply. YPF mentioned again its arguments on force majeure events (Annex A15/S15).----------

177. As per **Resolution 599/2007** issued on June 13, 2007 (Annex YL-104), the proposal for the 2007-2011 Agreement with Natural Gas Producers was accepted in order to meet domestic demand. The aforementioned Agreement sets forth that: ----------

"1. This Agreement is aimed at contributing to the usual supply of natural gas for the domestic market, prioritizing the demand which is satisfied with this fluid by Distribution companies. It is also aimed at providing enough incentives to allow the adequate formation of the natural gas market as well as supplying stock for domestic consumers. It is also important to acknowledge that natural gas production entails an activity that, in the medium or long term, shall operate within the framework of the provisions of the Executive Order 2731 dated December 29, 1993." ---

178. According to Hugo Martelli, YPF's expert, this resolution was used as an instrument to "persuade" producers into signing the agreement and taking on major commitments as regards the local market supply. The aforementioned expert explains that this agreement: (i) extended the involvement of the government in the natural gas market and in the gas prices in wellhead up

to 2011; (ii) established production quotas or natural gas volumes that those producers signing the agreement will commit to supply each sector of the Agreement Demand from any of the production areas; (iii) aimed at guaranteeing the supply of the domestic market in its entirety, prioritizing those natural gas consumers supplied by gas distribution companies, that is to say, individuals, businesses and small sized industries, and Compressed Natural Gas (CNG) retailers, named "Priority Demand"; (iv) established those procedures applicable to guarantee the gas supply for the domestic market in its entirety, even though the volumes agreed by the producers who signed the Second Gas Supply Agreement ("Signing Producers") were not enough to ensure the domestic supply , (v) established that the Signing Producers would receive a more favorable treatment than those who do not sign the agreement ("Non-Signing Producers") (establishing, for example, that in case of shortage of gas in the domestic market, the Energy Secretariat "would redirect" natural gas volumes of Signing Producers, affecting in that way their exports and domestic sales, only after affecting and redirecting the exports and domestic sales of Non-Signing Producers). According to Mr. Martelli, the consequence of this treatment, which favors the Signing Producers, was that Non-Signing Producers were forced to firstly meet any shortage in Priority Demand (that pays lower prices) with the volumes intended to exports or domestic sales which were better paid. Likewise, Non-Signing Producers were also forced to cover any increase in the domestic demand which was not covered by Signing Producers, affecting firstly their better paid sales. Only after the supply of Non-Signing Producers was completely used, Signing Producers' would be taken (First Report of Hugo Martelli, ¶¶104-114).----------

179. According to Mr. Martelli: "Both the Second and the First Gas Supply Agreement were not executed spontaneously by producers; on the contrary, they were promoted directly and openly by the Executive and the Energy Secretariat. The Second Gas Supply Agreement forced producers to decide whether not to agree and bear the adverse and discriminatory consequences provided for Non-Signing Producers, or to adhere to the agreement and accept new delivery commitments with the domestic market in order to protect the exports market, because if they do not sign the agreement their exports' customers would be the first ones affected by the shortage (First Report Hugo Martelli, ¶¶115).----------

180. Mr. Martelli added that, as from Resolution SE 599/2007, changes on natural gas dispatch were deepened (before the adoption of these measures, sales were determined and administered by gas producers) and producers lost their power to freely decide upon their

natural gas provisions and use them according to their obligations or will (First Report of Hugo Martelli,¶ 118). Mr. Martelli explains that: ----------

a "The new rules on gas sales imposed by the Energy Secretariat fixed an specific priority order for natural gas injection and dispatch which not only set aside exports but also affected the local contractual obligations engaged by producers, because it prioritized some local uses over others, even over those derived from preexisting local agreements." (First Report of Hugo Martelli, ¶119). ----------

b. Likewise, as from 2007, gas sales were affected by the decision of several agencies of the Government of Argentina. After the regulatory restriction measures, there were *de facto* measures adopted by an Emergency Committee which through direct orders imposed to carriers, in particular to TGN and TGS, reallocated gas and transportation at its discretion, not only as regards exports but also within the domestic market. In the Committee, the distribution companies informed the gas volumes required to meet the demand supply by each of them and, based on that, the corresponding sales instructions were given. The instructions given by the Committee, evidenced by informal communications issued by several governmental agencies, were discretionary and responded to what the authority considered as supply priorities in every case, set aside from any relation with the allocation determined by producers according to their agreements." (First Report of Hugo Martelli, ¶119). ----------

181. Particularly, as from September 16 up to November 16, 2007, the Secretariat of Domestic Commerce ordered TGN to reduce to zero (0) m3/day the hired haulage destined for the Uruguayana Power Station, despite the fact that every day YPF had ratified AESU the availability of the totality of nominated gas (2,800,000 m3/day) and had hired the haulage services for such volume (Annexes Y-75, Y-71). ----------

182. Besides the reductions imposed by the Government of Argentina, on October 13, 2007 a technical accident in the Uruguayana power station caused a 50% reduction in its generating capacity, leaving the power station at 320 MW. YPF holds that the day of the accident which caused a 50% reduction in its generating capacity, AESU nominated 2,800,000 m3/day (that is to say, a volume that it could have never used). YPF holds that this level of nomination -inconsistent with the generating capacity of the Uruguayana power station remained until December 11, 2007 when AESU reduced its nomination to 1,400,000 m3/day, a level consistent with such capacity. YPF concludes that the fact that AESU nominated more volumes of gas than those which YPF could effectively use, not only evidences AESU bad faith in its contractual behavior towards YPF

but also affects other aims of AESU in these arbitration proceedings (for example, the DOP liquidated but not billed in such period (Annexes Y-72 and Y-74)). (Y-MD, ¶330). ----------

9. AESU situation in Brazil ----------

183. Between 2000 and 2008, several changes were made which modified the regulation of the PPA of AESU in Brazil. At the beginning of 2000, through Executive Order 3371 issued on February 24, 2000, the Government of Brazil established the "Thermoelectricity Priority Program" [PPT, for its acronym in Spanish] that determined a regulatory framework aimed at introducing thermal energy in Brazil in order to reduce the hydroelectrical tendency of the country. (Report of Mercados Energéticos, Second Section, Chapter 3.1 (A/S-MD, ¶1009 foot note 139)) ----------

184. The PPT regulated several incentives for the installation of thermoelectrical power stations, including a guarantee of "treatment symmetry" among the readjustments of the price of the corresponding power purchase agreement entered into between the generator adhered to the PPT and the electricity distribution company, and the readjustments of the prices between the electricity distribution company and its customers. (Report of Mercados Energéticos, Second Part, Chapter 3.1; AESU and Sulgás agreed on this item).----------

185. Pursuant to Mercados Energéticos, YPF expert, this entailed an important difference with the PPA between AESU and CEEE-D, AES Sul and RGE distribution companies according to what the readjustments related to the PPA price could be made at any time, only if the readjustment of the distribution companies prices was made once a year. This asymmetry on the readjustment caused problems between AESU and distribution companies due to the severe devaluation of the Real compared to the United States Dollar. This situation caused an increase of an average of 25% per year in the price of the PPA; distribution companies could not immediately transfer said increase to their final customers. (Report of Mercados Energéticos, Second Part, Chapter 4.2; AESU and Sulgás agreed on this item)----------

186. In March, 2004, AESU, by mutual agreement with the distribution companies, required the MME the integration of the Uruguayana Power Station within the legal framework of the PPT (Presentation of AESU before the MME on March 23, 2004; Annex Y-43). This integration was held on April 7, 2004 (Presentation of AESU before the ANEEL on March 6, 2008, Annex Y-76, slide 4). As a consequence of this incorporation to the PPT, the price adjustment of the PPA would only be performed annually when the distribution companies' tariffs were adjusted. Additionally, the price of the PPA became a monomial value (payment for electric energy

supplied, disappearing the power payment) which was similar to the value fixed by the Brazilian authority (ANEEL) allowed to be transferred to the tariff (named "Regulatory Value"). ----------

187. In July 2004, AESU signed a new trade agreement with its affiliate AES Eletropaulo, for a term of 5 years and 59 MW power. AESU increased the power hired by the Uruguayana Power Station from 474,65 MW to 533,65 MW (Report of Mercados Energéticos, ¶189, A/S-MD, ¶151).[21] YPF, AESU and Sulgás consider that this agreement constitutes a part of the PPA. ----------

188. On July 30, 2004, the Government of Brazil issued Executive Order 5163/2004 which was aimed at regulating the trading of electrical energy and the procedures for the granting and authorization for electrical energy generation. This Executive Order provides that the sellers of electrical energy had to confirm a "*lastro*" or "guaranteed power output" to guarantee the totality of their agreements to trade electrical energy (such as the PPA of AESU). In the case of a thermal power station operating with natural gas, this was confirmed through an agreement of natural gas supply at a firm base {(that is to say, with a deliver-or-pay clause) and controlled by the ANEEL}. The above mentioned guaranteed output would be set by the Ministry of Mines and Energy and would impose a power maximum limit that could be traded by the power station. (Y-MD, ¶138; A/S-MD, ¶1007). In this sense, Section 2.III, § 2 determines that: ----------

"The guaranteed output of energy and power of a generating undertaking to be defined by the Ministry of Mines and Energy, and provided in the assignment agreement or in the authorization, will represent the maximum quantities of electrical energy and power related to the undertaking, including imports, that may be used for the confirmation of the service of transportation or trading under agreements." ----------

189. The Ministry of Mines and Energy, under Ministerial Decision [Ordinance] 303/2004 issued on November 18, 2004 (Annex A38/S38), established that even though the Uruguayana power station had a power rating of 639,9 MW, its guaranteed power output would be 565, 1 MW. According to the opinions of experts representing YPF and AESU/Sulgás, the guaranteed output is a regulatory term which sets the contractual limit of a power station to sell energy through agreements, and it is different from the term "generating availability", which is an operative concept consisting of the essential availability to generate certain levels of energy. In other words, the guaranteed power output means that the power station cannot execute sales agreements for quantities which, if added, exceed their guaranteed output values (except that the guaranteed output is increased through bilateral agreements). At that date, the Uruguayana

[21] The Tribunal holds that AESU and Sulgás prove that power increased to 554 MW possibly due to the submission of AESU before the ANEEL in March, 2008. Annex Y-76. See Note 24 in paragraph 193*infra*.-------

power station had power agreed with the distribution companies AES Sul, CEEE-D, RGE and AES Eletropaulo for 533,65 MW (First Report of Mercados Energéticos, ¶¶204-206; Second Report of Engenho,¶ 7).----------

190. In 2004, AESU frequently resorted to the spot market in order to comply with the obligations established in the PPA, and took advantage of the lower cost of available energy in such market (average price of 19 R$/MWh) in relation to its CVU (average price of 45 R$/MWh). At a daily basis, it bought 255 MW in the spot market, and they generated 259 MW. Meanwhile, AESU sold to distribution companies under the PPA at an average price of 122.70 R$/MWh. (First Report of Mercados Energéticos, ¶186, picture 15). AESU and Sulgás neither deny that they made these purchases in the spot market, nor the prices declared by the YPF's expert. In fact, AESU and Sulgás expert, *Abdo Ellery y Asociados* (Annex A65/S65), takes into account the data included in the Report of Mercados Energéticos, regarding the 108 months of operation in the AESU power station, to draw some conclusions (Abdo, Ellery y Asociados Report, Annex A65/S65,¶ 39)[22] ---------

191. As it has been hereinabove mentioned, on August 31, 2004, YPF, AESU and Sulgás signed the First Conflict Resolution Agreement, in which specific regulations for 2004 to 2007 were settled, in particular, the agreements related to the winter period (see 145 above). YPF also asserts (and AESU and Sulgás do not contradict) that in 2004, AESU nominated an average quantity of 1,200,000 m3/day pursuant to the Gas Supply Agreement, without accruing DOP penalties. (Y-MD, ¶278). In 2004, AESU and Sulgás incurred in TOP of the Gas Supply Agreement. ----------

---

[22] AESU's expert bases his remarks on the data provided in the Report of Mercados Energéticos in relation to the 108 months of operation of the AESU power station, in order to draw the following conclusions (Abdo, Ellery y Asociados Report, Annex A65/S65, ¶39):----------

a. Over the period previous to the failure of YPF to supply natural gas that started on April 2004 (53 months): ----------
   i. For 23 months (43.4% of the power station's operating time within the term in question) the CVU of the power station was higher than the PLD of the spot market. However, there was an intensive generation of energy.----------
   ii. For 4 months (7.5% of the power station's operating time within the term in question) the PLD of the spot market recorded a value higher than that of the CVU of the power station. However, most of the energy hired was purchased.----------
   iii. For 9 months (17% of the power station's operating time within the term in question) the CVU of the power station was lower than the spot price. In that term, there was an intensive generation.----
   iv. For 17 months (32.1% of the power station's operating time within the term in question) there was liquidation to the PLD of the spot market, which was lower than the CVU of the power station at that moment.----------
b. Over the period following the failure of YPF to comply with the natural gas supply (from June 2004 to December 2008) (55 months).----------

192. Under the MME Ordinance 153/2005 issued on March 30, 2005, the guaranteed output acknowledged to the AESU power station was 217 MW (Annex A38/S38). The guaranteed power output decrease led AESU to acquire from third parties, including the spot market, the electrical energy required to honor its obligations pursuant to the PPA. For such purposes, it executed some energy sales agreements with third parties, such as: (i) Long Term Electrical Energy Sales Agreement signed with Tradener Ltda, on June 28, 2006: (ii) Electrical Energy Sales Agreement No. AES-CSUL/2007 1032 signed with CPFL Comercialização Cone Sul S.A., on April 12, 2007; and (iii) Electrical Energy Sales Agreement No. AES-CSUL/2007 1033 signed with CPFL Comercialização Cone Sul S.A., on April 12, 2007. {YPF names these agreements with third parties "Bilateral Agreements"} AESU declares that this agreement caused loses for the latter.[23] ----------

193. YPF argues that, instead of trying to reduce the power hired pursuant to the PPA (which energy was about 533.65 MW in 2005) to the guaranteed power output value (217 MW), in order to cover such discrepancy AESU opted for keeping its position as trader using now the energy acquired through the Bilateral Agreements to resell it through the PPA. YPF alleges that the discrepancy between the average price that AESU used to purchase energy and the PPA price allowed AESU to keep its business economic benefits, despite the restrictions on Argentine gas deliveries. Considering the aforementioned, and the purchase procedures in the short-term market, the hiring consisting of about 533.65 MW average, between the Uruguayana power station and the distribution companies, (RGE =141.92; CEEE =155.21; AES-Sul =177.52 and Eletropaulo =59.0) was completely supported. (Report of Mercados Energéticos issued on July 1, 2008, ¶¶211-213).[24] ----------

i. For 14 months (25.5%) the CVU of the power station was higher that the PLD of the spot market and there was an intensive generation of the power station. ----------

ii. For 9 months (16.4%) the PLD of the spot market was higher than the CVU, however, there was an important acquisition of energy to comply with the agreements. ----------

iii. For 11 months (20%) the CVU was lower that the PLD and there was an intensive generation of the power station.----------

Iv. For 21 months (38.2%) there was liquidation to the PLD of the spot market, which was lower than the CVU of the power station at that moment. ----------

[23] A/S-MD 1009-1012. See also Table 1 of the Technical Note No. 398/2007-SEM/ANEEL issued on December 11, 2007 (Annex 32 of the Report of Mercados Energéticos of July 1, 2008).----------

[24] The Tribunal considers that AESU gave another numbers to ANEEL in 2008: a total amount of 554 MW average for RGE=148 MW average; CEEE= 162 MW average: AES Sul =185 MW average; AES Eletropaulo = 59 MW average (Presentation of AESU in the ANEEL on March 6, 2008; Annex Y-76, slide 5)----------

194. Up to June 2007, the spot price in the electrical market was still low (31.7 R$/MWh average). However, in July 2007, the spot price (132 R$/MWh) approached the PPA price (134.41 R$/MWh) and, from September, it was far higher than the PPA (182.65 R$/MWh average). AESU and Sulgás do not disagree with these prices.[25] ----------

195. Likewise, from November 2007, the natural gas price under the Gas Supply Agreement rose from 4 to 4.50 US$/MMBtu as a consequence of an increase of about 0,50 US$/MMBtu in exports taxes. This increased its CVU to 65.2 R$/MWh.[26] ----------

196. In July 2007, AESU, together with the distribution companies, required the MME to omit the limitation on the transfer of the PPA price set out by the PPT rules[27]. It appears that the MME did not accept the requirement, at least at that moment. ----------

197. According to YPF, the spot price remained higher than the PPA price during January and February, 2008 (362.95 R$/MWh average, compared to 135.60 R$/MWh). However, over these months, the AESU nominations and the YPF gas deliveries remained in 1,300,000m3/day, based on the limit in the level of deliveries allowed by the Government of Argentina by virtue of the

---

[25] In fact, AESU, Sulgás and YPF experts use the same data. (See paragraph 190 and Note 22 *supra*). Additionally, in the submission before the ANEEL in March 2008, AESU ratified that up to 2006 the energy price in the market was low but afterwards the energy offer dropped and it was impossible for AESU to acquire energy from third parties. Presentation of AESU before the ANEEL on March 6, 2008; Annex Y-76, slides 12-14.----------

[26] YPF holds that this was caused by the increase in the gas price of Bolivia which was imported by Argentina and which was used as a base for the assessment of the gas exports tax. See External Notes AFIP-DGA N° 28/2008; 50/2007; 61/2007; 89/2007; and 11/2008, Annexes YL-98, YL-105, YL¬106, YL-107 and YL-109.----------

[27] Presentation of AESU before the ANEEL on March 6, 2008 (Annex Y-76); Technical Note issued by the ANEEL on August 11, 2008 in the Proceeding No. 48500.004620/2008-79 between AES Sul and AESU, Annex Y-103, which determines in items 24 and 25:----------

> "24. In 2007, AES Uruguaiana argued before the MME the omission of the limitation of the maximum value of the energy generated in the power stations of the PPT, through the modification of § 30, section 1° of Resolution MME No. 52/2004, with the drafting of Resolution MME No. 188/2006. Consequently, the energy price corresponding to the agreement signed between the UTE Uruguaiana and the distribution companies AES Sul, CEEE and RGE will evidence the changes in the price of Argentinean imported gas, without being limited to the values declared by the other central power stations which form the PPT.----------
> 25. On December 11, 2007, the Superintendence of Market Research -SEM- issued the Technical Note No. 398/2007-SEM/ANEEL, in which it analyzed the commercial agreements, generating scope and purchase of energy for the formation of the ballast capacity of the UTE Uruguaiana, to help the Governing Body of ANEEL, in the analysis of the argument of the company. The analyses carried out by the SEM stated that: (...)----------
> The legislation and regulation in force do not foresee an economic and financial balance for generating agents; and----------
> There is no legal support for the elimination of the limit on transfers of the energy cost of UTE Uruguaiana to the tariffs of the supply, whereas the MME, if pertinent, can modify the limit on transfers through a Resolution."----------

Energy Exchange Agreement signed with Brazil (generating power at an average of 270 MW). Besides, the Bilateral Agreements ensured that AESU would receive a power average of 281,9 MW, so, the 533,7 MW under the PPA were mainly fulfilled with their own generating power and the Bilateral Agreements (Y-MD, ¶332, Report of Mercados Energéticos). AESU and Sulgás did not disagree with these figures.----------

198. As from February 2008, the tax on gas exports increased again by US$ 0.50/MMBTU. YPF alleges that, due to the limitation on the transfer of said higher cost to the PPA price, AESU billed 159.09 R$/MWh to RGE and AES Sue, whereas these companies -for the limit on transfers- only paid 138.73 R$/MWh, and billed to CEEE-D 147.5 R$/MWh, whereas it received 134.2 R$/MWh (Y-MD¶ 333)[28]. ----------

199. On February 20, 2008, AESU requested the ANEEL an administrative mediation aimed at renegotiating the contracts signed with the distribution companies AES Sul, RGE, CEEE and Eletropaulo (A/S-MD ¶1014; A/S-MC ¶192) giving rise to the administrative mediation proceeding No. 48512.006738/2008-00.----------

200. On March 6, 2008, AESU held a meeting with ANEEL in which declared that in the current situation, the energy sales agreement (PPA or CCVEE by their Portuguese acronym) were not sustainable, and proposed, among other measures the following ones: (i) reduction of the power hired under the PPA to the volume of its guaranteed output fixed in 217 MW, due to the impossibility to obtain energy from third parties, at least at prices that AESU could pay to comply with the PPA without causing losses, and (ii) the acknowledgment of a price in the PPA that accompanies the price of the Argentine gas (Presentation of AESU before the ANEEL issued on March 6 2008 (Annex Y-76), slides 16-25; Y-MD¶ 146, 335; A/S-MC ¶¶193¬194). Likewise, AESU highlighted the need to find a solution as soon as possible in view of the deterioration of the AESU's financial situation, which deterioration could be worsen due to the volatility of the market prices at a short term and the proximity of the tariffs revisions of RGE and AES Sul in April 2008 (Annex Y-76, slide 25). ----------

10. New increase in the gas exports tax and reduction of the guaranteed output of the Uruguayana power station----------

201. On March 12, 2008, six days after the presentation of AESU before the ANEEL, the Government of Argentina issued Resolution MEyP 127/2008 by which (i) the gas exports tax rate

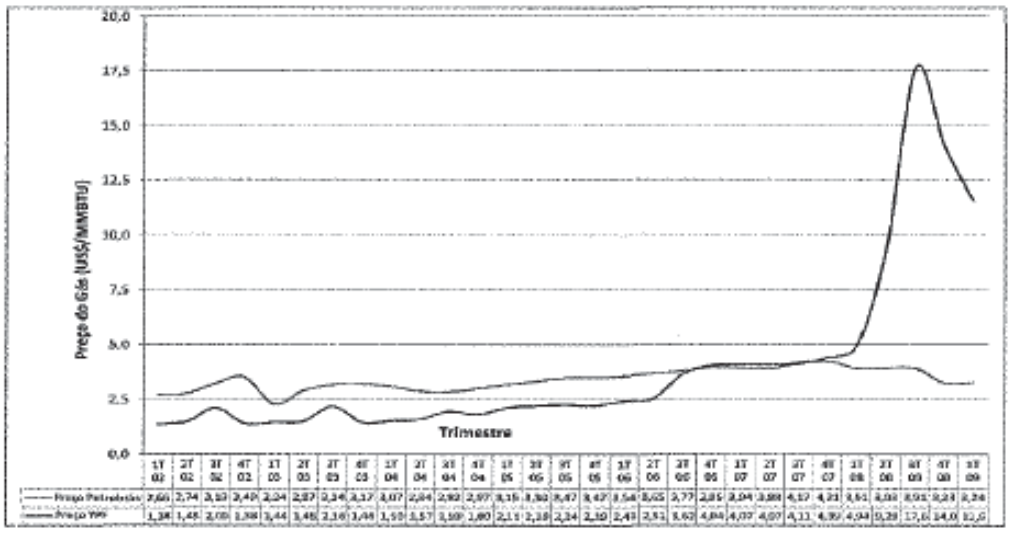
[28] AESU and Sulgás agree with these figures, which are ratified in their Presentation in the ANEEL on March 6, 2008 (Annex Y-76).----------

was increased from 45% to 100%, and (ii) the base for the assessment of export taxes was modified, by using the "highest price" to which Argentina imported gas at every moment (Resolution MEyP 127/2008 published on March 12, 2008 in the Official Gazette, Annexes YL-110, AL3/SL3).----------

---

202. In April 2008, the tax on gas exports increased from 3 US$/MMBtu to 7 US$/MMBtu, and over the months of June to August of the same year, the tax fluctuated between 14.5 and 17 US$/MMBtu (the reason is that in the winter period of that year, Argentina imported LNG at those prices, which would constitute the base on which the exports tax was assessed) (Y-MD¶ 337). YPF included the following chart to evidence the evolution of prices by which it billed natural gas to AESU, showing how the Argentine gas was losing competitiveness with respect to the Bolivian gas paid for the rest of the thermoelectrical power stations of the PPT, since the issue of Resolution MEyP 127/08:----------

---



Source: Chart No. 13 of the Report of MERCADOS ENERGÉTICOS. ----------

203. On November 25, 2008, under Resolution ANEEL 340/08, the guaranteed output of the Uruguayana power station was reduced to 0 MW. AESU argues that these reductions were caused by the failure of YPF to deliver natural gas. The reduction of the guaranteed power output to 0 MW took the power station out of the electrical production system (A/S-MD 1010, Annex A38/S38). ----------

11. Mailing between YPF and AESU (March 2008 - March 2009) ----------

204. As per the letter dated March 27, 2008, YPF informed AESU and Sulgás that Resolution MEyP 127/2008 had increased the exports tax at a 100%, and that, by virtue of the provisions of clause 13.1 of the Agreement, it would adjust the amounts billed to AESU as price and export duties. YPF also informed that such Resolution had an impact upon the royalties to be paid to the provinces where the gas is produced, and that the consequence of that situation was making the agreement extremely onerous. As a consequence, YPF called Sulgás to a meeting in order to "agree on the compensation that Sulgás would have to pay to YPF for the increase in the royalties payment (...) in order to make the natural gas deliveries possible pursuant to the Agreement." (Annex A15/S15). ----------

205. On April 17, 2008, AESU communicated YPF that TGN had informed that the availability of gas destined to Sulgás (and therefore, to AESU) would drop to zero m3 as from the following week, and urged YPF to explain the reasons for that and to regularize the situation (Annex A15/S15). ----------

206. As per the letter dated May 7, 2008, YPF answered the letter mentioned in the previous paragraph by stating that YPF had ratified the entirety of the gas volumes nominated by AESU, and that, therefore, any failure in the gas delivery should not be chargeable to YPF but to TGN (Annex A15/S15). ----------

207. On May 20, 2008, AESU informed YPF that it had paid US$ 20.1 million as balance for the carriage plus interests, plus segment A of the transportation of June, July and August 2007, plus interests, complying with their duties upon the Payment Agreement. (Annex Y-77). ----------

208. As per the letter dated May 26, 2008, AESU requested YPF to deliver a report on the court and out-of-court actions filed by YPF against the acts performed by the Government of Argentina (Annex Y-78, A15/S15) ----------

209. As per the letter dated June 5, 2008, YPF promised to send the required information and repeated what had been stated in the letters dated February 14 and May 16, 2005 (Annex A15/S15). ----------

210. As per the letter dated on June 25, 2008, AESU notified YPF of its failure to perform the gas delivery from September 9, 2007 and up to that date for an amount of 136,323,198 m3, causing a DOP penalty of US$ 28,089,320.50. Besides, AESU rejected the excuses alleged by YPF about the shortage of gas stated in the letter dated May 7, declaring that the references to the chargeability of TGN were irrelevant (since, pursuant to the terms of the Agreement, YPF was

liable for the transportation services) or wrong (since, in the emails mentioned by YPF, TGN confirmed its full availability) (Annex Y-80, A15/S15) ----------

211. As per the letter dated July 16, 2008, AESU notified YPF of a new failure to comply with the deliveries between January 18, 2006 and December 1, 2006, for an amount of 12,127,808 m3, causing a DOP penalty of US$ 2,711,424. AESU sent a Debit Note No. COM/001/2008 for such sum (Annex Y-81, A15/S15). ----------

212. As per the letter dated July 18, 2008 (Annex Y-82, A15/S15), YPF rejected the terms of the letters sent by AESU on May 26 and June 25, 2008, pointing out that, pursuant to the Agreement, it was inadmissible to collect DOP penalties in the event of force majeure, and that there were another causes to reject the collection (failures of AESU, break down of the reciprocal contractual relationship, and the wrong assessment made by AESU). Particularly, YPF added the following considerations:----------

"Disintegration of the Agreement in particular and of the Exports Agreements in general. ----------

As publicly known, and as it has been informed to AESU through emails and regular mail correspondence (the last one dated June 5, 2008), the authorities have -since 2004- limited the natural gas exports (including the Agreement) disintegrating their budgets and causing the disappearance of the reciprocal contractual relationship. Such behavior of the authorities exceeds the natural gas producers and should not be chargeable to them. ----------

In this sense, AESU's statements surprised us, since, this situation is known by the company (and by the public in general), and far from being a topic related only to YPF, it affects every Argentine natural gas producer and buyer domiciled abroad.----------

[...] ----------

As you know, YPF did not have other choice than to comply with the rules, acts and means adopted by the authorities, in order to avoid bigger problems for its customers and for the company. ----------

By virtue of the aforementioned, AESU's claim to collect penalties due to the failure to deliver natural gas volumes, which were considered as act of God or force majeure events, should be inadmissible and illegal.----------

We insist that the Agreement is no longer viable with its existing terms because the purpose agreed upon by the parties when executing it has been frustrated. This is based on the authorities' intervention which has disintegrated the Agreement and on the theory of unforeseen

contingencies, the frustration of the agreement's purpose, the general principle of good faith, unconscionability and equity." ----------

213. Additionally, YPF pointed out that "for many years and despite the repeated notifications sent by YPF, AESU fails to comply with the Agreement. This occurred despite the delayed and partial payment informed in the note dated May 20, 2008". YPF added that those failures "grant YPF a right to terminate the Agreement (if this contract may be considered in force after the disintegration caused by the authorities)", and "disable AESU to claim for the fulfillment of any contractual duty by YPF". However, YPF pointed out that it would be important to continue with the meetings "in order to reach to a new agreement including the new regulatory and market conditions" (Annex Y-82, A15/S15) ----------

214. In the letter dated August 1, 2008, YPF rejected the terms of the AESU's letter dated July 16, 2008, repeating the terms of the letter dated July 18 (Annex Y-83, A15/S15). ----------

215. In a separate letter dated August 1, 2008, YPF informed AESU that, pursuant to the External Notes 52/2008 and 57/2008 issued by the General Customs Administration, the base for the assessment of exports taxes had been modified. YPF pointed out that, considering the effects of this tax on the royalties paid in the provinces, "it is not viable for YPF to export natural gas in accordance with the Agreement" (Annex A15/S15). ----------

216. In the letter dated August 14, 2008, AESU rejected the terms included in the letters sent by YPF on July 18 and August 1. AESU ratified that up to that date it had comply with all the obligations derived from the Agreement and the Conflict Resolution Agreements, pointing out that YPF had neither identified nor explained the alleged failures to comply. AESU declared that, on the contrary, it was YPF who had not comply with its obligations to deliver. Therefore, AESU ratified its payment requirements for the two DOP penalties (US$ 28 million and US$ 2.7 million) (Annex Y-84, A15/S15). ----------

217. On August 25, 2008, YPF notified AESU of the continuation of the force majeure events (Annex Y-85, A15/S15). Particularly, YPF stated that: ----------

"As you know, the Government of Argentina keeps on limiting the natural gas exports, whether: (i) through direct acts; or (ii) urging the carrier company to redirect the natural gas owned by YPF to the domestic market, which natural gas was destined to comply with the Agreement between us. In this last case, the carrier company cuts the natural gas exports owned by YPF in the gas pipeline header -as we were informed of- upon a Public Authority order." ----------

It is worth repeating that neither the behavior of the carrier nor the acts performed by the Public Authority could be hampered by YPF or depended on its will, since the allocation carried out by the carrier prevails over any adverse confirmation of YPF and its own will.----------
Likewise, we repeat that YPF has rejected the acts performed by the Public Authority, which together with the carrier's acts constitute a force majeure event pursuant to the Agreement. -------
In this sense, as long as the existing Force Majeure event remains, ***the contractual obligations of YPF will be suspended***, and YPF will not be held liable for the failure to provide natural gas volumes pursuant to the agreement. Emphasis added. ----------
218. As per the letter dated September 5, 2008, YPF rejected the terms of the AESU's letter sent on August 14, 2008 (Annex A15/S15). In this letter, YPF repeated its statements on force majeure events, Agreement's breach, and AESU's failures (again without identifying specific failures). Regarding the Agreement's breach, YPF pointed out that: ----------
"The illegal and inadmissible behavior of the Government of Argentina regarding the Agreement and the behavior of AESU has also caused: ----------
(i) ***Disappearance of the agreement's "foundations".*** In this sense, from April 2004 and upon the issue of the Provision 27/2004, YPF has considered the factual and legal assumptions that the parties took into account when signing the Agreement. These assumptions are the long-term sale of natural gas within the scope of a stable legal and tax framework. ----------
(ii) ***disintegration of the Agreement*** through the issue of rules and the performance of acts or factual means, not involving YPF's control, which could not be foreseen by YPF as a prudent and responsible seller. ----------
In this sense, we noted that any reference that we make now -or in the future- to the Agreement could not be construed as an acceptance of the existence of a viable agreement with a contractual reciprocal relation in force." (Emphasis added)----------
219. As per the letter dated September 12, 2008, YPF notified AESU that the General Customs Administration had issued the External Note 75/2008 that fixed 15,1170 US$/MMBTU as the price that would be applied as a base for the assessment of natural gas exports {for export taxes}, from August 13 to August 29, 2008. YPF ratified that this would cause an important effect over the royalties paid to the provinces and that "if [AESU] does not assume -apart from the exports duties- the differential payment of royalties, it will not be viable for YPF to export natural gas in accordance with the Agreement." YPF ratified force majeure events and that the "Agreement is disintegrated and the contractual reciprocal relation has been broken -as a consequence of the

issue of restrictive rules on natural gas exports- due to reasons not attributable to YPF." (Annex A15/S15, Y-88) ----------

220. As per the letter dated September 12, 2008, AESU informed YPF that it had paid the debt for Segment A of transportation to Sulgás, which sum amounted to US$ 4.1 million, subject to be reimbursed in accordance with section 15.5 of the Agreement (Annex A15/S15, Y-87). ----------

12. Suspension and termination of the Gas Supply Agreement ----------

221. As per the letter dated September 15, 2008, AESU informed YPF that, due to its failures to perform, the compliance with the obligations provided in the Gas Supply Agreement and in the Complementary Agreements will be suspended (Annex Y-89, Annex A15/S15). Particularly, AESU pointed out that: ----------

"This letter answers yours dated on August 25, 2008 and September 5, 2008. ----------

We have noted your reference to the Agreements mentioning that the it has been "disintegrated" and that its "foundations would have disappeared." If, by these assertions, you mean the impossibility of YPF to comply with the agreements' provisions, actually, the alleged impossibility is caused by the failure of YPF to comply with its duties, such as the execution of a Reasonable and Prudent Operation, as required by the Agreement and section 1198, paragraph 1 of the Argentine Civil Code. In any case, we understand your reference to such unusual concepts, as well as the information included in your aforementioned letter (including your inadmissible request to transfer the costs which do not correspond to AESU pursuant to the Agreement, as well as the comprehensive revision of the latter), as guilty repudiation of your obligations upon the Agreement and the Agreement in itself. ----------

Therefore, we hereby reaffirm our position according to the letters sent by AESU dated May 26, 2008 and August 14, 2008, and the claim for the outstanding payment of "Deliver or Pay" by YPF, in accordance with the provisions of clauses 14.1.2.1, 14.1.2.2 and 14.1.2.2 bis of the Agreement, with the amendments introduced by the Supplementary Agreement dated February 10, 2006 between YPF, AESU and Sulgás.----------

We hereby also reject the alleged non-compliance of AESU with respect to the payments engaged in by the Agreement, upon which YPF do not provide information different from the aforementioned general reference. Therefore, considering the severe failures and the continuous arrears of YPF, in accordance with the provisions of sections 510, 1201 and related sections of the Argentine Civil Code, we hereby duly inform you that AESU, in the extent authorized by such

provisions and rules, ***will hold the compliance with the obligations set forth in the Agreement and in the Conflict Resolution Agreements*** ----------.

AESU reserves the right to exercise the legal actions that may correspond with respect to the failures and repudiations of YPF, and anything that has been herein provided could be construed as a limitation or contingency to such powers." (Emphasis added) ----------

222. On September 23, 2008, AESU answered the letters sent by YPF on August 1 and September 12 related to the assessment value applicable to natural gas exports (Annex Y-91, A15/S15). AESU pointed out that: ----------

"The hydrocarbon royalties, given its nature, are not considered costs transferable to Sulgás and, consequently, to AESU, in accordance with the provisions of clause 13.1 of the Agreement. Therefore, we reject your request that we should bear an economic effect which is not our responsibility according to the Agreement and the applicable legislation. ----------

In every case, we keep in force the suspension of our contractual obligations declared under the letter sent on September 15, 2008 and we reserve the right to exercise the legal actions that may correspond against the failures and repudiations of the Agreement made by YPF." ----------

223. On October 21, 2008, YPF rejected the letters sent by AESU on September 12, 15, 22 and 23, 2008, by considering that they are inadmissible and lack legal foundations (Annex 15/S15). ----------

a. YPF ratified that it was under a force majeure event, so according to the clause 17.2 of the Agreement, the obligations of YPF were suspended and, therefore, no DOP obligation was generated. ----------

b. YPF repeated that the Agreement's foundations had disappeared and that the Agreement was disintegrated, stating again that "any reference that we made in the present –or in the future- in the Agreement cannot be construed as an acknowledgement of existence of a viable agreement and/or of a contractual reciprocal relation in force." ----------

c. Additionally, YPF rejected the suspension of the AESU's obligations as inadmissible, and insisted on other failures of AESU without identifying them, adding that those failures empowered them to terminate the Agreement. ----------

d. Regarding the exports duties and royalties, YPF rejected the interpretation of AESU of the clause 13.1 of the Gas Supply Agreement, and insisted on the urgent need to review the Agreement. ----------

224. As per the letter dated November 3, 2008, AESU rejected the terms of the letter sent by YPF referred to in the previous paragraph (Annex A15/S15, Y-94). Particularly, AESU: ----------

a. rejected once again the statements on force majeure made by YPF;----------

b. rejected the statements on failure made by YPF;----------

c. rejected that pursuant to the clause 13.1 of the Agreement, the hydrocarbon royalties could constitute a transferable cost; ----------

d. pointed out that "[if] the Agreement's foundations or the contractual reciprocal relations have disappeared or have been affected, that was caused exclusively by the failures of YPF to comply with the Agreement's provisions, its behavior opposite to the standard of a reasonable operator and its steady lack of diligence that affected not only the normal compliance with the Agreement but also its present and future possibilities to comply with the contractual obligations assumed;" --

e. rejected invoice 0078-00001730 issued on October 23, 2008, of US$ 4.1 million for the payment of Segments A and B of transportation; and ----------

f. maintained in force the suspension of its obligations. ----------

225. As per the letter dated November 17, 2008, YPF rejected the terms of the letter sent by AESU on November 3 (Annex A15/S15). Particularly, it:----------

a. ratified the force majeure events.----------
b. ratified the existence of AESU's breaches, but again it did not identify them.----------
c. rejected the interpretation made by AESU with respect to the clause 13.1 of the Agreement regarding hydrocarbon royalties. ----------
d. asserted that it had behaved as a reasonable and prudent operator. ----------
e. rejected the payment of invoice 0078-00001730 issued on October 23, 2008, for US$ 4.1 million for the payment of Segments A and B of transportation.----------

226. As per the letter dated December 2, 2008, AESU rejected the terms of the letter sent by YPF on December 2, in particular, those statements on failures to comply made by YPF, requesting again their proper identification, including the causes, dates and amounts. Additionally, AESU rejected another invoice No. 0078-00001742 of US$ 5.5 million for Segments A and B of transportation (Annex A15/S15).----------

227. As per the letter dated December 4, 2008, YPF notified AESU that invoice No. 0078¬00001730 was still outstanding which was issued on October 23, 2008 of US$ 4.1 for the payment of Segments A and B of transportation that expired on November 3, 2008. Consequently, and pursuant to the clause 14.1.1 of the Agreement, YPF notified AESU that from the invoice's expiration date, it suspended the natural gas deliveries until such amount was paid (Annex Y-96, A15/S15). ----------

228. As per the letter dated 30 December, 2008, AESU rejected the terms of the letter sent by YPF on December 4, and, particularly, rejected that YPF was empowered to suspend the natural gas deliveries based on an alleged breaches of AESU. AESU explained that the suspension of their obligations derived from the breaches incurred by YPF as a consequence of the gas deliveries, the lack of DOP payment and the permanent failure to act as a reasonable and prudent operator (Annex A15/S15, Y-97). ----------

229. As per the letter dated January 7, 2009,{[the letter is dated 2008, but it is a mistake}, YPF rejected the letters sent by AESU on December 2 and 30, 2008, and repeated its statements on (i) force majeure, (ii) repeated failures of AESU, which empower the company to terminate the Agreement ("if this may be considered in force after the disintegration derived from the Authority's behavior"); (iii) its behavior as a reasonable and prudent operator. It also rejected the rejection of AESU to the payment of the invoices No. 0078-00001742 for the payment of Segments A and B of transportation. YPF also maintained the suspension of the compliance with its obligations under the Agreement (Annex A15/S15). ----------

230. As per the letter dated January 23, 2009, AESU rejected the letter sent by YPF on January 7 and ratified what had been stated in its previous letters (Annex A15/S15). ----------

231. As per the letter dated January 23, 2009 sent to TGM, with copies to AESU and Sulgás, YPF ratified "the situation of unbalance and frustration of the binding agreement considering the measures adopted by the Government of Argentina, which were unpredictable, external and out of YPF's control that have disintegrated the foundations and premises taken into account by the parties at the moment of executing the contract" (Annex A15/S15).----------

232. As per the letter dated February 3, 2009, AESU pointed out that, as long as the situation that gave rise to the suspension of AESU's obligations remains, and YPF do not revert such situation, AESU will not require the delivery of gas and will not nominate the daily quantities in accordance with the provisions of section 6 of the Agreement (Annex A15/S15). ----------

233. On February 17, 2009, YPF sent a letter to AESU which is illegible (Annex A15/S15).----------

234. As per the letter dated February 27, 2009, AESU rejected every term of the letter sent by YPF on February 17, 2009, for all the reasons given before. AESU also rejected that any contractual clause could be applicable in order to authorize YPF to request the carriers to send the invoices directly to AESU. AESU ratified the suspension of its obligations (Annex Y-105, A15/S15). ----------

235. On March 20, 2009, AESU in exercise of its own powers and on Sulgás behalf, informed YPF of its decision to terminate the Gas Supply Agreement (Annex Y-106, A15/S15).[29] Particularly, AESU held that: ----------

"Pursuant to the provisions of clause 14.2.2 of the Agreement, due to the default in payment of YPF according to the terms stipulated in the Agreement (even when the obligation to pay is questioned) of the Debit Note No. COM/00 1/2008 dated July 16, 2008, for the sum of US$ 2,711,424 (two million seven hundred and eleven thousand four hundred and twenty four dollars) which was outstanding from August 1, 2008, the Agreement and the Complementary Agreements are hereby declared terminated as a consequence of your own exclusive negligence and fraud. ----------

Furthermore, without affecting the self-sufficiency of what has been stated in paragraph 1 above, and as a cause independent to what has been expressed in item 1, due to the repeated, unjustified and fraudulent repudiation to the Agreement and its obligations pursuant to the Agreement of YPF, the Agreement and the Complementary Agreements are hereby terminated (which is not relieved by the false and unauthorized statements of an alleged and non-existent force majeure).----------

Additionally, as an independent cause and without affecting the self-sufficiency of what has been herein expressed, due to the repeated and fraudulent failure to act as a reasonable and prudent operator pursuant to the provisions of the Agreement and section 1198, paragraph 10 of the Argentine Civil Code, the Agreement and the Complementary Agreements are hereby terminated. ----------

YPF is held liable for all the damages derived from the repeated failures to comply with its obligations under the Agreement and the Complementary Agreements, as well as for the damages caused by the termination of the Agreement and the Complementary Agreements, in accordance with what was herein stated." ----------

236. YPF did not answer this letter, but, on April 6, 2009, it filed an arbitration complaint in this arbitration proceeding. ----------

13. Termination of the PPAs of AESU in Brazil ----------

237. Meanwhile, AESU was negotiating the termination of the PPAs in Brazil. Around the middle of 2008, AESU commenced a negotiation proceeding with AES Sul, AES Eletropaulo, RGE and

[29] The parties use the terms "rescission" and "termination" to refer to the early termination of the Gas Supply Agreement.----------

CEEE, aimed at gradually and accurately reducing the obligations to sell energy until they were exhausted (A/S-MC,¶222). ----------

238. YPF points out that the termination of the Gas Supply Agreement occurred some weekends after AESU terminated the last PPA (with RGE) in March 2009. ----------

a. Termination of the PPA with AES Sul and AES Eletropaulo ----------

239. On July 10, 2008, AESU and its affiliated distribution companies AES Sul and AES Eletropaulo made a request to ANEEL (Annex Y-103 (iv)) in order to obtain its authorization to terminate the PPA (which included 185,13 MW with AES Sul and 59 MW with AES Eletropaulo). In this filing, AESU mentioned the following factors that gave rise to the problem: ----------

-"Reduction and frequent interruptions in the gas supply, due to the Argentine energy crisis and the increasing restrictions on exports imposed by the Government of Argentina.----------

- Excessive increases in the exports tax introduced by the Government of Argentina.----------

- Limitation to the transfer of the agreements' prices for the distribution companies tariffs." --------

(Presentation of AESU before the ANEEL on July 10, 2008 in ANEEL Proceeding No. 48500.004620/2008-79, Annex Y-103 (iv), slide 3).----------

240. As a consequence of the aforementioned presentation, ANEEL Proceedings No. 48500.004619/2008-44 (Interested Parties: AES Eletropaulo and AESU) (Annex Y-101); and No. 48500.004620/2008-79 (Interested Parties: AES Sul and AESU) commenced (Annex Y-103). Within the framework of these proceedings, AESU pleaded before the ANEEL that there was an economic and financial unbalance by virtue of the increases in the Argentine tax on natural gas exports and its impossibility to transfer the tariff. In a letter sent to the ANEEL on July 22, 2008 in the Proceeding No. 48500.004620/2008-79 (Annex Y-103 (i)), AESU pointed out that:----------

"It is important to ratify the company's concern and we retold the last events related to the successive increases in the costs of gas in the Argentine Republic. ----------

On March 10, 2008, the Ministry of Economy and Production of Argentina published Resolution No. 127/2008 (Annex I), which:----------

i. provided an increase in the natural gas exports tax rate from 45% to 100%; and ----------

ii. defined the tax rate to be applied to the highest import price of natural gas bought by Argentina.----------

With this resolution, the exports tax which amounted to US$ 3,14/MMBtu in March increased to US$ 7,7957/MMBtu in April, which represented the sale price of Bolivian natural gas to Argentina. ----------

Most recently, Argentina began to import LNG (liquefied natural gas) at US$ 15,9620/MMBtu, which will turn to be a new base of assessment for the tax as from July, according to the Note DNEH No. 60 issued by the Energy Secretariat of Argentina (Annex II). However, Argentina could import new shipments of LNG at even higher prices. ----------

The application of the aforementioned tax will raise the energy sale price to the distribution companies approximately at R$ 325,00/MWh, in the respective readjustment dates of the electrical energy sales agreements (CCVEE) [PPA] with each of the distribution companies (RGE, CEEE and AES Sul).----------

Besides, the distribution companies are still cancelling the energy invoices that we have filed and paying to AES Uruguaiana only the value approved by the ANEEL for their tariffs, that is to say, R$ 134,94/MWh (AES Sul and RGE) and R$ 134,20/MWh (CEEE). Such difference that was about R$ 67,00/MWh will reach R$ 191,00/MWh by virtue of the most recent increase in the gas tax object to the Note DNEH No. 60 issued by the Energy Secretariat of Argentina. In this way, ***the preexisting unstable economic and financial balance for AES Uruguaiana is more difficult to support because the facts are totally out of its control ----------.***

The absurdity of this last increase in the gas tax coming from Argentina poses even greater urgency in the process of an order reduction and the termination of the CCVEEs [PPAs] with the electrical energy distribution companies, as examples of the procedures already commenced with AES Sul and AES Eletropaulo which are pending before this Agency. ----------

The risk of a greater deterioration of the economic and financial situation of AES Uruguaiana, and the subsequent elimination of every possibility to solve the conflict that allows us to administer a transition period for a sustainable solution in the mid and long term, could permanently jeopardize the continuation of the UTE Uruguaiana operations and could end in the termination of its activities. Such result is not favorable for AES Uruguaiana and, most likely, would cause harmful effects on the distribution companies, consumers and on the whole electrical sector." (Emphasis added)----------

241. As per the letter dated July 31, 2008, AESU notified AES Sul of the force majeure event declared by YPF through a letter sent on July {21}, 2008 with respect to periods running from September 2007 to May 2008.[30] AESU added that "we, together with YPF, are intensifying our efforts in order to restore the usual supply of gas by YPF in the following weeks, as it is provided by the Gas Supply Agreement. However, if up to mid September -term in which we expect to find

[30] The sending of the letter is detailed in the documentation related to the Proceeding ANEEL No. 48500.004620/2008-79, Annex Y-103. The letter is not included in the file.----------

a solution to the problem- YPF does not completely honor its obligations related to the volumes of gas deliveries hired under the Gas Supply Agreement, as it was written, AES Uruguaiana did not have other choice than to extend automatically, for the Gas Supply Agreement, the effects of force majeure declared by YPF under the Gas Supply Agreement." ----------

242. In a new meeting held with the ANEEL on August 6, 2008, AESU ratified the existence of the following problems:----------

"Problems with the supply of gas: ----------

- From 2004, the supply of gas has suffered frequent interruptions due to the energy crisis that hit Argentina.----------
- The Government of Argentina has imposed restrictions on gas exports, prioritizing the domestic market: Situation that was out of AES Uruguaiana control. ----------

Increases in gas prices: ----------

- The Government of Argentina has frequently increased the export taxes, whose rate is 100% of the highest gas price imported by Argentina. The value of this tax changed from US$ 2.25/MMBtu (2007) to US$ 17.15/MMBtu (July 14 to 27, 2008): Again, out the AES Uruguaiana control. ----------
- Considering the new tax on gas, the estimated energy sale price is approximately R$ 339/MWh. -

The transfer of the agreement's price for the distribution companies' tariffs is limited: ----------

- Decision MME 188/2006 - limits the transfer of the agreement's price for the tariffs of the distribution companies to the price of the most expensive thermal of the PPT.----------
- {The recent difference accepted by AESU is R$67,43/MWh and the future difference accepted by AESU would be R$204,16/MWh.}"[31] ----------

(Presentation of AESU, AES Sul and AES Eletropaulo in the ANEEL on August 6, 2008 in the Proceeding ANEEL No. 48500.004620/2008-79, Annex Y-103 (v), Slides 3-5). ----------

243. On August 12, 2008, under Communications No. 2996 and 2997 (Annexes Y-103 (x) and Y-101 (iv)), the ANEEL accepted the request of AESU and of the distribution companies AES Sul and AES Eletropaulo, and acknowledged the involuntary nature of the gradual termination of the energy supply under the PPA. Taking into account what had been previously decided in the disputes between CIEN (electricity importer from Argentina) and the distribution companies AMPLA and COPEL, the ANEEL pointed out that:----------

"39. The CIEN case is similar to the case of AES Uruguaiana, but for the fact that the former is

[31] Note of the Tribunal: this phrase responds to the interpretation made by YPF in paragraph 168 of its Opening Brief, of a chart that appears in slide 5 of the presentation given by AESU on August 6, Annex Y-103 (v).----------

about the impossibility to import electrical energy, pursuant to the provisions of the Ministerial Decision MME No. 294/2006, whereas the latter consists of the impossibility to import gas. Meanwhile, ***both cases commenced with the interruptions in the gas supply imposed by the Government of Argentina*** (Annex Y-101 (i)).----------

60. Besides, ***the statement of the generating company who provoked the economic and financial unbalance of the energy sales agreements for the distribution companies is not limited to the frequent interruptions of the gas supply by Argentina, since the excessive and recent increases in the exports tax of that product (340% from 2004) would have turned the execution of the contracts extremely onerous to the generating company, due to facts not involving the will of the agent***. In accordance with the last estimation made by AES Uruguaiana, the costs of energy produced by the power station are included within a range of R$ 325,00/MWh, whereas the value transferred to the tariffs of AES Sul and RGE, in the tariffs readjustments of April 2008 was R$ 134,94/MWh." ----------

(Technical Note No. 230/2008 -SER/ANEEL issued on August 11, 2008 added to the Proceeding ANEEL No. 48500.004620/2008-79 (Interested Parties: AES Sul and AESU), Annex Y-103 (vii)). -------

244. Similarly, the Decision of the Director Joisa Campanher Dutra Saraiva delivered on August 12, 2008 in such proceedings, provided as follows: ----------

"18. Although the initial proposal of AES Uruguaiana has been the reduction of the agreements for the level of guaranteed power output of the power station 217 MW average, ***the recent increases in the natural gas export tax of Argentina would make the execution of the contracts extremely onerous for the generating company,*** regardless of the volume produced, depending on the limit of transfer. Therefore, nowadays, the company's proposal is to conclude every supply agreement, gradually and in order up to January 2009." (Annex Y-103 (ix)). ----------

b. Termination of the PPA with CEEE-D----------

245. On June 3, 2008, AESU sent a letter to the CEEE-D in which it informed the new increase in the natural gas import tax and proposed a modification in the PPA in order that the price could evidence the impact of this tax increase (Annex Y-102 (i)).----------

246. On July 24, 2008, AESU proposed CEEE-D to terminate the PPA due to the excessive taxes levied on gas exports and because they do not expect that the restrictions on gas exports of the Government of Argentina end, in the following terms (Annex Y-102 (ii)): ----------

"The proposal for the solution of the conflict includes ***the order and gradual reduction of the contracts with the distribution companies*** until it reaches zero, ***due to the current restriction on***

the Argentine gas supply and the successive increases of export taxes for this fuel, which turn the compliance with the obligations stated in the Agreement not viable. As if the increases occurred in April of that year were not enough, most recently the Argentine Republic, through Note DNEH No. 60 dated June 8, 2008, issued by the Ministry of Federal Planning, Public Investments and Services and through the External Note No. 52/2008 issued by the General Customs Administration [DGA, for its Spanish acronym], increased the natural gas exports costs to US$ 15.9630/MWh. ----------

The application of the aforementioned ***taxes increase***, plus the rate increase held in April, will raise the sale price of energy for CEEE around to R$ 325.00/MWh, in the date of the readjustment of the Agreement. ----------

In addition to these important cost increases, the ***restrictions on gas supply*** have been rising every year and, in addition to the increasing rate and without expecting the recovery of the normality, they may still cause new reductions on the guaranteed power output of AES Uruguaiana, which entails a higher risk when buying energy in the market at very changeable prices and that may be higher than the sale price fixed in the Agreement. ----------

On the one hand, the ***combination of the significant increases in the costs of gas acquisitions, plus the increasing interruptions in the gas supply*** and the lack of a future normalization of the supply, and, on the other hand, the contractual commitments with CEEE ***subject AES Uruguaiana to an unsustainable situation.***" (Emphasis added) ----------

247. As per the letter dated July 31, 2008 and August 8, 2008, AESU informed CEEE-D that YPF had alleged force majeure events under the Gas Supply Agreement, among others, through the letter dated August 1, 2008, and that, if this situation remains, it did not have other choice than to extend the effects of such force majeure events to the PPA, in accordance with Clause 18.4 of said agreement (Annex Y-102 (iii)). ----------

248. On September 4, 2008, AESU informed CEEE-D that as per the letter dated August 25, 2008, YPF had declared the continuation of the force majeure event, stating that the obligations were suspended as long as such events remained. Consequently, AESU asserted that it did not have other choice than to allege the force majeure event of YPF under the Gas Supply Agreement and declared that it would suspend its obligations under the PPA (quoting Clauses 18.3 and 18.4, related to force majeure and act of God events) (Annex Y-102 (vii)). ----------

249. The CEEE-D resorted to the ANEEL, which on October 21, 2008, issued Communication No. 3845 by which it recognized the involuntary nature of the CEEE statements in the spot market

due to the reduction of the PPA, caused by extraordinary and unpredictable circumstances out of the parties' control (Annex Y-102 (xv)): ----------

"The GENERAL DIRECTOR OF THE BRAZILIAN ELECTRICITY REGULATORY AGENCY - ANEEL (...) orders: (i) as per the issue of this Resolution, in order to acknowledge the involuntary nature of the statements of Campanhia Estadual de Energia Elétrica -CEEE in the short-term market, based on the reduction of the Consolidated Agreement No. CEEE/07:83/97-09372, signed with AES Uruguaiana Empreendimentos LTDA, ***caused by extraordinary and unpredictable circumstances, not involving the parties' will***; (ii) the Superintendence of Economic Regulation that, in the tariff readjustment or revision procedures, in order to transfer the costs of the involuntary failures to the supply tariffs, comply with the corresponding tariff mechanism and hiring effort of the company to supply its market."----------

c. Termination of the PPA with RGE ----------

250. On June 10, 2008, AESU proposed to the distribution company RGE an amendment to the PPA (141,92 MW power) in order that the price evidences the impact caused by the application of Resolution MEyP No. 127/2008 and a 100% increase in the tax rate on gas exports (Annex Y-110 (i)). ----------

251. On July 11, 2008, RGE rejected AESU's proposal for considering "that the justifications alleged by {AESU} are inadmissible and aim at revising the Agreement's price, because, in accordance with the applicable legal provisions and the opinions already given by the Brazilian Electricity Regulatory Agency (ANEEL) and the Ministry of Mines and Energy of Brazil (MME), the transfer of the energy price to be paid by RGE of the costs of gas supplied by {AESU} shall be limited to the maximum value of the energy produced in the power stations of the Thermoelectricity Priority Program [PPT for its acronym in Spanish]" (Annex Y-110(ii)). RGE also pointed out that the dispute related to the transfer of the energy price was a matter of the arbitration proceedings before the ICC, which were commenced by RGE against AESU, as well as an administrative mediation commenced by AESU before the ANEEL. ----------

252. As per the letters dated July 31, 2008 and August 8, 2008, AESU informed RGE that YPF had declared force majeure events under the Gas Supply Agreement, among others, through the letters dated August 1, 2008, and that, if such situation remained, it would not have other choice than to extend the effects of such force majeure to the PPA, in accordance with Clause 18.4 of that agreement (Annex Y-110 (iii)). ----------

253. As per the letter dated August 12, 2008, RGE rejected the force majeure events for the following reasons, among others (Annex Y-110 (v)): ----------

"(...) a simple and alleged statement that YPF made to AESU, related to force majeure events, is not enough for AESU to accept and try to transfer, in chain, to RGE. The legal certainty of the Consolidated Agreement would be seriously affected if, at any stage and at any time, it could be influenced by these conditions.----------

(...) ----------

In any case, it is worth clarifying that the alleged facts -in our point of view- do not constitute force majeure events, taking into account that the shortage and increase in the costs of Argentine gas are not unpredictable, since they usually occur, as they have been taking place since 2005, and they have never been alleged as force majeure. Over that term, the prices in the market have reached their lowest level, and they are now {rising}." ----------

254. On September 4, 2008, AESU informed RGE that as per the letter dated August 25, 2008, YPF had asked the continuation of the force majeure events, declaring that its obligations were suspended whereas this event remained. As a consequence, AESU asserted that it did not have other choice than to declare the force majeure of YPF under the Gas Supply Agreement and to suspend its obligations under the PPA (quoting Clauses 18.3 and 18.4 of the agreement, related to force majeure and act of God events) (Annex Y-110 (x)).----------

255. As per the letter dated September 15, 2008 sent to RGE, AESU ratified its right to extend to the PPA the effects of the force majeure events alleged by YPF, unless RGE accepted the terms of the proposal previously sent by AESU (Annex Y-110 (xi)).----------

256. Similarly, RGE as per the letter sent to AESU on October 1, 2008, rejected again the force majeure alleged by AESU, as well as the proposal related to the change in the record before the CCEE (Annex Y-110 (xii)).----------

257. This conflict gave rise to a proceeding before the ANEEL, in which AESU explained the following: ----------

"22, [...] the Government of Argentina, not taking into account the protocols signed with Brazil, imposed severe restrictions on natural gas exports, even for Brazil. To sum up, Argentine companies -in particular, YPF, the most important of them- were forced to cover firstly the domestic demand of the Argentine market, and then, the possible surplus could be used to comply with export agreements, such as the agreement executed between YPF and PETROBRAS (i.e. AESU).----------

[…] ----------

26. Not being satisfied with the limitations on gas exports destined to Brazil, in the terms hereinabove stated, ***the Government of Argentina went beyond and increased the tax on such export***. On the effective date of the Consolidated Agreement, there was no incidence of the tax on the gas exported by YPF to AESU. In 2004, that tax was imposed by Executive Order 645/2004, with a rate of US$ 0.34/MMBTU (per million of BTU), now rising at an extremely high level of US$15.12/MMBTU. ----------

27. At the beginning of the agreement, the gas import price was US$2.36/MMBTU, whereas nowadays, the price reaches US$ 18.83/MMBTU [...]----------

28. Certainly, this represents another obstacle, now of an economic nature, to turn the Gas Supply Agreement not viable." (Emphasis added) ----------

258. On March 3, 2009, under Communication No. 768/2009, the ANEEL put an end to the conflict between AESU and RGE, acknowledging the involuntary nature of RGE statements in the spot market due to the reduction of the PPA, caused by extraordinary and unpredictable reasons out of the parties' control (Annex Y-110 (xvi)): ----------

"The DEPUTY DIRECTOR OF THE BRAZILIAN ELECTRICITY REGULATORY AGENCY -ANEEL [...] decides: (i) to acknowledge the involuntary nature of the Rio Grande Energía S.A. -RGE failure in the short-term market based on the reduction of the Consolidated Agreement No. CEEE/07:83/97-09372, signed with AES Uruguaiana Empreendimentos Ltda caused by the extraordinary and unpredictable circumstances not involving the parties' will; 2) to acknowledge that there is no legal and contractual foreseeable solution in order that CPFL Comercialização Brasil SA and TRACTEBEL Energia S.A. could supply RGE the energy volumes higher than those hired, based on the termination of such distribution company with UTE Uruguaiana; and 3) to determine that the tariff readjustment and revision procedures, aim at transferring the costs of the involuntary failures to the supply tariffs, comply with the corresponding tariff mechanism and the hiring effort of the company to supply its market. ----------

14. Termination of the Transportation Services Agreement ----------

259. As part of it suspensions declared on September 15, 2008, AESU did no longer pay YPF the price of the gas transportation services for Segment B. This constitutes a dispute between the parties about who had to make this payment, given the circumstances. ----------

260. From September 2008, and up to the termination of the Transportation Services Agreement (whose exact date is a matter of dispute between YPF and TGM), TGM continued billing YPF the

price related to the gas transportation services for Segment B, in accordance with the Transportation Services Agreement (Annexes T-IV-1, T-IV-3, T-IV-5, T-IV-7, T-IV-8, T¬IV-9, T-IV-10), however, YPF rejected the payment, requesting TGM to demand the payment directly to AESU.----

261. From September 2008 to January 2009, YPF, AESU and Sulgás and TGM mailed to each other to know who had to pay the transportation services (Annexes Y-11 to Y-20). In one of the letters, YPF repealed the invoices stating in some occasions "the lack of the complete availability of the STF" (Firm transportation services) and in others "the inadmissibility of the concept and the total amount billed" (Annexes T-II-13, T-II-16 and T-II-20). Particularly: ----------

a. As per the letter dated October 20, 2008 (Annex T-II-13), YPF informed TGM that it partially rejected a bill sent on September 30, 2008 stating that "the inadmissibility of the concept and the total amount billed motivates our rejection as a consequence of -among other reasons- the total lack of availability of the STF over September 2008." ----------

b. As per the letter dated November 17, 2008 (Annex T-II-16), YPF rejected again a bill sent on October 31, 2008 based on "the inadmissibility of the concept and the total amount billed over October 2008." ----------

c. As per the letter dated December 18, 2008 (Annex T-II-20), YPF rejected an invoice sent on November 30, 2008 based on "the inadmissibility of the concept and the total amount billed." -----

262. As per the letter sent to TGN and TGM on January 8, 2009 (Annex A15/S15), YPF informed that:----------

"In accordance with what has been informed in the letter dated December 4, 2008, we hereby ratify that YPF suspended the natural gas deliveries within the framework of Clause 14.1.1 of the Agreement based on the repeated failures incurred by AESU. Therefore, and according to Clause 14.1.1 of the Agreement in the item referring to "YPF suspension of the natural gas deliveries do not release AESU from the obligation to pay the transportation services", we hereby request the invoices related to the payment of transportation services of TGN and TGM, respectively, sent to AESU." ----------

263. Additionally, between September 2008 and January 2009, YPF and TGM mailed to each other regarding the outstanding irrevocable payments under the Memorandum of Agreement. ----

a. Between September and November, TGM billed the taxes corresponding to those months (Annexes T-IV-2, T-IV-4 and T-IV-6). ----------

b. YPF did not make any payment and through the letter dated December 23 (Annex T-II-21), YPF returned to TGM the referred invoices, stating that those invoices had been

"timely rejected –based on the inadmissibility of the concept and the total amount billed." ----------

c. As per the letter dated January 8, 2009, TGM rejected the returning of invoices and the terms declared by YPF "as they are inadmissible and deliberately vague" adding that "invoices 0001-000000293, 0001¬000000295 and 0001-000000297 have not been taken into account by YPF S.A. in the term provided in section 474 of the Commercial Code of the Argentine Republic, so, they become payable" (Annex T-II-23).----------

264. Regarding the TGM Transportation Services Agreement, YPF and TGM disagreed on the date and circumstances of said agreement.----------

265. TGM asserts that the TGM Transportation Services Agreement was terminated on March 23, 2009, and on that date TGM sent a letter to YPF (Annex Y-159, T-II-32) claiming the payment of several invoices and informing that:----------

"I am writing to you on behalf of TRANSPORTADORA DE GAS DEL MERCORSUR S.A. ("TGM") in order to the request that in a sole and an non-extendible term of fifteen (15) calendar days as from the date hereof has been served upon you, you pay the total amount of the invoices No. 0001-00000292, 0001-00000294, 0001¬00000296 and 0001-00000298 due and outstanding by YPF S.A. ("YPF") as firm transportation services of natural gas rendered by that company, and No. 0001-00000293, 0001-00000295 and 0001-00000297 due and outstanding as "irrevocable contribution", in both cases plus the corresponding interest. ----------

This notice is given under the penalty of declaring the termination of the firm transportation services agreement between YPF and TGM, for the failure of YPF, and, in such case, we reserve the right to claim for the payment of damages derived from such termination." ----------

266. After the sending of this letter, TGM states that it has granted YPF a 15-day term of good faith to pay its debt. However, it considers that through the request filed in this Arbitration proceeding, on April 6, 2009, YPF expressed formally and unequivocally that it was not willing to comply with the payment asked by TGM. Since the payment was not cancelled up to that moment, the TGM Transportation Services Agreement was terminated upon the decision of the creditor (TGM) and the failure of debtor (YPF). The termination was in effect since TGM informed YPF that it would terminate the agreement on March 23, 2009.----------

267. TGM also explains that, in order to avoid doubts regarding the contractual situation, under the note issued on April 15, 2009 (Annex T-II-36) TGM sent a notice to YPF declaring that the agreement has been terminated: ----------

"I am writing to you on behalf of TRANSPORTADORA DE GAS DEL MERCOSUR S.A. ("TGM") in order to inform you that upon the expiration of the demand for payment claimed by TGM on March 23 of this year without YPF S.A. ("YPF") cancelling the debt incurred as regards the payment of the invoices therein mentioned, in this letter, TGM declared the termination of the natural gas Firm Transportation Services Agreement signed by both companies, exclusively for YPF's fault. TGM will exercise all legal actions against YPF in order to be fully remedied for the damages arising from such termination." ----------

268, YPF, in turn, states that the TGM Transportation Services Agreement was terminated by YPF on April 8, 2009, when TGM was notified that YPF had filed a counterclaim (that same date) in the arbitration proceedings against TGM (Annex Y-12), or at the latest, on April 13, based on the provisions of clause 13.2 of the TGM Transportation Services Agreement : ----------

"Should the Gas Supply Agreement be terminated for any cause, except for the fault of YPF not arising from the failure of any of the Parties and/or Petrobras, YPF shall have the right to (i) continue with the execution of the Firm Transportation Services Agreement at its cost, or (ii) terminate the Firm Transportation Services Agreement upon duly notice in that sense served on YPF with five (5) calendar days in advance."----------

IV. SUMMARY OF THE POSITIONS OF THE PARTIES ----------

269. This section is aimed at introducing a summary of the positions of the parties which will be analyzed with more detail during the analysis of the Tribunal in the following sections of this Award. ----------

270. Particularly, this case includes three related disputes:----------

a. A dispute between YPF, on the one hand, and AESU and Sulgás, on the other hand, over the Gas Supply Agreement. YPF, and AESU and Sulgás sue each other for the failure to comply with the Gas Supply Agreement and each of the companies blames the other for the termination of said Agreement. ----------

b. A dispute between TGM and YPF over the Transportation Services Agreement and the Memorandum of Agreement. On the one hand, TGM sues YPF for the failure to comply with the Transportation Services Agreement and the Memorandum of Agreement. Additionally, both TGM and YPF argue to have terminated the Transportation Services Agreement. TGM blames YPF for such termination, whereas YPF declares that AESU and Sulgás are to be blamed. ----------

c. A dispute between TGM, on the one hand, and YPF, AESU and Sulgás, on the other hand, over the Gas Supply Agreement (formally brought as two separate requests, a counterclaim against

YPF, and cross claims against AESU and Sulgás). As the principal claim, TGM sues YPF, AESU and Sulgás for alleged violations of the Gas Supply Agreement. Subsidiarily, TGM sues YPF for the early termination of the Gas Supply Agreement. And, subsidiarily of the latter, TGM sues AESU and Sulgás for the early termination of the Gas Supply Agreement. ----------

271. As all the parties are plaintiffs and defendants in these arbitration proceedings, in this section the Tribunal will sum up the positions and requests of the parties within the framework in which they were formally filed, that is to say, related to each party and not in relation to the topics to be analyzed. This means for example that the dispute hereinabove mentioned in item (c) shall be described separately, whether it includes TGM requests filed against YPF, or against AESU and Sulgás. Even though the foregoing will give rise to repetitions, the Tribunal considers that it is necessary to clearly set each party requests in respect of the others. ----------

272. Notwithstanding the foregoing, as many questions are common to more than one dispute, and the resolution of some of them affects the resolution of others, the Tribunal will later perform the analysis following an extremely formal topic structure. This structure is explained in Chapter VI *infra*. ----------

A. DISPUTE BETWEEN YPF and AESU/SULGÁS ----------

1. Complaint submitted by AESU and Sulgás against YPF----------

273. As it was hereinabove explained, AESU and Sulgás submitted a complaint for arbitration against YPF in AESU Arbitration. In order to consolidate the arbitration proceedings, AESU and Sulgás joined that complaint to this YPF Arbitration, through the filing of a counterclaim against YPF herein (called "Second Counterclaim" in the Addendum to the Mission Statement). For the purposes of this Award, the Tribunal will refer to that simply as the complaint submitted by AESU and Sulgás against YPF. ----------

a. Claims of AESU and Sulgás included in the complaint against YPF----------

274. In their consolidated complaint, AESU and Sulgás allege that YPF, with fraud and negligence, failed to comply with and repudiated the Gas Supply Agreement, which gave rise to the suspension and later termination of AESU and Sulgás. AESU and Sulgás add that the failures of YPF and the resolution of those failures caused damages to AESU and Sulgás, of which YPF is to be blamed. ----------

275. Particularly, AESU and Sulgás hold that YPF, with fraud and negligence, failed to comply with the following terms of the Gas Supply Agreement (Chapter VII of the Opening Brief): ----------

a. From 2004, and up to the date of the termination of the Agreement, YPF repeatedly failed to comply with its duty to supply gas to Sulgás, (duty which AESU and Sulgás consider as an obligation of result) and as from 2007 stopped delivering gas definitively. ----------

b. YPF incurred in acts or omissions and framed policies that violated obligations related to its duty to deliver gas. These acts and policies contributed to its lack of capacity to comply with its duty to deliver gas, to the gas shortage in Argentina and to the increase in the domestic demand. Particularly, AESU and Sulgás describe the following behaviors, among others: ----------

i. YPF neither made the necessary investments to explore and exploit natural gas fields in Neuquén Basin nor adopted the measures to ensure the gas volumes to comply with its duties to the domestic and external markets in accordance with its legal and contractual obligations. ---------

Ii. YPF was reluctant to explore and exploit new fields. ----------

iii. YPF outrageously exploited Neuquén Basin, which leads to the exhaustion of some oilfields.-----

iv. YPF made commitments with other companies, most of which are related, knowing that gas supply would be not enough to comply with its existing commitments, and as a consequence, the domestic demand rose.----------

v. YPF prioritized short-term objectives, such as the payment of dividends to its shareholders, instead of destining resources to exploration and exploitation of reserves. ----------

c. YPF failed to pay the "*deliver or pay*" penalties under the Gas Supply Agreement. Particularly: ----------

i. As per the letter dated August 1, 2008, YPF rejected definitely the payment of the Debit Note No. COM/001/2008 (the "Debit Note") amounting to US$ 2,711,424 as deliver or pay penalty filed against YPF on July 16, 2008. ----------

ii. As per the letter dated July 18, 2008, YPF rejected the payment of US$28,089,320.50 for the deliver or pay penalty corresponding to the period September 16, 2007 to May 15, 2008 notified by AESU to YPF on June 25, 2008.----------

d. YPF failed to act in accordance with section 1198 of the Argentine Civil Code and with the standard of a "reasonable and prudent operator" in the terms of the Agreement. Particularly, it omitted to perform an efficient proceeding to repeal the measures adopted by the Government of Argentina which YPF considered as alleged force majeure events (AESU and Sulgás disagree on this) and that would have allowed the gas export. ----

e. YPF failed to comply with its duties set forth in clause 13.1 of the Gas Supply Agreement with respect to the application of taxes (withholdings) to gas exports. ----------

f. YPF wrongfully conditioned the compliance with its duties under the Agreement to the compliance by AESU and Sulgás of duties that were not contractually agreed. Particularly:-

i) YPF conditioned the remedy to the systems of substitution of energy authorized by government, which would have allowed exports, to the payment of higher costs arising from the use of such system that would be borne by AESU and Sulgás----------

ii) YPF conditioned the compliance with its duty to deliver gas to AESU and Sulgás payment of the withholdings (taxes) for gas exports. AESU and Sulgás had not only to pay those taxes without following the procedure provided in Clause 13.1 of the Gas Supply Agreement but also those taxes were unconstitutional and YPF should have repealed them. ----------

iii) YPF conditioned the compliance with its duty to deliver gas to AESU and Sulgás payment to YPF of the amount of royalties that YPF had to pay to the provinces from where the gas was taken. ----------

g. YPF gave inaccurate information on the real state of the reserves in Neuquén Basin. --------

h. YPF was granted a null and void authorization to export. ----------

i. YPF failed to comply with its duties under the Transportation Services Agreement with TGN and TGM. AESU and Sulgás hold that, pursuant to the Gas Supply Agreement, YPF was liable for rendering transportation services. Therefore, if YPF could not deliver gas due to failures to comply with the Transportation Services Agreement, it is liable before AESU and Sulgás under the Gas Supply Agreement. ----------

j. YPF unjustly repudiated the Gas Supply Agreement. This repudiation is included in the letter sent by YPF on July 27, 2006 and it was ratified by YPF in the letters dated July 18, 2008 and January 23, 2009, among others. The repudiation to the Agreement arises from the failure of YPF to comply with the Agreement's provisions or the impossibility to comply with them (the causes alleged were false and YPF knew it), given what YPF was effectively doing so (not complying with the agreement) when sending those letters. -------

276. AESU and Sulgás state that YPF fell in default regarding all these failures: ----------

a. YPF incurred in automatic default to deliver natural gas or pay the amounts due under the deliver or pay regime, by the expiration of every obligation (section 509 of the Argentine Civil Code). Regarding the Debit Note, YPF incurred in default on August 1, 2008.----------

b. YPF incurred in default to perform a prudent and reasonable operation since it stopped using the available resources against the regulations that, according to YPF, hindered it from complying with the Agreement;----------

c. YPF incurred in default to comply with its obligations when it conditioned the contractual compliance to the payment of the royalties balance under the note dated September 12, 2008; and ----------

d. YPF repudiated the Agreement and its obligations under it by automatic default.----------

277. According to some of these breaches, AESU and Sulgás firstly suspended their obligations under the Agreement and then terminated it.----------

a. As per the letter dated September 15, 2008, AESU and Sulgás suspended the compliance with their obligations "due to the severe failures and steady default of YPF, according to the provisions of Sections 510, 1201 and related sections of the Argentine Civil Code." The letter also referred to YPF repudiation of its obligations under the Agreement and the failure to pay the outstanding *deliver or pay* penalties; ----------

b. Regarding the termination, made through the letter dated March 20, 2009, AESU and Sulgás mentioned the following grounds, which they assert are sufficient to execute its right to terminate the Agreement: ----------

i. YPF failure to pay the Debit Note of US$ 2,711,424 as *deliver or pay* penalty;----------

ii. The repeated, unjustified and fraudulent repudiation of the Gas Supply Agreement by YPF; and

iii. YPF failure to act as reasonable and prudent operator. ----------

278. Likewise, AESU and Sulgás argued that YPF acted with fraud due to the following reasons (in any case, they note that the negligence of YPF is alleged): ----------

a. YPF always knew that the Argentine legal system prioritizes the domestic supply of gas over exports. There were no changes in such legal system, which always foresaw said priority. ----------

b. At any time, YPF could comply with its duties under the Agreement. YPF opted not to act, knowing the consequences. The rules used to support its failure foresaw flexible measures to allow the gas exports, measures that YPF decided not to use. ----------

c. YPF knew that the Uruguaiana thermoelectrical plant could only operate with natural gas and it was aware of the existence of the PPAs.----------

d. After the Agreement, YPF increased the natural gas aggregated demand in Argentina, creating demand to itself or to other related companies without taking measures to meet this new and the existing demand, knowing that it was affecting its possibility to fulfill its legal and contractual

obligations. YPF opted to meet the demand before complying with its obligations under the Agreement. ----------

e. From 2001, YPF substantially increased the payment of dividends [to Repsol, its controlling shareholder] thus using funds aimed at making the necessary investments to comply with the Agreement. ----------

f. YPF did not make any exploration and exploitation on purpose to comply with its legal and contractual obligations of delivering gas when other operators did. ----------

g. YPF has performed other acts as the signing of the "2007-2011 Agreement with Natural Gas Producers" that diminished the possibility to comply with the Agreement. ----------

279. AESU and Sulgás denied that force majeure events could excuse them from YPF failures or its repudiation of the Agreement. AESU and Sulgás assert that there has never been a factual or legal impossibility of YPF to comply with its duties under the agreement. ----------

280. Likewise, AESU and Sulgás claim that the breaches of YPF caused them damages, which will be determined in the corresponding procedural stage. They add that there is a relevant cause and effect relationship between the illegal behavior of YPF and the aforementioned damages caused to AESU and Sulgás, which are an immediate or mediate consequence of the abovementioned breaches. ----------

281. As a consequence of these claims, AESU and Sulgás posed “positive” requests related to YPF which are detailed below. ----------

282. In the Addendum to the Mission Statement, AESU and Sulgás request that: ----------

"A)it is ordered that the termination of the Agreement was due to YPF non-compliance with its duties under the Agreement and its repudiation to said agreement, everything as a consequence of gross negligence and/or fraud of YPF. ----------

B) the termination of the Agreement and the breaches that originated said termination caused the following damages to be compensated:----------

1) To AESU, including but not limited to: (i) debt of Deliver or Pay; (ii) lost profits from the termination of the Agreement up to the expiration of the contractual term; (iii) compensation for the dismissal of AESU’s staff due to the thermoelectrical plant's close ; (iv) expenses for the dismantling of the thermoelectrical plant and the environmental remediation; (v) credit for gas make up; (vi) damage to the corporate image; (vii) emotional distress; (viii) reimbursement of payments imposed to AESU by the authorities of Brazil; (ix) losses of AESU through the alternative methods for the supply of energy to comply with the PPA; (x) costs, including legal

fees and expenses incurred for the commencement and procedure of these arbitration proceedings; (xi) reimbursement of the payments made by AESU in 2008 for export duties on natural gas taxed in Argentina which were billed by YPF and paid-off "subject to potential reimbursement." ----------

2) To Sulgás, including but not limited to: (i) loss of profits from the termination of the Agreement up to the expiration of the contractual term; (ii) damage to the corporate image; (iii) emotional distress; (iv) costs, including legal fees and expenses incurred for the commencement and for the procedure of these arbitration proceedings. ----------

C) Interest derived from the amounts claimed in B) as from each default up to its payment." --------

(Addendum to the Mission Statement, Item 4.1) ----------

283. In the Opening Brief, AESU and Sulgás request the Tribunal to "declare that YPF is to be held liable before AESU and Sulgás for the breaches detailed in Chapter VII of this Opening Brief and for the consequences and damages derived from such breaches. They also request the Tribunal to declare that the termination of the [Gas Supply Agreement] decided by Sulgás with the participation of AESU was legal and that YPF, as a consequence of its breaches, is liable before AESU and Sulgás for the consequences and damages derived from such termination and/or which were caused to the Parties and Participants to the [Gas Supply Agreement]. The foregoing should be declared plus legal costs, interest and fees payable by YPF. (A/S-MD ¶1026) ----------

284. In the Reply Brief, AESU and Sulgás request the Tribunal as regards their claims against YPF that: ----------

a. "(6) It declares that the termination of the Gas Supply Agreement decided by Sulgás jointly with AESU was legal and that YPF, as a consequence of its breaches, is to be held liable before AESU and Sulgás for the same, and for the consequences and damages arising from that termination and/or which were caused to the Parties and Participants to the [Gas Supply Agreement]." ----------

b. "(7) It declares that YPF is liable before AESU and Sulgás for all the breaches detailed in Chapter VII of the Opening Brief filed by AESU and Sulgás and for all the consequences and damages arising from such breaches." (A/S MC, ¶982) ----------

285. AESU and Sulgás ratify these claims in other briefs (A/S¬Replication, ¶769; A/S-Rejoinder, ¶564). ----------

286. In its Closing Argument, AESU and Sulgás assert with respect to YPF that "therefore, there are no doubts about YPF responsibility with respect to AESU and Sulgás in relation to the

breaches of the [Gas Supply Agreement] which it committed due to the suspension of the [Gas Supply Agreement] and its termination, requesting the Tribunal to be so ordered. [...] Legal expenses to be borne by [...] YPF, requesting the Tribunal to order YPF [...] to pay the expenses of the procedure, included legal fees and expenses of the Tribunal and the fees of the legal representation of AESU and Sulgás among other expenses." (A/S-AF,¶¶ 1220-1222)----------

b. Principal defenses posed by YPF with respect to AESU and Sulgás complaint----------

287. YPF denied to have breached the Gas Supply Agreement in the terms stated by AESU and Sulgás (YPF refers to both jointly as the "Importer"). In the events in which it accepts to have failed to comply with its obligations, it denied to be liable for such breaches. ----------

288. Firstly, YPF denied to have performed the breaches declared by the Importer to suspend and terminate the Agreement. YPF declares that: ----------

a. DOP penalties have never been paid, because YPF was under a force majeure event (both related to labor unions and regulations). Besides, the Importer incurred in default in payment of Segment A of transportation when it billed DOP. Finally, DOP was wrongly assessed. ----------

b. The alleged “repudiation” of the Agreement declared by the Importer has never existed. YPF kept on supplying gas when it was possible as per the new regime on interruption and subordination. The Importer acknowledged in the Complementary Agreements the responsibility of YPF for the interruptions in the gas supply as well as the possibility of being in default to deliver in the winter and in the summer as a consequence of the measures adopted by the Government of Argentina. ----------

c. YPF failed to act as a reasonable and prudent operator. This behavior is more limited in scope than the one intended by the Importer. However, if this duty had the scope that the Importer expects, YPF behaved at all times as a reasonable and prudent operator {before and after 2004}. --

289. In fact, as detailed in Part IV.A.2 below, YPF files its complaint against the Importer, in which it pleads that the Importer has breached the Gas Supply Agreement when it suspended and, afterwards, terminated said agreement illegally, being the Importer the party to be held liable for the damages arising from such suspension and termination. YPF declares that the Importer blames YPF in order to hide the real reason for the termination of the Agreement: which is that its business in Brazil has become not viable due to the rise in the generation costs derived from the increase in the tax on Argentine gas exports. ----------

290. Secondly, YPF rejects the statements of the Importer as regards its duty to supply natural gas under the Gas Supply Agreement. Particularly:----------

a. YPF could not comply with all its duties related to the gas deliveries as from 2004 as a consequence of the measures adopted by the Government of Argentina in response to the gas shortage in such country. According to YPF's opinion, these measures were force majeure events arising from legislation which releases YPF from complying with its obligations under the Gas Supply Agreement.----------

b. YPF was not obliged to plan its investments in exploration and development of natural gas reserves and become the guarantor of the domestic supply and assure any future potential of the demand. ----------

i. When executing the Gas Supply Agreement, there was no legal or contractual provision that may constitute YPF as the domestic supply guarantor. When the Gas Supply Agreement was executed, YPF was not obliged to supply the domestic market as a condition to comply with the aforementioned agreement. The agreements and authorizations on exports were stable and they could not be limited to supply the domestic market. Opposite to the representations of the Importer, the authorization to export granted to YPF was completely valid. YPF's obligations under the Gas Supply Agreement are set forth in sections 2 and 3.4 of said Agreement. ----------

Ii. In this context, up to 2004, the obligation of any producer who exports natural gas in good faith was to keep the reserves and production capacities sufficient to comply with its commitments on gas sale. From the beginning of the Agreement and over its validity, YPF had the reserves and the production capacity enough to supply all its commitments to sell gas. ----------

iii. In any case, YPF made the necessary investments in exploration and exploitation.----------

c. Gas shortage in Argentina is not attributable to YPF or any of the gas producers, but to the measures taken by the Government of Argentina from 2002 onwards. ----------

d. In any case, in the Complementary Agreements, the Importer had waived to its right to terminate the Agreement due to the failures to deliver gas.----------

291. Thirdly, YPF declares that the other breaches mentioned by the Importer had no grounds:-----

a. All are false, late and inadmissible causes to justify the termination, and they are included in the waiver of termination for the failure to deliver gas.----------

b. In any case, said breaches did not happen:----------

i. YPF did not increase the domestic demand when executing the agreements with related companies. ----------

ii. YPF did not breach the Transportation Services Agreements, it was the Importer who did not pay for Segments A and B, which YPF could not pay to TGN and TGM, respectively.----------

iii. YPF did not exploit irregularly its exploitation licenses.----------

iv. Regarding alleged DOP penalties for 2007 and 2008, they have never been billed to YPF through a debit note, and therefore, neither did YPF incurre in default nor did the Importer acquire the right to terminate the agreement on such grounds. Besides, the Importer did not plead the default of this penalty when declaring the suspension and then the termination of the Agreement. In any case, this penalty has never accrued, because in every relevant day, the failure to deliver is excused based on regulatory force majeure events. ----------

v. YPF did not comply with its obligations arising from clause 13.1 of the Gas Supply Agreement with respect to the application of taxes to the gas exports.----------

• The tax risk was taken by the Importer. Clause 13.1 of the Gas Supply Agreement provides for the transfer to the Importer of any new tax affecting the gas exports, and provides for a system of consultation to the competent authority or an alternative system of experts, to determine the application, or not, of the tax to the Gas Supply Agreement. Whatever was the result of the consultation or opinion of the expert, the Importer will be liable for holding YPF harmless.----------

• In any case, the parties understood that the obligation created by the Argentine tax to the gas exports did not pose doubts to justify the use of the consultation mechanism. ----------

• It is not true that YPF has not challenged the tax on gas exports (it did so), but in any case, neither AESU nor Sulgás challenged such tax even when being authorized to do so.----------

vi. YPF neither conditioned nor suspended gas deliveries on the grounds that it expected to enforce not contractually agreed upon considerations or transfer the royalties to the Importer. ----

292. Finally, YPF rejects all damages claimed by the Importer.----------

293. Therefore, YPF poses the following requests regarding AESU and Sulgás complaint. ----------

294. In the Mission Statement, YPF requires the Tribunal: ----------

"[...] to dismiss the Counterclaim filed by the Importer, plus costs, and, consequently, to render an award in which: ----------

(a) it declares that the Importer is responsible for the termination of the Agreement notified to YPF as per the letter dated March 20, 2009 ----------

(b) it extends the responsibility and consequences to the Importer in relation to YPF, TGM and remaining Parties and Participants to the Agreement under sections 14.2.1, 14.2.5, 14.2.6 and related sections of the Agreement, and section 13.2 and related sections of the Transportation Services Agreement, which means, without limitation: ----------

(i) the declaration of the Tribunal of the Importer's fault as regards the termination of the Transportation Services Agreement; and----------

(ii) the exclusive responsibility of the Importer for any sum payable to TGM as regards the Transportation Services Agreement, as well as regarding any damages that YPF suffered or may suffer by the Importer's fault, including interests and, without limitation, any other sum payable to TGM by YPF in relation to any TGM claim under the Transportation Services Agreement. The value of the damages will be proved in the corresponding procedural stage; and ----------

(c) it orders the Importer to pay the cost of these arbitration proceedings, including legal fees and expenses of the Tribunal and the expenses of the legal representation of YPF, among others." -----

(Addendum to the Mission Statement, Item 4.2) ----------

295. In the Reply Brief, YPF requests the Tribunal regarding AESU and Sulgás claims to:----------

"(v) dismiss all AESU and Sulgás claims against YPF included in the Opening Brief; ----------

[...] ----------

(vii) In any case, to order AESU and Sulgás to pay the expenses of these proceedings, including legal fees and expenses of the Tribunal and the expenses of the legal representation of YPF, among others.----------

(Y-MC, Prayer) ----------

296. YPF ratifies these requests in the Replication (Y-Replication, ¶339) and Rejoinder (Y-Rejoinder, ¶436).----------

297. In the Closing Argument, YPF requests the Tribunal regarding AESU and Sulgás complaint that:----------

"(i) it rejects all AESU and Sulgás claims against YPF;----------

[...]----------

(iii) it sustains YPF claims detailed in the Mission Statement, including, without limitation, that AESU and Sulgás pay all the damages that TGM could have suffered as a consequence of the early termination of the Transportation Services Agreement; ----------

(iv) in any case, it orders AESU and Sulgás, and TGM to pay the costs of these proceedings including legal fees and expenses of the Tribunal and the expenses of the legal representation of YPF, among others.----------

(Y-AF, ¶ 323). ----------

2. YPF complaint against AESU and Sulgás----------

298. YPF filed a complaint against AESU and Sulgás in this YPF Arbitration, and counterclaims against AESU and Sulgás in AESU Arbitration. As a result of the consolidation of the arbitration proceedings, the complaint is only applicable to this YPF Arbitration.----------

a. YPF claims in the complaint against AESU and Sulgás ----------

299. YPF declares that AESU and Sulgás (who YPF names jointly as the "Importer") failed to comply with the Gas Supply Agreement, and suspended and terminated said agreement illegally. Therefore, they are the ones to be held liable for the termination of the Gas Supply Agreement regarding not only YPF but also the termination of the Transportation Services Agreement. ----------

300. YPF requests that the Importer be held liable for:----------

a. The Importer breach set forth in the Gas Supply Agreement, for suspending the compliance with its duties on September 15, 2008.----------

b. The final and unilateral termination of the Gas Supply Agreement by the Importer on March 25, 2009.----------

301. In both cases, with the responsibilities and consequences derived from the Gas Supply Agreement. ----------

302. YPF declares that the dispute that gives rise to these arbitration proceedings was originated from the decision of the Importer to: ----------

a. On September 15, 2008, suspend the compliance with all its obligations under the Gas Supply Agreement (particularly its obligation to pay the price of Segment B of Transportation, which YPF shall in turn pay to TGM). ----------

b. On March 25, 2009, terminate the Gas Supply Agreement, which also caused the early termination of the Related Agreements, including the Transportation Services Agreement with TGM.----------

303. YPF holds that the Importer failed to comply with its obligations under the Gas Supply Agreement when it unilaterally suspended its obligations under said Agreement illegally and untimely (Y-MD, Chapter VI). Particularly, YPF argues that this suspension: ----------

a. was not admissible, because YPF had declared a force majeure event.----------

b. contravenes the procedure agreed by the parties for separating the Gas Supply Agreement from the dispute on YPF force majeure and for allowing its continuance; and, it was contrary to the lawful expectation of this matter. ----------

c. has no grounds in any contractual provision, because the Gas Supply Agreement does not include said remedy in favor of the Importer. ----------

d. was illegal because the breaches declared did not occur, as the DOP has been wrongly assessed and, in accordance with the Gas Supply Agreement, the penalties are not accrued if the corresponding interruption of the supply was caused by a force majeure event of YPF or the carriers. ----------

e. was disproportionate in relation to the breaches declared, because the amount of the outstanding invoices, particularly the invoice which was eventually referred to by AESU and Sulgás as an excuse for terminating the Gas Supply Agreement, is insubstantial and even derisory compared to the amounts included in the Agreement and to the sums extinguished by YPF to AESU in the Complementary Agreements. ----------

f. was clearly untimely, as the alleged breaches accrued almost two years before the notice of demand of payment were invoked. ----------

g. was made in bad faith, because it was not aimed at obtaining a performance bond by YPF, on the contrary, it was aimed at evading the responsibilities of the Importer with respect to YPF and the other parties and participants to the Gas Supply Agreement and Related Agreements (see the Transportation Services Agreement). ----------

h. constituted the breach of all the obligations of the Importer under the Gas Supply Agreement, and, therefore, the repudiation of the Agreement, or at least an essential breach of the Importer's obligations under the Agreement, which enables YPF to consider that the Gas Supply Agreement has been terminated by the Importer's fault and to claim for the damages caused to the other parties and participants (for example, TGM) for the termination of the Gas Supply Agreement and Related Agreements. ----------

304. Additionally, YPF argues that the termination of the Gas Supply Agreement by the Importer on March 20, 2009 was illegal, abusive and untimely. Particularly, YPF holds that the termination of the Agreement: ----------

a. was inadmissible, because the remedy of the termination was not available in relation to the breaches referred to. The remedy of the termination was available contractually only for failures to provide gas and failures to pay the DOP penalties. In the Complementary Agreements, the Importer had waived to its right to terminate the agreement due to failures to provide gas, and, although this could have been available in cases of failure to pay DOP penalties, these penalties had not been accrued as YPF was not involved in force majeure causes. In any case, the remedy

was available neither for an alleged repudiation nor for the breach of a duty to act as a reasonable and prudent operator. ----------

b. was based on the alleged breaches of YPF that did never exist, and if they had existed, they would have equally been insubstantial to justify the extreme remedy of termination. Particularly: -

i. DOP penalties have never been accrued, because YPF was under force majeure events. Moreover, the Importer has incurred in default in payment of the Segment A of transportation when it billed the DOP. ----------

ii. The repudiation to the Agreement alleged by the Importer has never existed. ----------

iii. YPF did not breach its duty to act as a reasonable and prudent operator. This behavior has a much more limited scope than the one expected by the Importer. ----------

c. contravened the binding relationship among the parties to keep the Gas Supply Agreement despite the dispute referred to force majeure. ----------

d. was untimely as regards the causes, because it was based on the alleged breaches which occurred almost two years before the notice of demand of payment. ----------

e. was merely an excuse given by the Importer to justify its decision to abandon the Gas Supply Agreement and to try to evade its responsibilities under the Gas Supply Agreement and its regime of vicarious liability, trying to hold YPF liable. The real reason by which the Importer abandoned the Gas Supply Agreement in 2008 was that, at that moment, and not in 2004 or 2006, the business of AESU had became not viable, essentially due to the steep increase in the generating costs by virtue of the Argentine tax on natural gas exports and the impossibility to transfer them to its Brazilian buyers of electrical energy. ----------

305. Therefore, YPF argues that the behavior of the Importer related to suspend and unilaterally terminate the Gas Supply Agreement was: ----------

a. opportunistic when adopting a "double standard" to abandon the PPA in Brazil and the Gas Supply Agreement in Argentina. ----------

b. illegal, when contravening the legal and contractual provisions binding for the parties. ----------

c. in bad faith, when trying to transfer to YPF its own responsibility with respect to that company and the other parties and participants to the Gas Supply Agreement for the abandonment of its electrical business in Brazil in light of the economic impossibility caused by Resolution MEyP No. 127/08. ----------

306. Additionally, YPF holds that the illegal suspension and termination of the Gas Supply Agreement by the Importer affects the Transportation Services Agreement with TGM, for which the Importer is liable. Particularly: ----------

a. YPF holds that, as a consequence of the illegal suspension and later termination of the Gas Supply Agreement by the Importer, the price of the Transportation Services Agreement due to TGM shall be paid by the Importer in the date of the suspension (i.e., from September 15, 2008). YPF argues that although it was YPF that had executed the Transportation Services Agreement with TGM, the real responsible for the payment of the transportation service was the Importer. According to YPF, the Gas Supply Agreement set forth a transfer (pass-through) of the Transportation Services Agreement payment to the Importer through the price of Segment B of transportation, whereas the Transportation Services Agreement provided that the payment of YPF to TGM of the price for the transportation services was conditioned to the previous payment by the Importer to YPF of the price of Segment B of transportation under the Gas Supply Agreement. As the Importer did not pay to YPF the price for Segment B of transportation from September 15, 2008, YPF holds that, if the Tribunal considers that this price is payable to TGM, the Importer will be liable for its payment. ----------

b. YPF also holds that the Gas Supply Agreement and the Related Agreements (including the Transportation Services Agreement with TGM) established an overall and unified system of liabilities, by which the one who terminates the Gas Supply Agreement shall compensate for the damages caused to the Parties and Participants, including the damages derived from the vicarious termination of the Agreements related to the Gas Supply Agreement. YPF argues that, due to the illegal termination of the Gas Supply Agreement by the Importer, it exercised its right to vicariously terminate the Transportation Services Agreement. As a consequence of the unified system of liabilities, YPF holds that the Importer is to be liable for the damages that such termination causes to TGM. ----------

307. Therefore, YPF requests, in these arbitration proceedings, that the liability of the Importer is declared for all the damages caused to the Parties and Participants (including YPF and TGM) from September 15, 2008, date in which the Importer suspended the compliance with its obligations under the Gas Supply Agreement. Particularly, YPF poses the following requests against the Importer. ----------

308. In the Mission Statement, YPF requests the Tribunal: ----------

"(a) to declare that the Importer is to be held liable for the termination of the Agreement notified by the Importer to YPF through the letter dated March 20, 2009; (b) to extend the liabilities and consequences to the Importer as regards YPF, TGM and the other Parties and Participants to the Agreement as per the provisions of sections 14.2.1, 14.2.5, 14.2.6 and related sections of the Agreement, and section 13.2 and related sections of the Transportation Services Agreement, which includes, without limitation, (i) the declaration of the Tribunal that the Importer had vicariously terminated the Transportation Services Agreement; and (ii) the exclusive liability of the Importer for any sum payable to TGM derived from the Transportation Services Agreement, as well as all the damages that YPF could or would suffer for the Importer's fault, including interests, and including without limitation, any sum payable to TGM regarding or derived from any of the claims of TGM under the Transportation Services Agreement. The value of the damages shall be proved in the corresponding procedural stage; subsidiary to (a) and (b): (c) to declare that the compensation of TGM is inadmissible because it could not render the firm transportation services due to the measures adopted by the Government of Argentina; and subsidiary to (a), (b) and (c): (d) to order the termination of the Transportation Services Agreement due to the excessive onerous and supervening obligations of YPF to pay the price of the Transportation Services Agreement. Likewise, (e) to order the Importer to pay the costs of these arbitration proceedings, including legal fees and expenses of the Tribunal, and the costs derived from the legal representation of YPF, among others. ----------

(Item 4.5.1 of the Mission Statement. Emphasis added.) ----------

309. In the Opening Brief, YPF made the following positive requests as regards AESU and Sulgás, requesting the Tribunal to declare that: ----------

"(i) the suspension of the Gas Supply Agreement made by AESU and Sulgás on September 15 was illegal, unjustified and untimely;----------

(ii) the invoices for Segment B of transportation sent after September 15, 2008 shall be paid by AESU and Sulgás to TGM, by virtue of section 5.10 of the Transportation Services Agreement, sections 4.3.7, 4.3.8, 4.3.9 of the Transportation Services Agreement, and section 4 of the Payment Agreement; ----------

(iii) AESU and Sulgás are liable for the damages that such behavior has caused to the other Parties (including YPF) and Participants to the Gas Supply Agreement, plus interest up to the date of its payment, including damages to TGM; ----------

(iv) the later termination of the Gas Supply Agreement declared by AESU and Sulgás on March 25 was illegal, unjustified and untimely; ----------

(v) the liability of AESU and Sulgás for all the damages caused to the other Parties (including YPF) and Participants for the termination of the Gas Supply Agreement, plus interest up to the date of its payment, including the damages caused to TGM for the termination of the Transportation Services Agreement, by virtue of sections 14.2.1, 14.2.5 and 14.2.6 of the Gas Supply Agreement; -[...] ----------

(viii) in any case, to order the Defendants to pay the costs derived from these proceedings, including legal fees and expenses of the Tribunal, and the costs of the legal representation of YPF, among others ----------

(Y-MD, ¶588).----------

310. In the Reply Brief, YPF requests the Tribunal, as regards AESU and Sulgás, to declare that: -----

"(i) the suspension of the Gas Supply Agreement made by AESU and Sulgás on September 15 was illegal, unjustified and untimely; ----------

(ii) AESU and Sulgás are liable for the damages that their behavior (i.e. the suspension of the Gas Supply Agreement and the omission to pay the invoices for Segment B) has caused on the other Parties (including YPF) and Participants to the Gas Supply Agreement, plus interest up to the date of its payment, including damages to TGM; ----------

(iii) the later termination of the Gas Supply Agreement declared by AESU and Sulgás on March 25 was illegal, unjustified and untimely; ----------

(iv) the liability of AESU and Sulgás for all the damages caused to the other Parties (including YPF) and Participants for the termination of the Gas Supply Agreement, plus interest up to the date of its payment, including the damages caused to TGM for the termination of the Transportation Services Agreement, by virtue of sections 14.2.1, 14.2.5 and 14.2.6 of the Gas Supply Agreement; -[...] ----------

(vi) the claims of YPF included in the Opening Brief are sustained; ----------

(vii) in any case, the costs of these arbitration proceedings be paid by the Importer, including legal fees and expenses of the Tribunal, and the costs derived from the legal representation of YPF, among others. ----------

(Y-MC, Prayer) ----------

311. YPF ratifies these claims in the Replication (Y-Replication, ¶339) and Rejoinder (Y-Rejoinder, ¶436). ----------

312. In the Closing Argument, YPF requests the Tribunal to: ----------

"(i) dismiss all the claims of AESU and Sulgás against YPF; ----------

(iii) sustain YPF claims stated in the Mission Statement, including without limitation, that AESU and Sulgás shall pay all the damages that TGM could have suffered for the early termination of the Transportation Services Agreement; ----------

(iv) in any case, order AESU and Sulgás, and TGM to pay the costs of these arbitration proceedings, including legal fees and expenses of the Tribunal, and the costs derived from the legal representation of YPF, among others. ----------

(Y-AF, Prayer) ----------

b. Principal defenses of AESU and Sulgás towards YPF's complaint ----------

313. AESU and Sulgás dismiss the arguments and claims of YPF. ----------

314. Firstly, AESU and Sulgás reject the use of YPF of the term "the Importer" in singular to refer to AESU and Sulgás jointly. In this sense, they assert that the obligations of AESU are different and independent from Sulgás' obligations, and that they do not assume joint and several liability. -

315. Regarding YPF principal claim (as detailed in the Mission Statement)[32] AESU and Sulgás pose the following defenses: ----------

a. AESU and Sulgás denied to have suspended or terminated the Gas Supply Agreement illegally. They assert that, on the contrary, their acts have been done in exercise of their rights. ----------

b. As previously explained in Part IV.A.1 above, the termination of the Agreement by AESU and Sulgás was made according to the Agreement and authorized by the applicable law, based on: -----

i. The failure to pay its DOP obligations detailed in the Debit Note, in accordance with the provisions of section 14 of the Agreement. ----------

ii. YPF's repudiation of the Agreement and its obligations. ----------

iii. The YPF failure to act as a reasonable and prudent operator in accordance with the Agreement. ----------

c. Additionally, there was not a breach of AESU and Sulgás of the Agreement that could have prevented them from terminating it. All the invoices sent by YPF which were prior to September 15, 2008 (date in which AESU exercised the rights of section 1201 of the Civil Code) have been promptly paid by AESU based on what should actually be done through a fair and reasonable application of an assessment criterion. ----------

[32] The Tribunal holds that AESU and Sulgás refer to items (a) and (b) of Item 4.5.1 of the Mission Statement, detailed in paragraph 308 *supra*.----------

d. AESU and Sulgás also assert that the retention of their obligations from September 15, 2008 (or "suspension", as called by YPF) was legal. Particularly: ----------

i. The remedy of the suspension was available in applicable law, and the parties did not waive to it in the Gas Supply Agreement. ----------

ii. The suspension was valid both under the Vienna Convention and under Argentine domestic law. ----------

iii. There was not a random suspension of the obligations under the Agreement. ----------

iv. The suspension was not unreasonable, untimely or in contravention of any compulsory practice, ----------

v. The suspension was not an excuse to abandon the Gas Supply Agreement, ----------

e. AESU and Sulgás assert that they did not incur in arrears under the Agreement and did not act with fraud or negligence. On the contrary, they acted pursuant to the provisions of sections 510 and 1201 of the Civil Code. ----------

f. It is not true that AESU has decided to terminate the Agreement to stop trading energy in Brazil. The reason why AESU renegotiated the PPAs was to mitigate the damages caused by YPF as a consequence of the failure to deliver gas, and not the increase in the tax on Argentine gas exports. Due to YPF's failure to deliver natural gas, AESU had to implement alternative methods to provide energy in order to comply with the PPAs -incurring in losses- and, in 2008, the guaranteed power output of the AESU power station, which had been reduced to 217 MW in 2005 because of YPF, was then reduced to reach 0 MW. Therefore, AESU acted in good faith and was diligent when renegotiating the PPAs, which aimed at mitigating the damages caused by YPF.-

g. Additionally, they argue that YPF was not affected by damages from the contractual termination, which YPF has extolled in its letters dated December 4, 2008 and January 23, 2009, among others. ----------

316. Regarding the first subsidiary claim of YPF (detailed in the Mission Statement),[33] AESU and Sulgás pose the following principal defenses: ----------

a. If the termination of Sulgás and AESU is indisputable, the subsidiary claim of YPF will be not admissible as there would not be an agreement to which apply it. ----------

b. On the other hand, if the termination requested by YPF in its principal claim and the corresponding damages are accepted, the subsidiary claim of YPF will again not be admissible as

[33] The Tribunal holds that AESU and Sulgás refer to item (c) of Item 4.5.1 of the Mission Statement, detailed in paragraph 308 *supra*----------

there would not be an agreement to which apply it. This claim shall be rejected in limine in the items affecting AESU and Sulgás. ----------

c. There has never existed an Authorization to Export which was not subject to the requirements of the domestic demand.----------

d. The Authorization to Export has never been interrupted or subordinated.----------

e. The force majeure event has never existed, because the regulations that affect YPF derived from the provisions of Acts No. 17319 and 24076, among other reasons. ----------

f. There has always been transportation capacity available. ----------

317. Regarding the first subsidiary claim of YPF (detailed in the Mission Statement)[34], AESU and Sulgás pose the following principal defenses: ----------

a. This claim is futile as a consequence of what has been detailed in the first subsidiary claim and it shall be dismissed *in limine.* ----------

b. This claim is also inadmissible because (i) there was not an extraordinary and unforeseen event; (ii) there was not a supervening onerous nature; (iii) there was not an amendment to the legislation in force, which at the moment of executing the Agreement, prioritized the domestic supply, and (iv) YPF acted with fraud and negligence in the situation that now affects it. Likewise, a company as YPF cannot appeal to the theory of unforeseen contingencies. ----------

318. As a consequence of these defenses, AESU and Sulgás pose the following requests. In the Mission Statement, AESU and Sulgás request the Tribunal -regarding the YPF's request- that: -------

"A) the claim be no longer effective which is equal to the principal claim of YPF as regards AESU and Sulgás in these proceedings, because of the filing of YPF's counterclaim in arbitration JRF/16202. Should this claim be considered no longer effective, it may be ordered that there is a pending judicial decision between the principal claim of YPF in these arbitration proceedings and the counterclaim filed by YPF in arbitration JRF/16202 and, for having foreseen these last arbitration proceedings, the principal claim of YPF in arbitration JRF/16202 should be considered no longer effective. YPF shall bear the legal expenses. ----------

B) the two subsidiary claims filed by YPF in these arbitration proceedings be dismissed in limine. YPF shall bear the legal expenses. ----------

C) in any case, the YPF's request be dismissed in its entirety. YPF shall bear the legal expenses. -----

(Mission Statement, Item 4.5.2) ----------

319. In the Reply Brief, AESU and Sulgás request the Tribunal -regarding the YPF's request- that: --

[34] The Tribunal holds that AESU and Sulgás refer to item (d) of Item 4.5.1 of the Mission Statement, detailed in paragraph 308 *supra*----------

"(2) what has been requested in TITLE II, CHAPTER N of this brief be granted and the YPF's request against AESU and Sulgás be fully dismissed. Particularly, and notwithstanding the foregoing, and given that YPF in this brief has brought several claims, it is hereby requested that the claim brought by YPF requesting the termination of the [Gas Supply Agreement] be fully dismissed. The aforementioned termination provided by Sulgás and AESU derives from their liability, based on an alleged and nonexistent fault of AESU and Sulgás, including said dismissal, but not limited to, any claim for damages made by YPF. It is hereby also requested that the legal expenses, fees and costs petition be dismissed. YPF shall bear the legal costs, interest and legal fees." ----------

"(6) the termination of the [Gas Supply Agreement] which was decided by Sulgás together with AESU be deemed to be legal, and that YPF, due to its breaches, be held liable before AESU and Sulgás for said termination and its consequences and damages and/or affecting Parties and Participants to the [Gas Supply Agreement]."----------

"(7) YPF be declared liable before AESU and Sulgás as a consequence of the breaches detailed in Chapter VII of the Opening Brief of AESU and Sulgás and of the consequences and damages derived from said breaches." ----------

(A/S-MC, ¶982).----------

320. AESU and Sulgás ratify these claims in the Replication (A/S-Replication, ¶769) and Rejoinder (A/S-Rejoinder, ¶564). ----------

321. In the Closing Argument, AESU and Sulgás assert regarding YPF that "therefore, it is undoubtedly that YPF is liable before AESU and Sulgás for all its breaches of the [Gas Supply Agreement], for the suspension of the [Gas Supply Agreement] and its termination, requesting the Tribunal to be so ordered. [...] Legal costs borne by [...] YPF, requesting the Tribunal to order YPF [...] to pay the costs of these proceedings, including the legal fees and expenses of the Tribunal, and the expenses derived from the legal representation of AESU and Sulgás, among other expenses." (A/S-AF, ¶¶1220-1222). ----------

B. DISPUTE BETWEEN TGM AND YPF ----------

1. TGM complaint against YPF----------

322. As hereinbefore explained, TGM filed an arbitration complaint against YPF in TGM Arbitration, and filed a counterclaim against YPF in this YPF Arbitration. These complaints have

been consolidated in one counterclaim in this arbitration. For the purposes of this award, the Tribunal will refer to it simply as the TGM's complaint against YPF. ----------

323. Originally, TGM filed a counterclaim against YPF in YPF Arbitration temporarily (Item 4.5.3 of the Mission Statement). As a consequence of the consolidation, this complaint is no longer temporary and is now firm and final (Item 3.3.1 of the Addendum to the Mission Statement). -------

a. Claims of TGM in its complaint against YPF ----------

324. The dispute between TGM and YPF derives from two legal relations: on the one hand, from the Transportation Services Agreement and the Memorandum of Agreement, and on the other hand, from the Gas Supply Agreement. ----------

325. Under the Transportation Services Agreement and the Memorandum of Agreement, TGM sues YPF for the following reasons: ----------

a. TGM holds that YPF did not pay the invoices of the Transportation Services Agreement's price and the irrevocable contributions under the Memorandum of Agreement between September 1, 2008 and March 23, 2009. Therefore, TGM demands YPF the payment of those invoices and irrevocable contributions. ----------

b. TGM also requests to declare that the termination of the Transportation Services Agreement and the Memorandum of Agreement made on March 23, 2009 by TGM was legal and that YPF failed to comply with it. TGM also requests to declare that YPF is liable for all the damages caused to TGM pursuant to such termination. ----------

326. Under the Gas Supply Agreement, TGM sues YPF for the following items: ----------

a. TGM claims that YPF, together with AESU and Sulgás, did not fulfill its obligations under section 18.4 and related sections of the Gas Supply Agreement for having modified the Gas Supply Agreement through the Complementary Agreements without TGM's approval. TGM claims that Complementary Agreements affected TGM, and therefore, it requests (i) that the Complementary Agreements be deemed absolutely unenforceable against TGM, and (ii) that YPF be ordered to pay (notwithstanding the joint liability corresponding to AESU and Sulgás) the compensation for damages caused to TGM under the Complementary Agreements. ----------

b. Subsidiary to the foregoing, TGM files a complaint against YPF for having terminated the Gas Supply Agreement in advance without TGM's consent, and claims for damages derived from such early termination. This complaint is filed in the event that the Tribunal does not accept the claim against YPF in item (a). This claim entails two alternative situations, based on the decision of the

Tribunal about the dispute between YPF and AESU/Sulgás with respect to the liability for the termination of the Gas Supply Agreement: ----------

i. In the event that the Tribunal declares that the termination of the Gas Supply Agreement was a consequence of the YPF's breach, TGM requests that the liability of YPF for the early termination of the Gas Supply Agreement be declared and that YPF be ordered to compensate TGM, in its capacity as Participant to the Gas Supply Agreement, for all the damages derived from the early termination of the Gas Supply Agreement or that may be caused in the future, on the grounds of section 14.2.2 and related clauses of the Gas Supply Agreement. ----------

ii. In the event that the Tribunal declares that the termination of the Gas Supply Agreement made by AESU and Sulgás was illegal and, therefore, AESU and/or Sulgás are liable for it, TGM requests that YPF be also considered liable for the the termination of the Gas Supply Agreement for having accepted the termination provided by AESU and Sulgás, contravening the provisions of sections 3.1, 3.5, 18.4 and related sections of the Gas Supply Agreement. In this case, YPF would be individually (for its own breach) and jointly (in solidum) liable as regards the liability of AESU and Sulgás, which is subject matter of TGM Counterclaims against AESU and Sulgás. ----------

327. Therefore, in the Mission Statement, TGM brought the following claims in relation to its request against YPF: ----------

"TGM requests the Arbitral Tribunal: ----------

1) to dismiss all the principal and subsidiary claims of YPF in their entirety. ----------

2) to order YPF, either exclusively or jointly with AESU and/or Sulgás, to compensate TGM for all the current or future damages suffered by TGM for its breach to the Gas Supply Agreement. Likewise, it is requested that the Tribunal order YPF, either exclusively or jointly with AESU and/or Sulgás, to compensate TGM for all the current or future damages suffered by TGM for its breach and the termination of the Firm Transportation Services Agreement. ----------

3) (...) ----------

4) In the event the Tribunal sustains what has been requested in paragraphs 1) and 2), the costs of the proceedings shall be borne by YPF, including legal fees and costs of the Tribunal and the representation of TGM, as well as any other cost, expense or fee. ----------

5) (...) ----------

6) ----------

(i) to order YPF to pay the sum of US$ 17,192,237.18 (seventeen million one hundred and ninety two thousand two hundred and thirty seven and 18/100 United States dollars) included in the

invoices corresponding to the price of the firm transportation services of natural gas rendered between September and December 2008, January and February 2009 and in the first 23 days of March of 2009, in accordance with the Transportation Services Agreement, as well as the irrevocable contributions which are not capitalized corresponding to the same period pursuant to the Memorandum of Agreement, plus interest accrued and to be accrued as from the expiration of each of the obligations and up to the date of actual payment. ----------

(ii) to declare that the Transportation Services Agreement and the Memorandum of Agreement have been terminated by the creditor, that is to say TGM [SIC], and due to YPF breach, effective as of March 23, 2009. ----------

(iii) to order YPF to compensate TGM for all the direct or indirect, actual or future damages derived from the termination of the Transportation Services Agreement and the Memorandum of Agreement {damages assessed initially in **US$ 366,375,903** (three hundred and sixty six million three hundred and seventy five thousand nine hundred and three United States dollars) and/or those derived from evidence}, plus interest as from the termination of the Transportation Services Agreement and the Memorandum of Agreement up to the date of actual payment. --------

(iv) to order YPF to pay all the expenses, costs and legal costs of this arbitration proceeding, including, legal fees and expenses of the Tribunal and of the legal representation of TGM, as well as any other litigation expense, cost or legal fee related hereto." ----------

(Item 4.3 of the Addendum to the Mission Statement). ----------

328. In the Opening Brief, TGM requests the following regarding its complaint against YPF: ----------

"(i) to order YPF to pay all the invoices claimed by TGM in this Arbitration and identified under the following numbers: 0001-000000292, 0001-000000294, 0001-000000296, 0001-000000298, 0001-000000299, 0001-000000300 and 0001-000000301 {the last invoice, proportionally}, corresponding to the service rendered by TGM to YPF under the Firm Transportation Services Agreement over September 2008, October 2008, November 2008, December 2008, January 2009, February 2009, and the period from 1 to 23 March 2009 {date in which the Firm Transportation Services Agreement was terminated by TGM and by YPF's breach} plus interest from the date of the arrears of each of the obligations, assessed up to the date of actual payment. Besides, TGM claims that the Tribunal orders YPF to pay the compensation for all the damages suffered by TGM, or that it may suffer in the future, as a result of the failure of YPF to fulfill its obligations under the Firm Transportation Services Agreement, to the extent that said breach has not been

already repaired through the claim for interest. Those damages shall be timely determined and quantified at the corresponding procedural stage. ----------

(ii) to order YPF to pay the irrevocable contributions which are not capitalized and are due by YPF to TGM under the Memorandum of Agreement corresponding to September 2008, October 2008, November 2008, December 2008, January 2009, February 2009, and the period from 1 to 23 March 2009 {date on which the Memorandum of Agreement was terminated by TGM and YPF's breach}, plus interest from the date of the arrears of each of the obligations, assessed up to the date of actual payment. Besides, TGM requests that the Tribunal orders YPF to pay the compensation for all the damages suffered by TGM, or that it may suffer in the future, as a result of the failure of YPF to fulfill its obligations under the Memorandum of Agreement, to the extent that said breach has not been already compensated through the claim for interest. Those damages shall be timely determined and quantified at the corresponding procedural stage. ---------

(iii) to declare that the termination of the Firm Transportation Services Agreement and the Memorandum of Agreement provided by TGM under the authority of the creditor has been legal and derives from the breach of YPF. ----------

(iv) to order YPF to compensate TGM for all the damages caused or that may be caused in the future to TGM for the termination of the Firm Transportation Services Agreement and the Memorandum of Agreement under the authority of TGM and the breach of YPF {which is fraudulent}, plus interest accrued from the date of the termination of said agreements, i.e. March 23, 2009 and up to the date of actual payment; those damages shall be timely determined and quantified at the second stage of this arbitration. ----------

(v) to order YPF to compensate TGM for all the damages derived from the fraudulent breach of YPF of its obligations under the Gas Supply Agreement {such as is hereinbelow defined} that have been caused or may be caused in the future to TGM, plus interest from the date of the breach and up to the date of actual payment. Those damages shall be timely determined and quantified at the second stage of this arbitration proceeding. This order shall be made to the extent that those damages have not been already and effectively paid by YPF within the framework of the other claims posed by TGM in other parts of this arbitration proceeding. ----------

(vi) to declare the absolute unenforceability of the Complementary and Modification Agreements to TGM, and everything that is therein stipulated, provided or agreed, and their consequences, including, among others, the following: (1) the obligations and rights, directly or indirectly, created through the Complementary and Modification Agreements; (2) amendments, directly or

indirectly introduced through the Complementary and Modification Agreements to the obligations, rights and powers provided in the Gas Supply Agreement, including the amendments introduced to the suspension system, early termination and liability for the early termination of the Gas Supply Agreement; (3) the compliance or non-compliance with the obligations and/or the exercise of rights or powers, directly or indirectly, created through the Complementary and Modification Agreements, and the compliance or non-compliance with obligations, rights and powers provided in the Gas Supply Agreement, directly or indirectly amended by the Complementary and Modification Agreements, and all their consequences; (4) the disputes handled among YPF, AESU and Sulgás with respect to the Complementary and Modification Agreements, their scope, compliance or non-compliance, or with respect to any of the subjects detailed in paragraphs (2) and (3) above; and (5) the termination, by any means, of the disputes detailed in paragraph (4) above; the foregoing to the extent that any of the acts, facts, events or subject-matters referred to, were directly or indirectly claimed or posed as grounds or pretense grounds {either factual or legal} for any defense of YPF against the claims of TGM in this arbitration proceeding and/or as grounds or pretense grounds {either factual or legal} for any claim of YPF against TGM or against third parties, with negative effects regarding TGM and/or any other kind of effect to TGM. ----------

(vii) subsidiary to the claims of §(v) above, to order YPF to compensate TGM for all the damages suffered by TGM for YPF's liability in the early termination of the Gas Supply Agreement violating TGM rights, plus interest up to the date of actual payment. Those damages shall be timely determined and quantified at the second stage of this arbitration. This order shall be made to the extent that those damages have not been already and effectively paid by YPF within the framework of the other claims brought by TGM in other parts of this Arbitration. ----------

(viii) to order YPF to pay all the litigation expenses, costs or legal fees, and costs of this arbitration, including the fees and expenses of the Tribunal and of representation of TGM, as well as any other cost, legal cost or fee, or expense derived from this arbitration. ----------

(T-MD, ¶717) ----------

329. TGM ratifies these requests in its subsequent briefs (T-MC,¶ 619; T-Replication, ¶631, T-Rejoinder, ¶306, T-AF, ¶965). ----------

b. Principal defenses of YPF to TGM complaint ----------

330. YPF argues that the dispute that gave rise to this arbitration proceeding started on September 15, 2008, when the Importer failed to comply with its obligations under the Gas

Supply Agreement, from the illegal decision of AESU issued on that same date to suspend the compliance with the Gas Supply Agreement. Among the obligations that the Importer failed to comply with, there was the payment of the price component for the transportation costs, which in turn YPF paid to TGM as the price of the Transportation Services Agreement, subject to the receipt of such component from the Importer. This dispute is also a consequence of the later joint decision of AESU/Sulgás to terminate the Gas Supply Agreement on March 25, 2009. According to YPF, both decisions caused, in turn, the early and vicarious termination of the Transportation Services Agreement on April 8, 2009, and, consequently, this Arbitration. ----------

331. YPF adds that, pursuant to the contractual regime -accepted by TGM in its capacity as party to the Transportation Services Agreement and as participant to the Gas Supply Agreement-, the one to be liable for the termination of the Gas Supply Agreement shall compensate for the damages caused to the Parties and Participants, including the damages derived from the vicarious termination of the Agreements related to the Gas Supply Agreement. In the said regime, alternatively, Sulgás or YPF as parties, or AESU as a participant, as the case may be, could be liable for the payment of the damages derived from the termination of the Gas Supply Agreement in its entirety. Depending on the obligation which was not fulfilled, the one to be liable for the termination would be one or the other. TGM as a signing party and participant to the Gas Supply Agreement was always subject to the determination of the liability in the case of a possible breach of the Gas Supply Agreement, which would determine the one to be liable for the damages of the termination of the Gas Supply Agreement and the vicarious termination of the Transportation Services Agreement, independently of TGM's will. ----------

332. Despite the fact that TGM is not involved in the dispute regarding which party was the one -YPF or the Importer- to blame for the early termination of the Gas Supply Agreement, YPF argues that TGM expects to hold YPF liable, to the detriment of the AESU and Sulgás liability, through the alleged joint and several liabilities which are non-existent and contrary to the Gas Supply Agreement. TGM does not try to blame YPF because it is the real responsible (YPF argues that it is not) but because it prefers the credit risk of collecting the payment from YPF in Argentina to collect the payment from AESU and Sulgás in Brazil. TGM, according to its Brief, states as follows: "What has been stated is evident: it is not the same for TGM whether the compensation for the termination of the Gas Supply Agreement was due by YPF -Argentine company which is solvent- or by SULGÁS or AESU. (T-MD, ¶556). ----------

333. According to YPF, TGM tries to make YPF jointly and severally liable for the behavior of AESU/Sulgás of illegally abandoning the Gas Supply Agreement, either regarding the breaches in September 2008 or the illegal termination in March 2009. This objective leads TGM to insist on the treatment of its claims against YPF separately, ignoring the mechanisms of vicarious termination and vicarious and unique liability provided in the Gas Supply Agreement and in the Transportation Services Agreement. According to YPF, TGM acts in an "autistic" manner, as if it has not agreed and implemented the consolidation of the three existing arbitration proceedings among YPF, AESU/Sulgás and TGM. YPF argues that TGM insists on not acknowledging the practical effect of the contractual mechanisms that were used to found this consolidation, which was made to jointly treat the claims of all the parties and to determine the one who is liable for the termination of both agreements, pursuant to the vicarious and unique liability regime therein established. ----------

334. Notwithstanding the foregoing, YPF brings the following principal defenses to the claim filed by TGM under the Transportation Services Agreement: ----------

a. YPF denied owing the invoices claimed by TGM under the Transportation Services Agreement, because: ----------

i. Its payment obligation of the Price of the Transportation Services Agreement was suspended, as AESU/Sulgás had not paid Segment B of Transportation to YPF under the Gas Supply Agreement; such fact did not constitute a condition precedent in order to bring the obligation of YPF under section 5.10 of the Transportation Services Agreement. As it was mentioned in Part IV.A.2 *supra*, YPF requests that AESU and Sulgás be held liable for the payment of those invoices. -

ii. The invoices are not accrued because the transportation capacity of TGM was not available, as a result of the measures adopted by the government from 2004. ----------

b. YPF also denies owing the irrevocable contributions under the Memorandum of Agreement, as it argues that their accrual depends on the accrual of the payment obligation of the price of the Transportation Services Agreement. ----------

c. As regards the claims of TGM related to the termination of the Transportation Services Agreement, YPF denies that the letter sent by TGM on March 23, 2009 was aimed at terminating the Transportation Services Agreement. When TGM effectively declared the termination of the Transportation Services Agreement on April 15, 2009, this agreement had already been terminated through the vicarious termination made by YPF on April 8, 2009. Pursuant to the unified regime of liabilities of the Gas Supply Agreement, YPF argues that, as a consequence of

the legal termination of the Gas Supply Agreement by the Importer, it is the Importer who is to be held liable for the damages suffered by TGM as a result of the early termination of the Transportation Services Agreement. ----------

d. YPF also argues that the termination of the Memorandum of Agreement does not imply a liability for YPF. ----------

335. YPF also dismisses TGM claims under the Gas Supply Agreement: ----------

a. YPF rejects to have contravened section 18.4 of the Gas Supply Agreement. It argues that through the Complementary Agreements, YPF, AESU and Sulgás exercised their own rights and did not affect TGM. In any case, it holds that the remedy would be the unenforceability of the Complementary Agreements as regards TGM, and not the compensation for damages. ----------

b. YPF also denies that it is liable before TGM for the early termination of the Gas Supply Agreement: ----------

i. YPF rejects the first alternative posed by TGM (that the Tribunal declares that YPF was liable for terminating the Gas Supply Agreement) because, as it has been stated, the position of YPF is that the Importer (i.e. AESU and Sulgás) is liable for the termination. Therefore, YPF argues that, pursuant to the unified regime of liabilities of the Gas Supply Agreement, the Importer is liable for all the damages caused by such termination to the other Parties and Participants (including damages suffered by TGM for the vicarious termination of the Transportation Services Agreement). ----------

ii. Regarding the second alternative posed by TGM, YPF rejects to have accepted the termination of the Gas Supply Agreement made by AESU/Sulgás. YPF argues that, although that termination was not legitimate, it was also irresistible, as it de facto turned impossible to continue with the export business. Moreover, it has the effect to terminate the Transportation Services Agreement. Therefore, YPF denies being jointly liable with AESU and Sulgás for the early termination of the Gas Supply Agreement. ----------

336. As for the aforementioned reasons, YPF files the following claims as regards TGM complaint: -

337. In the Mission Statement, YPF requests the Tribunal: ----------

"Regarding the possible Counterclaim of TGM[35], the Counterclaim Defendant, YPF, requests the Tribunal: ----------

(I) to dismiss TGM direct complaint for collection related to YPF failure to pay the Price of the Transportation Services Agreement and the irrevocable contributions over "September 2008/

[35] As a consequence of the consolidation, the counterclaim of TGM against YPF was no longer temporary, and now it is firm and final (Item 3.3.1 if the Addendum of the Mission Statement).----------

March 2009", as it is applicable to YPF the condition precedent provided in section 5.10 of the Transportation Services Agreement and related supplementary regulations; and, subsidiary to, as the obligation has not been accrued to pay the price of the Transportation Services Agreement taking into account the legal impossibility of TGM to render firm transportation services for exports under the conditions and objectives originally agreed, as a consequence of the progressive measures of the Government of Argentina that as from 2004 turned the Transportation Services Agreement and related agreements of firm transportation services for exports interruptible and subordinated to the natural gas and transportation needs of the domestic market; ----------

(II) to dismiss the termination of the Transportation Services Agreement by TGM as it was illegal and untimely. Illegal, as if it was applicable to the condition precedent provided in section 5.10 of the Transportation Services Agreement and/or having been evidenced the legal impossibility of compliance by TGM, no sum has been accrued by YPF for the transportation services' costs and, consequently, TGM has not been entitled to terminate the agreement. Untimely because, as the Importer terminated the Gas Supply Agreement, YPF exercised its right of vicarious termination provided in section 13.2 of the Transportation Services Agreement and related complementary provisions and regulations, before TGM terminates the Transportation Services Agreement for an alleged failure of YPF; ----------

(III) to order TGM to pay the expenses derived from the temporary Counterclaim in YPF Arbitration, including legal fees and costs of the Tribunal, and the costs derived from the legal representation of YPF, among others." ----------

(Item 4.5.1 of the Mission Statement). ----------

338. In the Reply Brief, YPF requests the Tribunal, as regards TGM positive claims: ----------

(i) to declare that the invoices for Segment B of transportation, as from September 2008 afterwards, shall be paid to TGM by AESU and Sulgás, pursuant to the application of Section 5.10 of the Transportation Services Agreement and sections 4.3.7, 4.3.8, 4.3.9 and related sections of the Gas Supply Agreement; ----------

(ii) to declare that the Transportation Services Agreement was legally terminated by YPF on April 8, 2009, pursuant to the application of section 13.2 of the Transportation Services Agreement; ----

(iii) to dismiss all TGM claims against YPF included in the Opening Brief; ----------

[...] ----------

(v) complementary, to order TGM to pay the expenses of this arbitration proceeding, including legal fees and expenses of the Tribunal, and the costs derived from the legal representation of YPF, among others. ----------

(Y-MC, Prayer)----------

339. YPF ratifies these claims in its Replication (Y-Replication, ¶339) and Rejoinder (Y-Rejoinder, ¶436). ----------

340. In the Closing Argument, YPF requests the Tribunal –regarding AESU and Sulgás's complaint:

"[...] ----------

(ii) to dismiss all TGM claims against YPF; ----------

(iii) to sustain YPF claims stated in the Mission Statement, including without limitation, that AESU and Sulgás shall pay all the damages that TGM could have suffered for the early termination of the Transportation Services Agreement; ----------

(iv) in any case, to order AESU and Sulgás, and TGM to pay the expenses of this arbitration proceeding, including legal fees and expenses of the Tribunal, and the costs derived from the legal representation of YPF, among others. ----------

(Y-AF, ¶323) ----------

2. YPF complaint against TGM ----------

341. As it was previously explained, YPF filed a counterclaim against TGM in TGM Arbitration, and filed an arbitration complaint against TGM in YPF Arbitration. These complaints have been consolidated in one complaint in this arbitration. For the purposes of this Award, the Tribunal will refer to it simply as the YPF's complaint against TGM. ----------

a. Claims brought by YPF against TGM ----------

342. As it has been explained, YPF argues that the Parties and Participants to the Gas Supply Agreement (including TGM) agreed on a unified regime of liabilities, by virtue of which the responsibility of one or more of the Parties and/or Participants in the termination of the Gas Supply Agreement made them liable for the compensation for all the damages suffered by the other Parties and Participants, including those suffered for the impossibility of the Related Agreements' continuance. ----------

343. Accordingly with this unified regime of liabilities, YPF asserts that in section 13.2 of the Transportation Services Agreement YPF agreed with TGM a mechanism of vicarious termination of the Transportation Services Agreement, which empowered YPF to terminate this Agreement

without any liability before TGM when the termination of the Gas Supply Agreement did not derive from a breach of YPF. ----------

344. YPF holds that, as a consequence of the illegal termination of the Gas Supply Agreement by the Importer, it was forced to terminate the Transportation Services Agreement vicariously, due to causes external to YPF. YPF explains that it posed this vicarious termination through a Counterclaim for termination in TGM Arbitration, filed on April 8, 2009. YPF holds that it was on that date and by its authority that the Transportation Services Agreement was terminated and that the termination attempted by TGM was illegal and untimely. ----------

345. YPF also holds that, as a consequence of the vicarious termination of the Transportation Services Agreement, it also terminated the Memorandum of Agreement without holding YPF liable. ----------

346. Therefore, YPF brings the following requests related to its request against TGM: ----------

"[...] Subsidiary to (a) and (b)[36]:" (c) to declare that the compensation of TGM is inadmissible because it could not render the firm transportation services due to the measures adopted by the Government of Argentina; and subsidiary to (a), (b) and (c): (d) to order the termination of the Transportation Services Agreement due to the excessive onerous obligations of YPF to pay the price of the Transportation Services Agreement. Likewise, (e) to order the Importer to pay the expenses of this arbitration proceeding, including legal fees and expenses of the Tribunal, and the costs derived from the legal representation of YPF, among others. ----------

(Item 4.5.1 of the Mission Statement. Emphasis added) ----------

347. As regards the request detailed in item (c), the Tribunal holds that, in its previous briefs, YPF seemed to have waived to it regarding positive claims in order to use it as a defense against the other claims of TGM. ----------

---

[36] "The reference to items (a) and (b) of Item 4.5.1 of the Mission Statement, in which YPF request the Tribunal: "(a) to declare that the Importer is to be held liable for the termination of the Agreement notified by the Importer to YPF through the letter dated March 20, 2009; (b) to pose the liabilities and consequences to the Importer as regards YPF, TGM and the other Parties and Participants to the Agreement as per the provisions of sections 14.2.1, 14.2.5, 14.2.6 and related sections of the Agreement, and section 13.2 and related sections of the Transportation Services Agreement, which includes, without limitation, (i) the declaration of the Tribunal that the Importer had terminated the Transportation Services Agreement; and (ii) the exclusive liability of the Importer for any sum payable to TGM derived from the Transportation Services Agreement, as well as all the damages that YPF had or may suffer for the Importer, including interests, and including without limitation, any sum payable to TGM regarding or derived from any of the claims of TGM under the Transportation Services Agreement. The value of these damages shall be determined timely at the corresponding procedural stage; [...]"----------

348. As regards the request under item (d), the Tribunal holds that YPF has not ratified it again in its following briefs. Therefore, the Tribunal considers that YPF has never waived to it. ----------

349. In the Opening Brief, YPF brings the following positive claims as regards TGM, requesting the Tribunal to declare that: ----------

"(i) [...] ----------

(ii) the invoices for Segment B of transportation sent after September 15, 2008 shall be paid by AESU and Sulgás to TGM, by virtue of section 5.10 of the Transportation Services Agreement, sections 4.3.7, 4.3.8, 4.3.9 of the Transportation Services Agreement, and Section 4 of the Payment Agreement; ----------

[...] ----------

(vi) the validity of the vicarious termination of the Transportation Services Agreement declared by YPF on April 8, 2009, by the application of section 13.2 of the Transportation Services Agreement; and ----------

(vii) the termination without liability of the Memorandum of Agreement; ----------

(viii) in any case, to order the Defendants to pay the costs of this arbitration proceeding, including legal fees and expenses of the Tribunal, and the costs derived from the legal representation of YPF, among others. ----------

(Y-MD, ¶588). ----------

350. In the Reply Brief, YPF requests the Tribunal as regards its complaint against TGM: ----------

(i) to declare that the invoices for Segment B of transportation, as from September 2008 afterwards, shall be paid to TGM by AESU and Sulgás, pursuant to the application of section 5.10 of the Transportation Services Agreement and clauses 4.3.7, 4.3.8, 4.3.9 and related sections of the Gas Supply Agreement; ----------

(ii) to declare that the Transportation Services Agreement was legally terminated by YPF on April 8, 2009, pursuant to the application of section 13.2 of the Transportation Services Agreement; ----

(iii) to dismiss all TGM claims against YPF included in the Opening Brief; ----------

(iv) to sustain YPF claims included in the Opening Brief; ----------

(v) complementary, to order TGM to pay the costs of this arbitration proceeding, including legal fees and expenses of the Tribunal, and the costs derived from the legal representation of YPF, among others. ----------

(Y-MC, Prayer) ----------

351. YPF ratifies these claims in its following briefs (Y-MC, Prayer, Y-Replication, ¶339, and Y-Rejoinder, ¶436). ----------

352. In the Closing Argument, YPF requests the Tribunal -regarding its complaint against TGM ------

"[...] ----------

(iii) to sustain YPF claims stated in the Mission Statement, including without limitation, that AESU and Sulgás pay all the damages that TGM could have suffered for the early termination of the Transportation Services Agreement; ----------

(iv) in any case, to order AESU and Sulgás, and TGM to pay the costs of this arbitration proceeding, including legal fees and expenses of the Tribunal, and the costs derived from the legal representation of YPF, among others." ----------

(Y-AF, ¶323) ----------

b. Principal defenses brought by TGM against YPF ----------

353. TGM rejects the vicarious termination of the Transportation Services Agreement and the Memorandum of Agreement made by YPF. According to TGM, through this alleged "vicarious termination", YPF expects to evade its liability for the termination of the Transportation Services Agreement and the Memorandum of Agreement provided by TGM for its breaches, seeking the application of the waiver of TGM provided in section 13.2 of the Transportation Services Agreement. ----------

354. Specifically, TGM argues that the termination of the Transportation Services Agreement and the Memorandum of Agreement provided by YPF is inadmissible because: ----------

a. YPF failed to comply with its obligations under the Transportation Services Agreement, the Memorandum of Agreement and the Gas Supply Agreement. ----------

b. The Gas Supply Agreement was not terminated by virtue of a reason not involving YPF. ----------

c. YPF did not comply with the formal requirements set forth in sections 13.2 and 13.3 of the Transportation Services Agreement. Particularly, it failed to duly notify TGM with five consecutive calendar days prior to the service of notice. ----------

d. The vicarious termination mechanism was not in force or operative during the validity of the Complementary Agreements. ----------

355. Therefore, in the Addendum to the Mission Statement, TGM requests to dismiss the principal and subsidiary claims of YPF and brings the remaining claims detailed in paragraph 327 *supra* (Item 4.3 of the Addendum of the Mission Statement).----------

356. In the Reply Brief, TGM requests the Tribunal -as regards YPF' complaint: ----------

"(i) to dismiss the claims posed by YPF against TGM with each and every part and, on the contrary, to sustain the claims posed by TGM in the Counterclaim Opening Brief against YPF and the Crossclaim between SULGÁS and AESU.----------
(ii) reserve the right to appeal to the Supreme Court of Argentina.----------
(iii) in each and every case, to order YPF to pay all the expenses, legal costs and fees, and costs of these arbitration proceedings including the legal fees and costs of the Tribunal and of the legal representation of TGM, among others.----------
(T-MC, ¶619)----------
357. TGM ratifies these claims in its following briefs (T-Replication, ¶631, T-Rejoinder, ¶306, T-AF, ¶965).----------

C. DISPUTE BETWEEN TGM AND AESU/SULGÁS----------

1. TGM complaint against AESU and Sulgás. ----------

358. TGM has filed complaints against AESU and Sulgás in this arbitration. For the purposes of this Award, the Tribunal will refer to it simply as TGM's complaint against AESU and Sulgás. ---------

a. TGM claims in its complaint against AESU and Sulgás----------

359. The dispute between TGM and AESU and Sulgás was originated under the Gas Supply Agreement, and it is based on the same allegations of the dispute between TGM and YPF under this Agreement.----------
360. Under the Gas Supply Agreement, TGM sues AESU and Sulgás for the following items: ----------
a. TGM argues that AESU and Sulgás (together with YPF) violated their obligations under section 18.4 and related sections of the Gas Supply Agreement for having modified the Gas Supply Agreement through the Complementary Agreement without TGM's consent. TGM claims that Complementary Agreements affected it, and therefore, it requests (i) that the Complementary Agreements be considered absolutely unenforceable to TGM, and (ii) that AESU and Sulgás be ordered to pay (notwithstanding the joint liability corresponding to YPF) the compensation for damages caused to TGM under the Complementary Agreements. ----------
b. Subsidiary to the foregoing, and in case the Tribunal determines that the Gas Supply Agreement was terminated by AESU and Sulgás's fault, TGM files a complaint against AESU and Sulgás for the early termination of the Gas Supply Agreement without TGM's consent, and claims the damages derived from this early termination. ----------

361. Therefore, in the Mission Statement, TGM brought the following claims as regards its complaint against AESU and Sulgás: ----------

"TGM requests the Tribunal: ----------

"[...] ----------

3) to order AESU and Sulgás, either exclusively or jointly with YPF, to compensate TGM for all the actual or future damages suffered by TGM for its breach to the Gas Supply Agreement. Subsidiary to, and in the event that the termination of the Gas Supply Agreement be sustained caused by AESU/SULGÁS's fault, to order that AESU and SULGÁS jointly and severally compensate (exclusively or jointly with YPF) TGM for all the damages caused to TGM, including the damages derived from the termination of the Firm Transportation Services Agreement and the Memorandum of Agreement. ----------

[...] ----------

5) In the case the claims detailed in paragraphs 2) and 3) were granted, to order AESU and/or SULGÁS to pay the costs of the proceeding, including legal fees and costs of the Tribunal and the costs derived from the legal representation of TGM, as well as any other cost, expense or fee. -----

[...]" ----------

(Item 4.3 of the Addendum to the Mission Statement). ----------

362. In the Opening Brief, TGM requests the Tribunal: ----------

"(i) to order SUGAS and AESU {each of them individually and for the total amount, although jointly and with YPF (in solidum)}, to compensate TGM for all the damages derived from the fraudulent breaches of SULGÁS and AESU of their obligations under the Gas Supply Agreement caused or which may be caused in the future to TGM, plus interest as from the date of the breaches and up to actual payment. Those damages shall be determined and quantified at the second stage of this arbitration". This order shall be made to the extent that those damages have not been effectively paid already by YPF within the framework of the other claims brought by TGM in other parts of this arbitration. ----------

(ii) to declare the absolute unenforceability of the Complementary and Modification Agreements to TGM {as detailed hereinbelow }, and everything that is therein stipulated, provided or agreed, and their consequences, including, among others, the following: (1) the obligations and rights, directly or indirectly, created through the Complementary and Modification Agreements; (2) amendments, directly or indirectly, introduced through the Complementary and Modification Agreements to the obligations, rights and powers provided in the Gas Supply Agreement,

including the amendments introduced to the suspension system, early termination and liability for the early termination of the Gas Supply Agreement; (3) the compliance or non-compliance with the obligations and/or the exercise of rights or powers, directly or indirectly, created through the Complementary and Modification Agreements, and the compliance or non-compliance with obligations, rights and powers provided in the Gas Supply Agreement, directly or indirectly, amended by the Complementary and Modification Agreements, and all their consequences; (4) the disputes among YPF, AESU and Sulgás with respect to the Complementary and Modification Agreements, their scope, compliance or non-compliance, or with respect to any of the subjects detailed in paragraphs (2) and (3) above; and (5) the termination, by any means, of the disputes detailed in paragraph (4) above; the foregoing to the extent that any of the acts, facts, events or subject-matters referred to, were claimed or posed as grounds or pretense grounds [either factual or legal] for any defense of SULGAS and/or AESU against the claims of TGM in these arbitration proceedings and/or any other kind of negative effect to TGM. ----------

(iii) Subsidiary to the claims provided in§ (i) above, to order SULGÁS and AESU {each and every of them individually and for the total amount, although jointly and with YPF (in solidum)} to compensate TGM for all the damages suffered by TGM for the liability of SULGÁS and AESU in the early termination of the Gas Supply Agreement violating the rights of TGM, plus interest up to the date of actual payment. Those damages shall be determined and quantified at the second stage of this arbitration proceeding. This order shall be made to the extent that those damages have not been effectively paid already by YPF within the framework of the other claims brought by TGM in other parts of this Arbitration. ----------

(iv) to order SULGÁS and AESU, each of them individually and for the total amount, although jointly and in the case with YPF (in solidum), to pay the costs, legal costs and fees, and expenses of these arbitration proceedings, including the legal fees and costs of the Tribunal and the legal representation of TGM, as well as any other cost, legal cost or fee, or expense derived from this Arbitration Proceeding." ----------

(T-MD, ¶718) ----------

363. TGM ratifies these claims in its following briefs (T-MC, ¶619; T-Replication, ¶632, T-Rejoinder,¶307, T-AF, ¶966) ----------

b. Principal defenses brought by AESU and Sulgás to TGM's complaints. ----------

364. AESU and Sulgás reject the complaints filed by TGM against them and bring the following principal defenses: ----------

a. AESU and Sulgás reject to have violated section 18.4 of the Gas Supply Agreement under the execution of the Complementary Agreements. Particularly, they reject that those Agreements have affected TGM, because they do not modify the rights and duties of TGM, either under the Gas Supply Agreement or under the Transportation Services Agreement. ----------

b. Regarding the early termination of the Gas Supply Agreement: ----------

i. AESU and Sulgás assert that they terminated the Agreement legally and due to the breach of YPF. They reject to have considered the consent of YPF when terminating the agreement. Therefore, YPF is liable for the damages caused by such termination to TGM. ----------

ii. AESU and Sulgás also reject that the termination of the Gas Supply Agreement has constituted a voluntary and fraudulent violation of TGM right not to terminate the Gas Supply Agreement in a date earlier than the date agreed upon. They assert that they have terminated the Agreement legally, in accordance with the powers granted to these companies both by the Gas Supply Agreement and the law applicable to the Agreement. ----------

iii. Additionally, they add that TGM commenced the termination of the Transportation Services Agreement on March 23, 2009, when the Gas Supply Agreement was still in force, by implementing a mechanism that caused the impossibility to comply with the Gas Supply Agreement, because the natural gas could not be transported. Therefore, when AESU and Sulgás terminated the Gas Supply Agreement, the TGM Transportation Services Agreement had been already terminated (AESU and Sulgás assert that the termination of the Transportation Services Agreement came into effect on March 23, 2009). Therefore, it is difficult that TGM could expect that AESU and Sulgás compensate for damages derived from the termination of the Gas Supply Agreement and the Transportation Services Agreement, when TGM has terminated the Transportation Services Agreement, leaving the Gas Supply Agreement without transportation to maintain its validity. ----------

365. Therefore, AESU and Sulgás request in the Mission Statement: ----------

"[…]----------

(D) to dismiss TGM cross-claim against AESU and SULGÁS in its entirety plus legal costs borne by TGM (even in the case that this TGM claim is not decided)," ----------

(Item 4.5.2 of the Mission Statement). ----------

366. In the Reply Brief, AESU and Sulgás request -as regards TGM complaints:----------

"It is requested, therefore, the dismissal of the TGM complaint against AESU and Sulgás, in its entirety, plus legal costs and fees to be borne by TGM". ----------

(A/S-MC, ¶978) ----------

367. AESU and Sulgás ratify these claims in their following briefs (A/S-Rejoinder, ¶564, A/S-AF, ¶1221-1222) ----------

V. PRELIMINARY MATTERS ----------

A. JURISDICTION OF THE TRIBUNAL AND CONSENT TO CONSOLIDATION ----------

368. The jurisdiction of the Tribunal under the Gas Supply Agreement is set forth in section 20.2 of the Agreement, which establishes: ----------

"20.2) ARBITRATION ----------

a)All disputes among the PARTIES or between two or more PARTICIPANTS or between one or both PARTIES and one or more PARTICIPANTS arising from the interpretation and/or execution of this AGREEMENT, except for those which shall be submitted to an EXPERT WITNESS pursuant to the AGREEMENT or that the PARTIES and PARTICIPANTS involved agree to submit to an EXPERT WITNESS, shall be definitely solved according to the Conciliation and Arbitration Rules of the International Chamber of Commerce by three (3) arbitrators appointed pursuant to said Rules. ----

The PARTIES and PARTICIPANTS expressly waive to any other venue or jurisdiction which may correspond to them for the solution of any dispute among them. ----------

b)The place of the arbitration shall be Montevideo –Uruguay- or any other place that the PARTIES and PARTICIPANTS involved agree upon. ----------

The arbitration language shall be Spanish [*castellano*]. ----------

c) The arbitration award shall be issued in writing and shall be definite, binding upon the PARTIES and the PARTICIPANTS involved, and non-appealable, except for the motion for clarification and/or motion for annulment set forth in Section 760 of the Code of Civil and Commercial Procedure of the Republic of Argentina (Special Appeals). ----------

The award shall decide on the manner in which the arbitration costs, expenses and reasonable professional fees shall be borne. ----------

The execution of any award which is not complied with may be brought before any court having jurisdiction over the PARTIES and/or PARTICIPANTS; stating, however, that any Special Appeal shall be exclusively filed before the courts of the Republic of Argentina and pursuant to the laws of said country. ----------

The execution of the arbitration award shall be suspended until: ----------

(i) the term to file said Special Appeals shall have expired, without having performed said filing, or a final and non-appealable court order in relation to said Special Appeals shall have been rendered". ----------

369. Likewise, this section was included as a reference in each Complementary Agreement. So as to interpret this document, Complementary Agreements shall include (i) the First Conflict Resolution Agreement entered into on August 31, 2004, entered into by and between YPF, AESU and Sulgás; (ii) the Supplementary Agreement entered into on February 10, 2006 and its amendment dated March 10, 2006, entered into by and between YPF, AESU and Sulgás; (iii) the Second Conflict Resolution Agreement entered into on February 20, 2006 and its amendment dated March 10, 2006, entered into by and between YPF, AESU and Sulgás; and (iv) the Payment Agreement entered into on February 20, 2006 and its amendment dated March 10, 2006, entered into by and between YPF, AESU and Sulgás. ----------

370. The jurisdiction of the Tribunal under the Gas Supply Agreement is set forth in Section 10.2 of the said Agreement, which establishes: ----------

"10.2) ARBITRATION ----------

All disputes arising from the interpretation and execution of the Firm Transportation Service Agreement shall be subject to and shall be definitely solved pursuant to the Conciliation and Arbitration Rules of the International Chamber of Commerce by three (3) arbitrators appointed pursuant to said Rules. The Parties expressly waive to any other venue or jurisdiction which may correspond to them for the solution of any dispute among them. The place of the arbitration shall be the city of Montevideo, Uruguay, or any other place which the Parties may agree upon. The arbitration language shall be Spanish [*castellano*]. The arbitration award shall be issued in writing and shall be definite, binding upon the PARTIES and non-appealable, except for the motion for clarification and/or motion for annulment set forth in Section 760 of the Code of Civil and Commercial Procedure of the Republic of Argentina ("Special Appeals"). The award shall decide on the manner in which the arbitration costs, including expenses and reasonable professional fees, shall be borne. The execution of any award which is not complied with may be brought before any court having jurisdiction over the Parties that, pursuant to the award, shall make payments or enforce an action or that has jurisdiction over said Parties assets; stating, however, that any Special Appeal shall be exclusively filed before the courts of the Republic of Argentina and pursuant to the laws of said country. The execution of the arbitration award shall be suspended until: (i) The term to file said Special Appeals shall have expired, without having

performed said filing, or (ii) a final and non-appealable court order in relation to said Special Appeals shall have been rendered. Notwithstanding the foregoing, any dispute arising between the Parties under the Firm Transportation Service Agreement and which also constitutes a dispute under the Gas Supply Agreement subject to arbitration under the Gas Supply Agreement shall be solved pursuant to arbitration under the Gas Supply Agreement and the arbitration award issued in relation to said arbitration shall be binding upon the Parties for the purposes of said dispute arising from the Parties under the Firm Transportation Service Agreement". ----------

371. When this YPF Arbitration began (CCI 16232/JRF/CA), TGM (CCI 16029/JRF) and AESU (CCI 16202/JRF) Arbitrations had already begun. YPF held that the existence of those parallel proceedings entailed an artificial fragmentation of inseparable judicial relations originated from a single economic undertaking, and suggested the consolidation of the three arbitration proceedings in this YPF Arbitration, because it includes all the parties. YPF justified this request with an alleged intention of the parties and for considering it favorable (particularly, in order to avoid possible negative results). ----------

372. Initially, all defendants rejected this consolidation and filed motions to dismiss based on previous procedural defects and challenges of jurisdiction in this arbitration proceeding. ----------

373. AESU and Sulgás initially pointed out that they accept the arbitral jurisdiction only under the provisions of section 20(2)(a) of the Gas Supply Agreement and if the dispute arises exclusively from an agreement to which they are parties. In their opinion, this situation occurred only in AESU Arbitration (A/S-MCPP, ¶¶14¬16). As a consequence of the foregoing, in the first stage of this arbitration, AESU and Sulgás alleged the lack of jurisdiction of the Tribunal to solve the claims of YPF against them for the following reasons: ----------

a. Lack of jurisdiction of the Tribunal over YPF's claim against AESU and Sulgás because there is not a single dispute among AESU/Sulgás, TGM and YPF. ----------

b. YPF counterclaim in AESU Arbitration would mean the tacit dismissal of YPF complaint against AESU and Sulgás in YPF Arbitration and this tacit dismissal would exclude the arbitral jurisdiction of this Tribunal. ----------

374. AESU and Sulgás also rejected the jurisdiction of the Tribunal in relation to TGM crossclaim. --

375. In turn, TGM filed the following motions to dismiss based on previous procedural defect: -----

a. As a principal motion to dismiss, TGM filed a motion to dismiss based on the fact that YPF claims are already being litigated in another suit, as they are identified with those brought by YPF in its counterclaim in TGM Arbitration. ----------

b. Subidiarily, TGM requested the Tribunal to dismiss the grounds of the claims mentioned in favor of the possible consideration and resolution by the tribunal already constituted in TGM Arbitration, this based on the application of *forum non conveniens*. ----------

376. Within the context of the decision on previous procedural matters, on February 16, 2011, the Tribunal wrote the following to the Parties: ----------

"The Tribunal has discussed on the previous procedural questions posed by the three defendants against YPF's complaint, and those filed by AESU and Sulgás against TGM crossclaim. ----------

Notwithstanding the factual and legal arguments posed by the parties, the Tribunal could not overlook that said arguments include three parallel arbitration proceedings in which two or more parties take part in relation to the Gas Export Agreement, TGM Transportation Services Agreement, or both. The Tribunal notes that, in the opinion of some of the parties, the disputes subject matter of these three arbitrations would be different. However, and at least at first sight, this does not dismiss that the three arbitrations are aimed at determining the obligations and duties that involve at least two of the parties that appear before this Tribunal, as a result of the contractual obligations that they accepted within the scope of a single economic project, the Uruguayana Project. ----------

Consequently, the Tribunal agrees with the parties to the concern over the difficulties and risks that may be generated from these three parallel arbitrations and the decisions that may be adopted. In addition to increasing the costs of each of the parties, these parallel arbitrations pose the risk of opposing decisions and positive and negative conflicts over jurisdiction, which may lead into a denial of justice. For instance, two of the tribunals involved could decline its jurisdiction to solve a certain case thinking that this will be solved by the other tribunal, with the result that this case would end without settlement. ----------

Being this arbitration the only proceeding that includes all the parties involved in the three arbitration proceedings, the Tribunal holds that it is pertinent, rapid and advantageous to convene a meeting with the parties to discuss different alternatives to coordinate and cooperate among the three tribunals. The Tribunal considers that a meeting in person shall be more effective than a written or teleconference communication, and proposes that this meeting be held on March 23, 2011 or April 6, 2011. Due to the difficulties to go to Montevideo from the United States or Europe, the Tribunal suggests that the meeting be held in Buenos Aires, Argentina, or in the city of Santiago, Chile. ----------

The Tribunal calls the parties to file their comments on this proposal, including their availability on the date mentioned and in their opinions about the place of the meeting not later than on February 22, 2011. ----------

The Tribunal considers it appropriate that the tribunals in the two parallel arbitration proceedings be informed of this procedure, and requests the authorization of the parties to inform those who preside the two tribunals about this consultation initiative adopted by this Tribunal, once it has been accepted." ----------

377. In the following weeks, the parties held that they agreed to participate in the meeting suggested by the Tribunal. On April 6, 2011, the Tribunal and the parties met in the city of Buenos Aires to discuss about the possible solutions to the risks and difficulties arising from the existence of parallel arbitration proceedings. ----------

378. As a result of this meeting, and according to the Addendum to the Mission Statement signed on that same date (see paragraph 37 *supra*), the parties: ----------

a. Accumulated in this YPF arbitration proceeding the complaints and defenses brought in the AESU and TGM Arbitrations that had not been brought in this YPF Arbitration. ----------

b. Dismissed the previous procedural motions to dismiss and claims filed in YPF Arbitration. --------

c. Agreed to end AESU and TGM Arbitration. For such purposes, AESU, Sulgás and YPF rejected the actions brought in AESU Arbitration as per joint letter dated April 11, 2011, and TGM and YPF rejected the actions brought in TGM Arbitration as per joint letter dated April 14, respectively. ----

d. Agreed on separating again the procedure in a first stage to determine if there is a breach attributable to one or more of the parties that affects its civil liability, and in a second stage, if applicable, focused on the quantification of damages to be paid by the non-compliant party. This agreement was included in the Procedural Order No. 2, as it is explained in the following paragraph. ----------

379. Regarding the accumulation of the requests, the paragraphs 2.2 and 2.3 of the Addendum to the Mission Statement provided: ----------

"2.2 The Parties express their consent so that the complaints filed in TGM and AESU Arbitrations which were not filed in this arbitration, shall be accumulated in this YPF Arbitration. These complaints are detailed in Part 3. ----------

2.3 Being the aforementioned a consequence of the express agreement among all the parties involved, the Tribunal authorizes the incorporation to this proceeding of the new complaints, pursuant to article 19 of the ICC Rules hereinbefore mentioned." ----------

380. In the Addendum to the Mission Statement, the parties expressly accepted the jurisdiction of the Tribunal for all the claims and defenses brought. Particularly: ----------

a. Regarding new AESU and Sulgás complaints that were accumulated in this arbitration, Part 5 set forth: ----------

"5. JURISDICTION OF THE TRIBUNAL OVER THE NEW COMPLAINTS FILED BY AESU AND SULGÁS ----

5.1 The claims of AESU and SULGÁS are based on the Gas Supply Agreement, which includes an arbitration clause in section 20.2 transcribed in paragraph 7.1 of the Mission Statement. ----------

5.2 The Parties expressly accept the jurisdiction of the Tribunal as regards the new requests of AESU and SULGÁS that have been accumulated in this arbitration proceeding." ----------

b. Regarding the previous procedural claims and motions to dismiss filed by the parties, Part 6 set forth: ----------

"6. WITHDRAWAL OF THE PREVIOUS PROCEDURAL MOTIONS TO DISMISS AND CLAIMS ----------

6.1 First Defendant, SULGÁS, and Second Defendant, AESU, hereby waive to the following prior procedural motions filed against YPF Arbitral Complaint: ----------

a. motion to dismiss for lack of jurisdiction of the Tribunal; and ----------

b. Its argument that YPF has waived tacitly to its Arbitral Complaint when filing a counterclaim against AESU and SULGÁS in AESU Arbitration. ----------

6.2 Third Defendant, TGM, hereby waives to the following prior procedural motions to dismiss filed against YPF Arbitral Complaint: ----------

a. The plea of lis pendens as regards YPF Arbitral Complaint, as this would be equal to the counterclaim filed by YPF in TGM Arbitration; and ----------

b. Its subsidiary request to the Tribunal to dismiss the treatment of the grounds of YPF's claims in favor of its possible consideration and resolution by the Tribunal in TGM Arbitration based on *forum non conveniens*. ----------

6.3 Consequently, the Parties accept the jurisdiction of the Tribunal over all the claims and questions brought in this arbitration." ----------

381. Pursuant to the foregoing, there is not a dispute among the parties as regards the jurisdiction of the Tribunal to solve all the claims and defenses now subject to its decision. ----------

B. APPLICABLE LAW ----------

382. Part 9 of the Mission Statement sets forth that: ----------

"Pursuant to section 20.1 of the Agreement, and section 10.2[37] of the Transportation Services Agreement, that establish respectively that both Agreements shall be ruled and interpreted in accordance with the legislation of the Argentine Republic, the applicable law to the dispute shall be the Argentine law. ----------

383. This requires some explanations. ----------

1. Applicable law to the Gas Supply Agreement ----------

384. Section 20.1 of the Gas Supply Agreement establishes that "this [Agreement] shall be ruled and interpreted in accordance with the legislation of the Argentine Republic." This Tribunal shall apply the law chosen by the parties to this dispute, taking essentially into account the provisions of the agreement (ICC Rules, section 17). As regards the sale of goods (including the natural gas exports agreements), as from the effectiveness of the United Nations Convention on Contracts for the International Sale of Goods (CISG or Vienna Convention)[38], the Argentine law provides special rules for the international sale of goods contracts. ----------

385. While by the date of the execution of the Agreement, Brazil had not ratified the Vienna Convention,[39] and as the parties had agreed to the application of the Argentine law, it is worth wondering if their intention was to include the application of such convention, international treaty that regarding international sale of goods is more important than the rules of domestic law applicable to the sale of goods.[40] As the parties have the power to exclude totally or partially the provisions of the Vienna Convention,[41] it is worth wondering whether the parties wanted to subject the Gas Supply Agreement to the Argentine domestic law related to the sale of goods, excluding the Vienna Convention, or if the reference to the "Argentine legislation" includes the

---

[37] "The reference to section 10.2 of the Transportation Services Agreement shall be interpreted as made to section 10.1 of said agreement."----------

[38] "The Vienna Convention was ratified in the Argentine Republic as per Act No. 22,765 on March 24, 1983 (ALDA XLIV-B, p. 1259) and entered into force on January 1°, 1988. Argentina ratified the Vienna Convention with the note (reserve) (a): "This State stated, pursuant to articles 12 and 96 of the Convention that no provision of article 11, article 29, or Part II of the Convention which allows the execution, amendment or termination, by mutual agreement, of a sale agreement, or that the offer, acceptance or any other statement of intention shall be made through a non-written procedure, in the case that any of the parties have been domiciled in the territory shall be established."----------

[39] The Vienna Convention was ratified by Brazil under Legislative Order No. 538/2012 dated October 18, 2012 (*aprovando o texto da Convencao das Nacoes Unidas sobre Contratos de Compra e Venda Internacional de Mercadorias (CISG)*) published in the Official Gazette of the Uniao, No. 203, on October 19, 2012, p. 4).----------

[40] National Constitution of the Argentine Republic, section 75 (22).----------

[41] The article 6 CISG provides that: "The parties may exclude the application of this Convention or, without prejudice to the provisions of article 12, establish exceptions to any of the provisions or modify its effects."-

Argentine law in its entirety, that is to say, including the application of Act N° 22.765 of March 24, 1983 which ratified the Vienna Convention. ----------

386. What has been expressed by the parties before this Tribunal, as well as the legal precedents issued with respect to the article 6 of the CISG, evidence that the rights and duties of YPF and AESU-Sulgás under the Gas Supply Agreement are ruled by the Vienna Convention. Firstly, it is important to note that all the precedents related to the scope of the Vienna Convention lead to conclude that the exclusion of the CISG shall be made explicitly[42]. The legal precedents related to the way of excluding *("opt out")* the application of the Vienna Convention also supports the conclusion which indicates that the adoption of the legislation of a State who signed the Vienna Convention shall be interpreted in the sense that the intention of the parties has been to include the Convention as applicable law.[43] It is important to note that if the signing parties had wanted to exclude the application of the Vienna Convention to the Gas Supply Agreement, they would have stated it[44].----------

387. Additionally, it is important to note that in the submissions made before this Tribunal, the parties have repeated explicitly the provisions of the Vienna Convention and have used them to found some of their allegations. YPF asserts that the Vienna Convention is applicable to the Gas Supply Agreement[45] whereas AESU and Sulgás acknowledge that the Vienna Convention is applicable to the relation between YPF and Sulgás, as Parties to a gas supply agreement[46]. As the

---

[42] *Draft Convention on Contracts for the International Sale of Goods Approved by the United Nations Commission on International Trade Law Together with a Commentary Prepared by the Secretariat,* UN Doc. AlConf.l975/5, p. 44, paragraph 2 (1979). See also the analysis that supports section 6 CISG in the database of the *Institute of Commercial Law of Pace University Law School*, at http://www.cisg.law.pace.edu/cisg/principles/uni6.html *("When a State adopts the CISG, the Convention becomes part of its law and only direct indication that the contracting parties have chosen the domestic rules of a Contracting State may lead to the conclusion that an implied opting-out of the Convention is made").*----------

[43] See, among others, the decisions published in English in the database of the *Institute of Commercial Law of Pace University Law School*: November 16, 2000 Provincial Hearing [court of appeals] of Alicante, Spain <http://cisgw3.law.pace.edu/cases/001116s4.html>; January 14, 2002 *Obester Gerichtshof* [Supreme Court of Justice] of Austria http://cisgw3.law.pace.edu/cases/020114a3.html; January 15, 2002 Commercial Court [Court of original jurisdiction in commercial matters], Austria <http://cisgw3.law.pace.edu/cases/020115b1.html>; December 3, 2002 *Handelsgericht* [Court of original jurisdiction in commercial matters] St. Gallen, Switzerland, <http://cisgw3.law.pace.edu/cases/021203s1.html>; June 15, 1994, arbitral award handled in Austria and identified as SCH-4318 <http://cisgw3.law.pace.edu/cases/940615a4.html>.----------

[44] Isaac Dore, *Choice of Law Under the International Sales Convention: A US Perspective*, 77 Am.J.lnnL. 531-32, note 62 (1983).----------

[45] Y-MD, ¶376, note 372 (quoting Chapter II of the Legal opinion of Antonio Boggiano.) ----------

[46] A/S-MD, ¶¶117-120. It is important to highlight that AESU and Sulgás hold that the Vienna Convention is not applicable to the rights and duties of AESU and Sulgás as Participants to the Gas Supply Agreement,

behavior of the parties that follows the execution of contracts is one of the signs of the intention of the parties at the moment of executing it,[47] this confirms its intention not to exclude the Vienna Convention as applicable law to the Gas Supply Agreement. The references made to the Argentine domestic law by the parties in these proceedings are not sufficient to evidence a mutual agreement to exclude the application of the Vienna Convention. ----------

388. It is important to note that the answers offered by the Vienna Convention to a number of relevant questions do not differ substantially from those specified in the Argentine legislation in relation to the agreements in general, or to the sales in particular.[48] Therefore, sometimes, at the time of specifying the rule of the Vienna Convention applicable to the item in question, the Tribunal could make a tangential and comparative reference to the solution that the same topic would be given by the Argentine domestic law. However, it is clear that the hierarchy of rules that shall be applied to the Gas Supply Agreement is the following: (1) the provisions specified by the parties in the Gas Supply Agreement in exercise of the material free will (by the application of article 6 CISG[49] and section 1197 of the Argentine Civil Code)[50]; (2) the practices developed by the parties, according to the definition and effects given by the Vienna Convention (pursuant to article 9 CISG)[51]; (3) the rules of the Vienna Convention for being *lex specialis* applicable to the

---

because the relationship of gas supply occurs only between YPF and Sulgás as Parties to the Gas Supply Agreement. Therefore, according to AESU and Sulgás, "the civil and commercial Argentine legislation, and not the Vienna Convention, rule their rights and duties arising from the [Gas Supply Agreement]." The same would occur with the other Participants to the Gas Supply Agreement, particularly TGM: AESU and Sulgás hold that "the Argentine legislation, particularly Law 24076 (that governs the gas transportation Service agreements in Argentina) and the administrative civil and commercial Argentine law applicable - and not the Vienna Convention- rule the rights and duties of TGM and TGN arising from the [Gas Supply Agreement]." (A/S-MD, ¶120). The Tribunal does not agree with this allegation: the law governing the Gas Supply Agreement is specified by the principal relationship arising from this agreement, i.e., gas sale. While the Participants to the Gas Supply Agreement are not part of this legal relation, their rights and duties as Participants to the Gas Supply Agreement are governed by the law that rules the agreement, save for the imperative rules (mandatory rules or *lois d'application immediate*) of other applicable legislations to those Participants that could be applicable. 47 Commercial Code, section 218.4.. ----------

[47] Commercial Code, section 218.4. The Tribunal notes that AESU argues that the CISG is applicable to Sulgás but not to AESU.----------

[48] For instance, despite the Argentine legislation on sales seems to not differentiate, as the Vienna Convention does, an "essential" breach and a breach less severe for the purposes of permitting the termination of the agreement (section 25 CISG), the legal precedents as well as the Argentine legal doctrine agree on, supporting sections 1071 and 1198 of the Argentine Civil Code, that a breach of less importance does not authorize the termination of the agreement. See, for example, section 1472 of the Argentine Civil Code and its interpretation in *CMA Consultoría v. Finerco SA*, National Court of Appeals in Commercial Matters, Division A, March 31, 1995, LL-1996-B-185. ----------

[49] The content of section 6 CISG is quoted in the footnote 41 *supra*. ----------

[50] Section 1197 of the Argentine Civil Code provides: "The agreements constitute for the parties a rule to which they may subject themselves as the law in itself." ----------

[51] The article 9 CISG provides that: ----------

international sale of goods in the Argentine territory chosen by the parties as applicable to the Gas Supply Agreement (article 6 CISG and article 1197 of the Argentine Civil Code); (4) the general principles in which the Vienna Convention is based, as regards those questions that are not expressly resolved in it (article 7.2 CISG)[52]; (5) only finally, in the case of some Vienna Convention gaps that may not be solved with the principles ruling the Convention, the rules of Argentine domestic law, which is the law applicable by virtues of the private international law rules (article 7.2 CISG)[53].----------

389. Without prejudice to the foregoing, the Parties to the Gas Supply Agreement agree at least one partial explicit exclusion to the application of the Vienna Convention: in case of force majeure or act of God, section 17.1 of the Gas Supply Agreement provides that "the definition, scope and effects of the FORCE MAJEURE OR ACT OF GOD shall be the ones specified in the Argentine Civil Code (section 513, and related sections) and this Section 17." Therefore, in case of force majeure, the applicable rules are those agreed by the parties and by the Argentine Civil Code. ----------

2. Applicable law to the Transportation Services Agreement ----------

390. Clause 10.1 of the Transportation Services Agreement establishes that "this [Agreement] shall be ruled and interpreted in accordance with the legislation of the Argentine Republic." There are no doubts that in this case the Argentine domestic law is applicable. ----------

VI. STRUCTURE OF THE ANALYSIS ----------

391. This arbitration proceeding consolidates two principal complaints (YPF against AESU/Sulgás and TGM), two counterclaims (AESU/Sulgás and TGM against YPF) and one cross claim (TGM against AESU/Sulgás). Many of the matters in question are repeated in the cross-claims, and the

---

"1) The parties are bound by any use that they might have agreed and for any practice that they might have established between them."----------
2) Unless otherwise agreed, it is considered that the parties have tacitly apply to the agreement or its formation a use that they have or might have had known and that, in the international commerce, it was widely known and regularly observed the parties in agreements of the same type in several commercial fields." ----------

[52] The article 7 CISG provides that: ----------
"(1) In the interpretation of this Convention there shall be taken into account its international nature and the need to promote the uniformity of its application and to guarantee the compliance in good faith in the international commerce rules.----------
2) The matters related to the topics ruled by this Convention that are not expressly resolved in it shall be discussed in accordance with the general principles in which the Convention is based, or without these principles, in accordance with the applicable law by virtue of the rules of private international law." --------

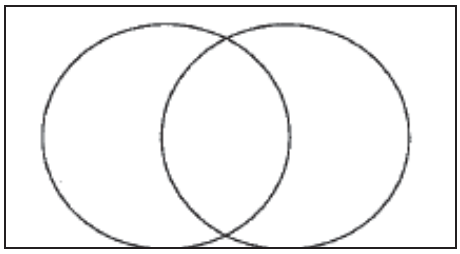
[53] See Legal opinion of Antonio Boggiano, ¶39. ----------

result of some of them affects the analysis of the others. The Tribunal has structured its analysis in the way that it considered more logic and efficient, which is explained hereinbelow. ----------

A. DISPUTE BETWEEN YPF AND AESU/SULGÁS ----------

392. The dispute between YPF and AESU/Sulgás is based on (i) who is liable for the termination of the Gas Supply Agreement; and (ii) the existence or inexistence of several breaches alleged by the parties. ----------

393. If the reciprocal requests of YPF and AESU/Sulgás could be shown in charts, we would see two circles crossed forming an intersection. The area where both circles are crossed corresponds to the dispute as regards the liability of the termination of the Gas Supply Agreement, whereas the areas out of the intersection correspond to the other breaches alleged by each of the parties against the others (which breaches are related sometimes to the dispute in common). ----------



394. In fact, with respect to the liability for the termination of the Gas Supply Agreement, the complaints of YPF and AESU/Sulgás are symmetrical. ----------

a. On the one hand, AESU and Sulgás argue that YPF failed to comply with the Gas Supply Agreement (failure to pay the penalty *deliver or pay* -see ¶275.c *supra*), repudiated the Gas Supply Agreement (see ¶ 275.j *supra*) and failed to act as a reasonable and prudent operator (see ¶275.d *supra*). AESU and Sulgás used these reasons to terminate the Gas Supply Agreement. Consequently, AESU and Sulgás request that the liability of YPF for those breaches (either by fraud or negligence) be declared, and that YPF be declared liable for the termination of the Gas Supply Agreement and all the damages caused to the Parties and Participants to the Gas Supply Agreement. ----------

b. YPF denies having breached the Gas Supply Agreement in the terms mentioned by AESU and Sulgás, requesting to reject the request against it. At the same time, for the same reasons, YPF files a complaint against AESU and Sulgás, arguing that the termination of the Gas Supply Agreement by AESU and Sulgás, as well as its previous suspension, were illegal and constitute breaches of AESU and Sulgás of said Agreement. Particularly, YPF holds that the causes

mentioned by AESU and Sulgás to terminate the Agreement were mere excuses to hide its real reason, which was to abandon the electrical business in Brazil, and transfer YPF its liability against YPF and the other Parties and Participants to the Gas Supply Agreement. Consequently, YPF argues that AESU and Sulgás shall be liable before all the Parties and Participants to the Agreement for all the damages derived from such suspension and termination. ----------

c. AESU and Sulgás reject the complaint of YPF, defending the legitimacy of the suspension and termination of the Agreement, which were the results of the legal exercise of rights of AESU and Sulgás regarding YPF's breaches. In this sense, they argue that the absence of negligence in the termination of the Agreement may only be proved by YPF's liability in the breaches mentioned to found the termination. ----------

395. The parties discuss the consequences of the liability for the termination of the Gas Supply Agreement over TGM. ----------

396. Despite these vicarious requests, the parties sue each other for the failure to comply with other duties. ----------

397. As stated in items (b) and (c) of paragraph 394 *supra*, YPF sues AESU and Sulgás not only for the termination of the Agreement but also for its previous suspension. Although it is true that the complaint was filed by YPF for the first time in the Opening Brief, the Tribunal considers that it is within the scope of the case which was included in the Mission Statement. In fact, (i) firstly, in the description of the claims in paragraph 4.2.2 of the Mission Statement and paragraph 3.2.2 of the Addendum to the Mission Statement, YPF refers to the suspension of the Gas Supply Agreement notified by AESU and Sulgás on September 15, 2008; (ii) secondly, in the Mission Statement it was expressed that "the parties agree and the Tribunal accepts to include, if necessary, an specific list of questions to resolve, in accordance with article 18(1)(d) of the ICC Rules. Consequently, the factual and legal issues that shall be resolved by the Arbitral Tribunal shall be those which, within the scope of its jurisdiction, derived from the allegations, declarations and claims that the Parties made in due time and manner, besides any other factual or legal question over which the Tribunal, after hearing the Parties and in exercise of its own discretion, deems necessary in order to hand in awards" (paragraph 5): and (iii) thirdly, in the Addendum to the Mission Statement it is shown the consent of the parties in order that the claims posed in the AESU and TGM arbitration proceedings that were not brought in this arbitration be accumulated in the YPF arbitration, as well as the "briefs of the Parties on the merits of the complaints accumulated in this arbitration,"

that are also added to this arbitration (paragraphs 2.2 and 2.4 of the Addendum to the Mission Statement). ----------

398. In any case, if the Mission Statement and its Addendum do not include it in the previous paragraphs, those questions shall be considered as part to those that the Tribunal shall resolve as it is a new claim within the framework of section 19 of ICC Rules. In fact, this claim was filed at the beginning of the written communications between the parties as regards the liability, and, therefore, it did neither constitute a violation of the procedural rights of the other parties, who had the chance to reject this complaint, nor affected this arbitration proceeding, as it was treated jointly with the other requests. ----------

399. Besides suing YPF for the termination of the Gas Supply Agreement, AESU and Sulgás sue YPF for a number of breaches to the Gas Supply Agreement in relation to which they request to declare that YPF is liable. According the AESU and Sulgás, "such breaches are different but all of them are aimed at, have effects over or are related to, the principal obligation of YPF to supply gas." (A/S-MD, ¶462). ----------

400. Specifically, AESU and Sulgás list the following breaches, which are in their opinion substantial or essential in the sense of article 25 of the Vienna Convention (A/S-MD, ¶¶463-464): -

a. Failure to deliver gas. ----------

b. Failure and deficiency of the gas exploration and production activities in Neuquén Basin. ---------

c. The increase in domestic demand. ----------

d. Failures to the transportation services agreements executed with TGN and TGM. ----------

e. Abusive exploitation of Neuquén Basin, leading some oilfields to depletion and others to infraexploitation. ----------

f. Lack of information on the real situation of the reserves in Neuquén Basin. ----------

g. Granting of a null and void authorization to export. ----------

h. Conditioning the gas exports to the compliance of AESU and Sulgás with the services not agreed in the contract -in relation to the administrative acts referring to the gas exports, the effects of gas imports withholdings and the royalties in charge of YPF. ----------

i. Failure to pay the debt under the DOP regime of gas. ----------

j. Repudiation of the Gas Supply Agreement by YPF. ----------

k. Omission to develop procedural activities, either judicially or administrative, that may be allowed by gas exports. ----------

l. Failure to challenge the gas exports withholdings or to adopt the procedural judicial or administrative measures that may hinder the application of the retentions to the gas exports. -----

m. Failure to comply with the regime provided in the Gas Supply Agreement for the new taxes. ----

n. Production of gas shortage in Argentina. ----------

401. Taking into account the foregoing, some of the failures alleged by AESU and Sulgás were those expressly mentioned by AESU and Sulgás to terminate the Agreement. Said failures are: -----

a. the failure to pay the debt under the DOP regime. ----------

b. the repudiation of the Agreement. ----------

c. "the omission to carry out the procedure, either judicial or administrative, that would have allowed the gas export", which coincides with the failure of YPF to act as a reasonable and prudent operator."[54] ----------

402. The remaining failures alleged were not mentioned by AESU and Sulgás to justify the termination of the Agreement at that moment. However, in this proceeding, AESU and Sulgás seem to try to justify the termination of the Agreement also in these breaches. For instance, in the Opening Brief, after quoting the letter dated March 20, 2009 by which they terminated the Agreement, AESU and Sulgás point out the following: ----------

"Whereas in this letter there are only three identified reasons to terminate the {Gas Supply Agreement}, the rest of the breaches of YPF should not be set aside which were previously detailed as they were all considered, as well as their consequences, at the moment of deciding the termination. The fact that the other breaches of YPF have not been mentioned in the aforementioned letter does not mean that they have been cancelled or that YPF is not liable for them, or that, those breaches shall not be taken into account also to decide over the acceptance of the termination stipulated by Sulgás together with AESU." (A/S-MD, ¶971) ----------

403. YPF has challenged the intention of AESU and Sulgás to now mention new reasons to terminate the agreement. YPF argues that "these arguments are generic, vague and presented *ex post* to replace the weakness of the arguments to prove the suspension [...] and to terminate the Gas Supply Agreement [...]" (Y-MC, ¶420). YPF argues that AESU and Sulgás could only terminate the Agreement for the causes explicitly mentioned in the section 14.2.2 of the Gas Supply Agreement. Even if the implied resolutory covenant detailed in section 1204 of the Civil Code had

[54] In fact, AESU and Sulgás, to prove that YPF failed to act as a reasonable and prudent operator, have asserted that YPF omitted to develop an efficient procedure to challenge the measures adopted by the Government of Argentina that YPF considered a force majeure event and that may have allow gas exports (A/S-MD, ¶¶624-742)----------

been applied, the termination would not have been legal either, as those breaches did not exist and AESU and Sulgás did not grant the term requested to compensate them. (Y-MC, ¶¶420-423) Additionally, YPF holds that many of the alleged breaches exceed the scope of this lawsuit as they are not even included in the Mission Statement. (Y-MC, ¶6, 30) Finally, YPF argues that many of those alleged breaches are only related to the obligation of YPF to deliver natural gas and, therefore, they are affected by the decision of AESU and Sulgás not to terminate for such reason (Y-MC, ¶¶521-522). ----------

404. The Tribunal considers that to determine if the termination of the Gas Supply Agreement by AESU and Sulgás was legal, it should only take into account the reasons that, at that moment, AESU and Sulgás expressly requested to terminate. Therefore, in order to determine the liability for the termination of the Gas Supply Agreement, the Tribunal will not consider the other breaches mentioned by AESU and Sulgás. ----------

405. However, the Tribunal will consider the other breaches mentioned by AESU and Sulgás to determine if there has been a breach to evidence a different liability of YPF for the termination of the Gas Supply Agreement. In the Opening Brief, AESU and Sulgás expressly requested the Tribunal "to declare that YPF is liable before AESU and Sulgás for all the breaches detailed in Chapter VII of this brief and for the consequences and damages derived from said breaches" (A/S-MD, ¶1026). Although it is true that this request was brought as such by AESU and Sulgás in the first place in their Opening Brief, the Tribunal considers that it is within the scope of the case as this was mentioned in the Mission Statement, for the reasons given in the paragraph 397 *supra*. In fact, (i) firstly, in the description of the their claims in paragraph 3.2.1 of the Addendum to the Mission Statement, AESU and Sulgás refer to the principal breaches detailed in Chapter VII of their Opening Brief (particularly, those included in items (a), (b), (c), (h), (i), (j) and (k) of the paragraph 400 *supra*). (ii) Secondly, these questions shall be construed as included within the factual or legal matters that shall be decided by the Tribunal in accordance with paragraph 5 of the Mission Statement, because, pursuant to what has been therein expressed, they are within the scope of its jurisdiction and arise from the allegations, statements and requests made by AESU and Sulgás in due time and manner. In any case, the Tribunal, after hearing the parties and in exercise of its own discretion, deems necessary and timely to decide on said questions in order to render the award. (iii) Thirdly, these questions shall be construed as included in this arbitration in accordance with paragraphs 2.2, 2.3 and 2.4 of the Addendum to the Mission Statement. --------

406. In any case, if those questions are not considered included in the previous paragraphs of the Mission Statement and its Addendum, they shall be considered as part of those that the Tribunal shall settle as they entail a new complaint within the framework of article 19 of ICC Rules, for the reasons given in paragraph 397 *supra*. ----------

407. Therefore, the Tribunal decides that the "other breaches" identified by AESU and Sulgás are included in the lawsuit, not as causes for the termination of the Gas Supply Agreement, but as breaches of YPF that may generate its liability under the Gas Supply Agreement. Taking into account the foregoing, the allegation of YPF becomes irrelevant which is that many of these breaches would be reached by the decision of AESU and Sulgás not to terminate the Agreement for failures to deliver gas, as the Tribunal will not analyze if those breaches shall entitle AESU and Sulgás to terminate the Agreement. In any case, the Tribunal will analyze the scope of AESU and Sulgás waiver in the following part.----------

408. Taking into account the foregoing, the Tribunal will develop its analysis of the dispute between YPF and AESU/Sulgás as follows: ----------

a. Firstly, it will determine who is liable for the termination of the Gas Supply Agreement (Chapter VII.A *infra*). As these are closely related topics, the Tribunal will herein deal with the arguments of YPF as regards the suspension of the Gas Supply Agreement by AESU {and Sulgás}, as well as the arguments of YPF as regards the reasons of AESU and Sulgás. ----------

b. Once the liability has been determined for the suspension and termination of the Gas Supply Agreement, the Tribunal will analyze the requests of AESU and Sulgás as regards the other breaches of the Gas Supply Agreement which they consider that YPF is liable for (Chapter VII.B *infra*.) ----------

c. The Tribunal will deal with several issues between YPF and AESU/Sulgás regarding the payment of the transportation services and the liability derived from the termination of the Transportation Services Agreement, after analyzing the disputes involving TGM (Chapter X, *infra*.) ----------

B. DISPUTES INVOLVING TGM ----------

409. Besides the dispute between YPF and AESU/Sulgás under the Gas Supply Agreement, the three companies have a dispute with TGM. ----------

410. The dispute between TGM and YPF derives from two legal relations: on the one hand, from the Transportation Services Agreement and the Memorandum of Agreement, and on the other

hand, from the Gas Supply Agreement. The dispute between TGM and AESU and Sulgás derives from the Gas Supply Agreement.----------

411. The dispute between TGM and YPF under the Transportation Services Agreement and the Memorandum of Agreement includes reciprocal complaints among the parties that may be sum up as follows:----------

a. TGM requests YPF to pay the invoices related to the price of the Transportation Services Agreement and the irrevocable contributions over September 1, 2008 and March 23, 2009. YPF rejects these invoices, arguing that:----------

i. Its obligation to pay the price of the Transportation Services Agreement was suspended, as AESU/Sulgás had not paid for Segment B of transportation to YPF under the Gas Supply Agreement, which fact did not constitute a condition precedent in order to bring the obligation of YPF under clause 5.10 of the Transportation Services Agreement. YPF requests that AESU and Sulgás be declared liable for paying those invoices.----------

ii. The invoices are not accrued because the transportation capacity of TGM was not available, as a result of the measures adopted by the government from 2004.----------

TGM rejects those allegations.----------

b. TGM also requests to declare that the termination of the Transportation Services Agreement and the Memorandum of Agreement made on March 23, 2009 was legal and that YPF failed to comply with it. On the contrary, YPF requests: that the termination of the Transportation Services Agreement by TGM be declared illegal and untimely. ----------

c. In turn, YPF requests that the vicarious termination of the Transportation Services Agreement be declared valid, which was made by YPF on April 8, 2009, upon the application of section 13.2 of the Transportation Services Agreement, and that YPF was not liable for the termination of the Memorandum of Agreements. TGM rejects those allegations. ----------

412. Additionally, TGM has brought separate complaints against YPF, on the one hand, and against AESU and Sulgás, on the other hand, under the Gas Supply Agreement. These complaints are almost identical, although some of them are subsidiary to the others. Particularly: ----------

a. TGM files an almost identical complaint against YPF (in the counterclaim) and against AESU and Sulgás (in the cross claim) for the breach of YPF, AESU and Sulgás of their obligations under section 18.4 and related sections of the Gas Supply Agreement (in particular, for having modified the Gas Supply Agreement through the Complementary Agreements without TGM's consent). As a remedy, TGM requests YPF, and AESU and Sulgás (i) the most absolute and broad

unenforceability to TGM of the Complementary Agreements, and (ii) the compensation for damages, which TGM argues that it is included. ----------

b. Subsidiary to the foregoing regarding YPF, TGM files a complaint against YPF for having terminated the Gas Supply Agreement early without TGM's consent, and claims for damages derived from such early termination. This complaint is filed in the event that the Tribunal does not sustain the claim against YPF in item (a). ----------

c. Subsidiary to what has been detailed in items (a) and (b), TGM files a complaint against AESU and Sulgás for having terminated the Gas Supply Agreement early without TGM's consent, and claims for damages derived from such early termination. This complaint is filed not only in case the Tribunal does not sustain the claim against AESU and Sulgás in item (a) but also in case the Tribunal decides that the Gas Supply Agreement was terminated for AESU and Sulgás fault (i.e. in case the Tribunal does not sustain item (b)). ----------

413. In view of the foregoing, the Tribunal will develop its analysis as follows: ----------

a. Firstly, it will deal with the reciprocal claims between TGM and YPF under the Transportation Services Agreement (Chapter VIII *infra*.) ----------

b. Then, it will deal with the claims of TGM against YPF, AESU and Sulgás under the Gas Supply Agreement (Chapter IX *infra*.) ----------

VII. DISPUTE BETWEEN YPF AND AESU/SULGÁS ----------

414. As it was hereinbefore mentioned, the Tribunal will firstly deal with the liability for the termination of the Gas Supply Agreement (Part A) and then the liability of YPF for other breaches of the Gas Supply Agreement (Part B). ----------

A. LIABILITY FOR THE TERMINATION OF THE GAS SUPPLY AGREEMENT ----------

1. Introduction ----------

415. In the letter dated March 20, 2009, AESU and Sulgás mentioned three alleged breaches of YPF to terminate (rescind) the Gas Supply Agreement: ----------

a. The failure of YPF to pay the debit note for US$ 2,711,424 as "Deliver or Pay" penalty. ----------

b. The repeated, unjustified and fraudulent repudiation of YPF of the Gas Supply Agreement. ------

c. The failure of YPF to act as a reasonable and prudent operator in accordance with the terms of the Agreement and the provisions of section 1198, paragraph 1 of the Argentine Civil Code. ---------

416. YPF argues that, as regards each of the causes, the termination of the Agreement was not admissible (as the remedy of the termination was not available for the breach mentioned), illegal (as the breach mentioned did not exist, or as it refers to insubstantial breaches), untimely (as it was made two years after the facts that found the alleged breach occurred), contravening of a practice agreed by the parties, unreasonable and in bad faith (as it was based on mere excuses to justify the decision of AESU and Sulgás to terminate the Gas Supply Agreement).----------

417. YPF holds that, on the contrary, the real reason by which AESU and Sulgás decided to suspend and then to terminate the Gas Supply Agreement was that AESU had decided to abandon the trading business of energy in Brazil, as this business had become not viable as a consequence of the rise in the generating costs, due to the dramatic increase in the export tax on Argentine natural gas.----------

418. Therefore, YPF concludes that the termination was "illegitimate, abusive and untimely" (Y-MD, ¶15) and that the behavior of AESU/Sulgás in the suspension and termination of the Agreement was "opportunistic", "illegitimate" and "in bad faith" (Y-MD, ¶121). ----------

419. The Tribunal considers convenient to make a preliminary comment on the terms used by YPF. Saying that the termination was "illegitimate" or "unlawful" does not mean to have an adequate content in law. The Tribunal holds that what YPF wants to say is that the termination was "illegal", that is to say, not allowed by the Agreement and by the applicable law. ----------

420. Similarly, holding that the termination was "abusive", "unreasonable" or "opportunistic" means nothing unless these terms are granted a legal base. If a remedy is exercised pursuant to the agreement and the applicable law, this exercise shall be valid unless it has been exercised in bad faith or abusing this right. YPF has not expressed that AESU and Sulgás have abused their right to terminate, so the Tribunal holds that with those adjectives YPF wants to say that AESU and Sulgás resorted to their remedy for termination in bad faith. ----------

421. Having explained the terms, the Tribunal will firstly analyze if AESU and Sulgás terminated the Gas Supply Agreement legally, that is to say, in accordance with the Agreement and the applicable law. For such purposes, the Tribunal will firstly analyze if the termination was available for AESU and Sulgás as regards the causes mentioned (Part 2 *infra*). If it was available, the Tribunal will analyze the causes mentioned by AESU and Sulgás to determine (i) if YPF committed the breaches mentioned to justify said termination, and (ii) if those breaches have been committed, whether AESU and Sulgás exercised their remedy for termination in accordance with

the requirements stipulated in the Agreement or the law, either explicit or implicit (Parts 3, 4 and 5 *infra*). ----------

422. Once it is determined that AESU and Sulgás have legally terminated the remedy for termination, the Tribunal will consider if such termination was in bad faith (Part 6 *infra*). ----------

2. Was the termination available for AESU and Sulgás as regards the causes mentioned? ----------

423. Although AESU and Sulgás are those who firstly mentioned a breach of YPF to terminate the Agreement, the Tribunal will start with YPF arguments because it is YPF who challenges the availability of the remedy for termination, and AESU and Sulgás who reply to said objections. ------

a. Position of YPF ----------

424. YPF argues that the remedy for termination was not available for AESU and Sulgás as regards any of the breaches mentioned by these companies to terminate the Gas Supply Agreement, either because the Agreement did not specify the remedy for termination for that cause or because AESU and Sulgás had waived to such remedy. Additionally, they argue that the exercise of such remedy for termination was limited due to a binding practice of negotiation and adaptation of the clauses of the Gas Supply Agreement to procure its continuance. ----------

(i) The remedy for termination was not included in the Agreement or in the Argentine legislation for two of the causes mentioned. ----------

425. Notwithstanding what is stated in the following Part (ii), YPF asserts that, according to the provisions of section 3.5 of the Gas Supply Agreement, AESU and Sulgás could terminate the Agreement only for the reasons included in section 14.2.2 of the Agreement, that is to say, for the failure of YPF to deliver gas (cause included in section 14.2.2 (i) of the Agreement) and for the failure to pay *deliver or pay* (DOP) penalties (cause included in section 14.2.2 (ii) of the Agreement). Consequently, AESU and Sulgás were only entitled to terminate the Agreement for these two last specific failures. According to YPF, this excludes the second cause mentioned by AESU and Sulgás (the alleged repudiation of the Agreement) and the third cause (the failure to act as a reasonable and prudent operator). ----------

426. In any case, YPF asserts that the repudiation of the Agreement was a concept taken from the English law, which does not entitle the person to a remedy for termination neither in the Argentine domestic law nor under the Vienna Convention. ----------

427. As regards the failure to act as a reasonable and prudent operator, YPF argues that this obligation has a scope much more limited than the one that AESU and Sulgás want, and its breach does not justify the exercise of a remedy for termination. In this sense, YPF argues that section 17.4(d) of the Gas Supply Agreement specifies a standard of conduct to the party that refers to force majeure, which is the only case in which the Agreement sets forth to act in such manner. Therefore, this standard only arises after the statement of force majeure and it is applied as a guideline of behavior as long as this event lasts. Additionally, YPF argues that this standard has a very narrow and specific field of application, as it is exclusively provided for the cases of force majeure and act of God that affect the facilities or equipment, hence the broad interpretation given by AESU and Sulgás shall be rejected. Particularly, this cannot be interpreted as a standard of conduct applicable to the exploration and exploitation policies of YPF. In any case, this standard of conduct may only be applied to contractual obligations, and does not allow the revision of the whole company operation. ----------

428. YPF asserts that it has always acted as a reasonable and prudent operator; however, it argues that its breach would not entitle the other party to terminate the Gas Supply Agreement, as the Agreement does not include a remedy for termination in cases of a breach of this obligation of limited scope. ----------

(ii) The waiver of AESU and Sulgás to terminate due to failure to deliver gas is included in the grounds mentioned. ----------

429. YPF holds that in the Complementary Agreements AESU and Sulgás waived to the termination of the Gas Supply Agreement based on the deficiencies to deliver gas. According to YPF, the three grounds mentioned by AESU and Sulgás are inextricably linked to the failure to deliver gas, so AESU and Sulgás's waiver of termination for such reason is included in the grounds mentioned. ----------

430. Regarding the first cause (the failure to pay DOP penalties) YPF argues that, having AESU and Sulgás waived their right to terminate for failure to deliver gas, it would not be logic to interpret that AESU and Sulgás could on the contrary terminate the agreement because YPF did not pay the penalty for failure to deliver, which was the substitute service. YPF asserts that this was the understanding of the parties and, according to this understanding, from 2004 up to 2008 (when it decided to abandon the Gas Supply Agreement) AESU never billed the DOP penalties derived from the deficiencies to deliver gas. (Testimony of Teodoro Marcó {Chairman of the Legal

Department of Natural Gas of YPF during such period, who was not called to testify in the hearing} ¶76). ----------

431. In this sense, YPF points out that besides AESU and Sulgás's waiver to terminate the Agreement due to the failure to deliver gas, in the Complementary Agreements the parties agreed upon other temporary rules and mutual licenses in order to allow the continuance of the Agreement (such as the important write off by YPF of the debts TOP of AESU). According to Teodoro Marcó, witness for YPF, "the underlying intention was that the parties would prevent themselves from behaving in a way that affects the continuance of the Agreement for the questions related to the failure to deliver." (Testimony of Teodoro Marcó, ¶30). ----------

432. Regarding the second and third causes, YPF argues that the alleged repudiation to the Agreement as well as the alleged failure to act as a reasonable and prudent operator could only provoke the failures to deliver gas by which AESU and Sulgás committed themselves not to terminate the Agreement. ----------

(iii) The exercise of the remedy for termination was banned for a binding practice between the parties. ----------

433. According to YPF, the Complementary Agreements prove that the parties did not allow that the effects related to the measures adopted by the Government of Argentina on gas exports did not prevent the Gas Supply Agreement from continuing, and as long as it was valid, the parties had a permanent trading relation through which there were discharges, reciprocal waivers and amendments to the terms of the agreement. Particularly, YPF adds that in the Complementary Agreements (in particular, section 7.2 of the Supplementary Agreement and section 3.2 of the Second Conflict Resolution Agreement), the parties accepted and acknowledged the existence of a dispute regarding whether the measures adopted by the Government of Argentina constituted a force majeure event that excuses the failures to deliver natural gas under the Agreement, and agreed to keep such dispute in "parenthesis" (in an "umbrella" clause) for the future resolution by means of a negotiation or an arbitration. ----------

434. According to YPF, this originated a practice of negotiation and adaptation of the Gas Supply Agreement sections to such circumstances to procure its continuance. According to the expert for YPF, Antonio Boggiano, in accordance with the Vienna Convention, this practice has a double function: (i) as a criterion for the interpretation of the behavior of the parties, as according to article 8(3) of the Vienna Convention, "In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant

circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties", and (ii) a regulatory function, as according to article 9.1 of the Vienna Convention "the parties are bound by any usage to which they have agreed and by any practices which they have established between themselves." YPF holds that this practice created a legitimate expectation on that any of the parties would exercise unilateral acts which tend to terminate the Gas Supply Agreement found in the legal position of each party as regards the dispute on the existence of a regulatory force majeure event. ----------

435. In view of the foregoing, YPF argues that, even if it has not been covered by the waiver, the exercise of the right to terminate the agreement of AESU and Sulgás for the failure to pay DOP penalties was limited by this binding practice. Under the Gas Supply Agreement, YPF was not obliged to pay DOP penalties when the failure to deliver that motivated them was hindered by a force majeure event. As it is analyzed below, YPF holds that the penalty billed by AESU and Sulgás has never been accrued, because YPF was under a regulatory force majeure event, among other reasons. Consequently, YPF argues that AESU and Sulgás could not terminate the agreement alleging the failure to pay a penalty without considering before if there was a force majeure that eliminates the obligation to pay such penalties. In YPF's opinion, AESU and Sulgás should have requested an arbitral tribunal the settlement of the dispute over the existence of force majeure; only then the winning party could exercise the rights to which it is entitled, such as claiming for the payment of DOP penalties, or possibly terminating the agreement due to the failure to collect such penalties. ----------

436. Therefore, YPF holds that the exercise of the remedy for termination based on the failure to pay a DOP penalty contravened the binding practice for the parties to, on the one hand, keep the regulatory force majeure under an "umbrella clause" and, on the other hand, negotiate and adapt the Gas Supply Agreement to allow its continuance. ----------

437. The Tribunal holds that this argument of YPF also includes the two other grounds for termination mentioned by AESU and Sulgás.----------

b. Position of AESU and Sulgás ----------

438. AESU and Sulgás hold that, contrary to YPF's allegations, the remedy for termination was available for each of the grounds mentioned, for the reasons expressed below.----------

(i) The remedy for termination was included in the Agreement or in the applicable law for the grounds mentioned to terminate. ----------

439. AESU and Sulgás assert that the remedy for termination was available in the Agreement or in the applicable law for each of the grounds mentioned. Firstly, they argue that the power to terminate the Agreement for the failure to pay DOP penalties was expressly included in section 14.2.2 (ii) of the Gas Supply Agreement. ----------

440. Secondly, they argue that although the right to terminate the Agreement was not expressly stated regarding the second and third causes mentioned, this does not mean that the remedy for termination was not available. According to AESU and Sulgás, section 3.5 of the Agreement is not specific, and the right to termination derives from the applicable law. ----------

441. Regarding the second cause mentioned (repudiation of the Agreement), AESU and Sulgás acknowledge that the concept of repudiation is not expressly ruled in the Argentine Civil Code. However, they argue that the legal precedents of the Argentine courts have accepted this concept. They also acknowledge that the repudiation is not expressly ruled under the Vienna Convention, buy they argue that the concept is therein recognized. In this sense, they assert that article 72 of such Convention authorizes the termination of the agreement in situations in which the breach of one of the parties is clear. Additionally, they hold that article 73 authorizes the termination of agreements with successive compensations if the failure of one of the parties to deliver gives the other party reasonable grounds to infer that an essential breach will occur in future deliveries. In AESU and Sulgás opinion, it derives from the rules that the Vienna Convention does not accept the situations in which it may be concluded that the continuance of an agreement has become futile, as when one of the parties holds that it considers that the agreement has stopped to exist. In any case, AESU and Sulgás consider that YPF attributes AESU and Sulgás to have repudiated the Agreement, so YPF accepts that the concept of repudiation is applicable. ----------

442. In relation to the third cause mentioned (failure to act as a reasonable and prudent operator), AESU and Sulgás acknowledge that this breach is not expressly included as grounds for termination of the Gas Supply Agreement; however, they argue that it constitutes an essential breach of the Agreement which allows its termination. AESU and Sulgás argue that, in accordance with section 17.4(d) of the Gas Supply Agreement, in case an alleged event of force majeure or act of God occurred, YPF was obliged to carry out, at its own cost and expense, a reasonable and prudent operation in order to repair the fault or diminish the consequences of the event

mentioned as force majeure as soon as possible. AESU and Sulgás argue that the scope of this obligation shall be construed broadly, and the restrictive interpretation suggested by YPF shall be dismissed (according to which this obligation would only include mechanical failures in the extraction of gas). Particularly, AESU and Sulgás assert that the obligation to act as a reasonable and prudent operator required that YPF challenged before the competent authorities or courts the terminations which it considered that constituted an event of force majeure and that hampered the gas delivery. ----------

443. AESU and Sulgás assert that YPF failed to comply with such obligation from the moment in which it mentioned the regulatory force majeure in 2004 to justify the breach of its duty to deliver gas, as YPF did not use the proper practices to mitigate the effects of the rules that it considered as a force majeure event. AESU and Sulgás argue that the breach of this duty prevented YPF from delivering gas, and, therefore, this constitutes an essential breach to the Agreement. AESU and Sulgás assert that this breach affected all the gas deliveries from 2004 onwards, and made it possible to infer that such essential breach would last. Therefore, they argue that this breach enables the companies to terminate the Agreement in accordance with the provisions of article 72 of the Vienna Convention. ----------

(ii) The waiver to terminate does not include the grounds for termination mentioned. ----------

444. AESU and Sulgás also deny that the grounds mentioned in the letter dated March 20, 2009 have been included in the waiver to terminate agreed upon in the Complementary Agreements.---

445. As regards the first ground mentioned (failure to pay DOP penalties), AESU and Sulgás argue that the waiver to terminate the Agreement except for the parties mutual consent only affected the right to terminate under section 14.2.2(i) (failures to deliver gas), and not the right to terminate under section 14.2.2(ii) (failure to pay the debt derived from the DOP regime). AESU and Sulgás argue that, in accordance with section 18.4 of the Gas Supply Agreement, all the amendments to the agreement shall be made in writing, and that in accordance with section 874 of the Civil Code "the intention to waive to the termination is not presumed and the interpretation of the acts that may lead to prove it shall be restrictive." ----------

Consequently, the waiver to terminate does not include the power of AESU and Sulgás under section 14.2.2 (ii) of the Gas Supply Agreement, leaving the termination of the Agreement fully in force in case YPF breaches its obligation to pay DOP penalties.----------

446. As regards the allegation of YPF stating that they did not exercise such right up to 2008, AESU and Sulgás argue that, in accordance with section 18.3 of the Gas Supply Agreement, the failure to exercise a right does not entail its waiver. ----------

447. As regards the second cause mentioned (repudiation of the Agreement), AESU and Sulgás argue that the repudiation of the Agreement is grounds for termination different and independent from those which arise from the breaches of the Agreement. In this sense, they argue that the repudiation of the Agreement is qualitatively different from the breach of one of their obligations. It is repudiated not only just one obligation but also the existence of the legal relation in itself. Particularly, AESU and Sulgás does not attribute to YPF the failure to deliver gas but the statements of YPF on that the Agreement did not exist anymore or was not binding upon it.----------

448. A regards the third cause mentioned (failure of YPF to act as a reasonable and prudent operator), AESU and Sulgás assert that it is an obligation different from the delivery of gas. Although the result of the breach of such obligation is that the gas was not delivered, the obligation that is breached is that included in section 17.4 (d) of the Gas Supply Agreement, which is different from the delivery of gas. ----------

(iii) There was no binding practice that hinders the exercise of AESU and Sulgás rights to terminate [the Agreement] ----------

449. AESU and Sulgás denied the interpretation made by YPF of said "umbrella clause" and rejected the existence of a binding practice among them that had hindered the termination of the Agreement. ----------

450. AESU and Sulgás rejected the YPF argument holding that the Complementary Agreements included a "binding practice" among AESU, Sulgás and YPF to negotiate the disagreements under the Gas Supply Agreement and that only after such negotiations the parties could file legal actions. Particularly, they deny that there has been an agreement among the parties to keep the dispute, as regards the existence or non existence of force majeure, under an "umbrella" or in a "parenthesis" to a future termination by means of a negotiation or arbitration. In any case, they hold that this is the arbitration proceeding that solves the matter.----------

451. In this sense, AESU and Sulgás argue that the express provisions of the Gas Supply Agreement (particularly sections 18 and 20) hinder the application of article 9.1 of the Vienna Convention in the way suggested by YPF. Section 20 of the Gas Supply Agreement specifies the procedure that must be followed in the event of a dispute between the parties but in any of its

parts it does not include a procedure of negotiation prior to the exercise of actions that the Agreement grants to the parties. According to section 18.4 of the Gas Supply Agreement, such negotiation procedure could only be specified through an express and written modification of the Agreement. ----------

452. On the contrary, AESU and Sulgás assert that the disagreement between YPF and AESU/Sulgás on the existence or not of a force majeure event is the only fact included in the Complementary Agreements, however, there is not a waiver to exercise the rights derived from this Agreement (waiver that, pursuant to sections 18.3 and 18.4 of said agreement, shall be expressed and written.) ----------

453. In any case, AESU and Sulgás hold that the suspension and termination of the Agreement by AESU and Sulgás occurred in a situation qualitatively different from the negotiations which ended in the Conflict Resolution Agreements. Those negotiations were based on that the Agreement was essentially viable and that the objective was to solve specific problems, whereas the suspension and termination by AESU and Sulgás was held as a consequence of the repudiation of the agreement by YPF from July 2006, and requests of YPF to renegotiate a new agreement. -------

454. In relation to article 8 of the Vienna Convention, AESU and Sulgás argue that the intent of a party or the understanding of a reasonable person depend on the conduct of the parties. In this sense, they argue that the behavior of AESU and Sulgás (evidenced in the letters sent by YPF) proves that they have always rejected (i) the existence of a regulatory force majeure; (ii) the application of the Withholdings on Exports, their inclusion in the price of gas without having complied with the provisions of section 13.1 of the Gas Supply Agreement, and the claim of YPF that AESU and Sulgás be responsible for the royalties as a result of this increase in the price; and (iii) the renegotiation of the Gas Supply Agreement in its entirety. According to AESU and Sulgás, their behavior does not imply the existence of a binding practice of negotiation. ----------

c. Analysis ----------

455. The Tribunal will firstly analyze if the remedy for termination was available for AESU and Sulgás only for those causes expressly specified in the Agreement (Part (i)). Then, it will analyze the scope of the waiver of AESU and Sulgás to terminate the Agreement as a consequence of the failure to deliver gas, and if this waiver may include the grounds mentioned (Part (ii)). Finally, the Tribunal will analyze if there has been a binding practice between the parties which prevented AESU and Sulgás from terminating the Agreement before settling the dispute as regards the existence of a regulatory force majeure (Part (iii)). ----------

(i) Was the remedy for termination of AESU and Sulgás limited to the cases specified in section 3.5 of the Gas Supply Agreement? ----------

(a) General considerations ----------

456. Section 3.5 of the Gas Supply Agreement sets forth: ----------

"3.5) EARLY TERMINATION ----------

This AGREEMENT could be terminated before the date specified in section 3.1 by YPF under the conditions established in sections 14.2.1, 14.2.3 and 14.2.4, and by PETROBRAS {now Sulgás} under the conditions established in sections 14.2.2 and 14.2.3." ----------

457. In turn, section 14.2.2 of the Gas Supply Agreement sets forth that Petrobras (now Sulgás) shall be entitled to terminate the Agreement in the following cases: ----------

"14.2.2) TERMINATION BY PETROBRAS {SULGÁS} ----------

If YPF: ----------

(i) Notwithstanding the compliance with its duty to DELIVER OR PAY (pursuant to section 14.1.1.1), ***does not comply with its duty to make the GAS*** available by virtue of this AGREEMENT for a term equal or exceeding sixty (60) consecutive days or seventy five (75) alternate days in a term of one year; or ----------

(ii) notwithstanding the provisions of section 14.1.2.3 above, ***does not comply, when necessary, with its duty to pay the outstanding amount for the GAS not available (DELIVER OR PAY)*** (provided that YPF does not pay said sum, plus interest, subject to the potential reimbursement or held in escrow pursuant to Section 15.5), within one hundred and eighty (180) days after the date of expiration of the corresponding debit note, therefore, in any of the cases, PETROBRAS may terminate this AGREEMENT through FORMAL NOTICE in that sense to YPF, and YPF or the PARTICIPANT that may correspond pursuant to the provisions of Sections 14.2.5 and 24.2.6 shall compensate PETROBRAS for all the damages that such termination for breach may cause to PETROBRAS and/or the PARTICIPANTS. ----------

Additionally, YPF shall assign to PETROBRAS, either totally or partially according to PETROBRAS decision and gratuituosly, the FIRM TRANSPORTATION SERVICES AGREEMENTS to transport GAS, subject matter of the AGREEMENT, from NEUQUÉN BASIN to the POINT OF DELIVERY, as long as those agreements were in force and the assignments were legally viable, in order to facilitate its use by PETROBRAS to transport gas to be used as fuel in the POWER STATION that PETROBRAS acquires from other producer, in its capacity as assignee, and it will accept the corresponding rights and duties under the FIRM TRANSPORTATION SERVICES AGREEMENT, including the duty to

pay the total amount of the firm transportation services agreed in the FIRM TRANSPORTATION SERVICES AGREEMENT of TGN and ruled by ENARGAS, and the total amount of the price agreed in the FIRM TRANSPORTATION SERVICES AGREEMENT of TGM." ----------

458. Section 14.2.3 includes grounds for termination if the power station and/or gas pipeline and/or its expansion are not complete, which is not relevant in this case. ----------

459. In the opinion of the Tribunal, the fact that the Agreement has expressly ruled two specific situations that entitled AESU and Sulgás to terminate the Gas Supply Agreement, does not eliminate the right granted to a contracting party under the Vienna Convention to terminate the agreement in case the other committed an essential breach. In this sense, article 49 of the Vienna Convention entitles the buyer to terminate the agreement in case of an essential breach of the seller, in the following terms: ----------

"Article 49 ----------

1) The buyer may declare the termination of the contract: ----------

a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a ***fundamental breach*** of contract; or ----------

b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed. ----------

2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so: ----------

a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made; ----------

b) in respect of any breach other than late delivery, within a reasonable time: ----------

i) after he knew or ought to have known about the breach; ----------

ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or ----------

iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance." ----------

(Emphasis added) ----------

460. In turn, article 72 of the Vienna Convention sets forth: ----------

"Article 72 ----------

1) If prior to the date for performance of the contract it is clear that one of the parties will commit a ***fundamental breach*** of contract, the other party may declare the contract avoided. -----

2) If time allows it, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance. ----------

3) The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations." ----------

(Emphasis added)----------

461. Similarly, article 73 of the Vienna Convention specifies that for contracts of sale with successive deliveries: ----------

"Article 73 ----------

1) In the case of a contract for delivery of goods by installments, if the failure of one party to perform any of his obligations in respect of any installment constitutes a ***fundamental breach*** of contract with respect to that installment, the other party may declare the contract avoided with respect to that installment. ----------

2) If one party's failure to perform any of his obligations in respect of any installment gives the other party good grounds to conclude that a ***fundamental breach*** of contract will occur with respect to future installments, he may declare the contract avoided for the future, provided that he does o within a reasonable time. ----------

3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract." ----------

(Emphasis added) ----------

462. In turn, article 25 of the Vienna Convention sets forth: ----------

"Article 25 ----------

A breach of contract committed by one of the parties is ***fundamental*** if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result." ----------

(Emphasis added) ----------

463. In view of the foregoing, the Tribunal concludes that, pursuant to the original Gas Supply Agreement and the applicable law, the remedy for termination was available for AESU and Sulgás in case of fundamental breaches of the Gas Supply Agreement, even if those breaches were not expressly included in the Agreement. ----------

464. Considering the specific grounds for terminating the Agreement mentioned by AESU and Sulgás, the Tribunal notes that the repudiation of the agreement as well as the failure to act as a reasonable and prudent operator, should they occur, will constitute essential breaches of the agreement that may authorize its termination for the following reasons. ----------

(b)Repudiation of the agreement. ----------

465. The Tribunal holds that the concept of repudiation of the agreement as the rejection of one of the parties to its essential obligations thereunder, either because one of the parties expresses that the other will commit an essential breach, or because its conduct shows that it is evident that a breach will occur. The Tribunal holds that this concept is included in article 72 (1) of the Vienna Convention hereinbefore quoted. ----------

466. The Tribunal acknowledges that the concept of repudiation of the agreement was originated in English law.[55] The regulation of the agreements in the legal systems governed by European civil law generally does not expressly consider the power of one of the parties to terminate the agreement earlier in the event that the behavior or statements of the other party evidence that it cannot or does not want to comply with the agreement and that such breach would be serious or important. Argentine domestic law is not an exception, as it does not expressly consider the repudiation of the agreement as grounds for termination. However, if the breach of the debtor is serious, the other party has the possibility to request an out-of-court termination based on section 1204 of the Argentine Civil Code and section 216 of the Argentine Commercial Code, provided that the creditor grants the debtor a grace period of at least 15 days to comply with its

[55] According to the Restatement (Second) of Contracts, "[a] repudiation is (a) a statement by the obligor to the obligee indicating that the obligor will commit a breach that would of itself give the obligee a claim for damages for total breach under § 243, or (b) a voluntary affirmative act which renders the obligor unable or apparently unable to perform without such a breach." (Restatement (Second) of Contracts § 250 (1979)). In turn, the Restatement provides that as a general rule, "a breach by non-performance accompanied or followed by a repudiation gives rise to a claim for damages for total breach." (Restatement (Second) of Contracts § 243(2) (1979)). Additionally, the Restatement explains that "a breach by non-performance gives rise to a claim for total breach only if it so substantially impairs the value of the contract to the injured party at the time of the breach that it is just in the circumstances to allow him to recover damages based on all his remaining rights to performance." (Restatement (Second) of Contracts § 243(4) (1979)). ----

obligation.[56]This term is not necessary, however, when it is evident that the debtor cannot comply with or when the will of non-complying "arises unequivocally from the acts performed."[57]-

467. Notwithstanding the foregoing, the Tribunal holds that the concept of repudiation has been accepted, at least in some cases, by the Argentine courts. AESU and Sulgás quote two decisions that recognize this concept, which have not been challenged by YPF. According to one of the decisions quoted, "when the debtor expresses its will of non-performance, which shall be undoubted, total and final, showing its absolute and irrevocable intention to repudiate the agreement, even though it is tacit or when it derives unequivocally from the acts performed, the termination will be accepted."[58] ----------

468. In this case, the contractual relationship among the parties shall be ruled by the Vienna Convention. During the discussions on the application of article 72 of the Vienna Convention, they agreed on using a provision which empowers one of the parties to terminate the agreement earlier when the conduct or statements of the other party evidence its impossibility to comply or its will not to comply or "repudiate" (*anticipatory breach o anticipatory repudiation*) the compliance with its obligations under the agreement."[59] Therefore, it is clear that pursuant to the Vienna Convention, the repudiation of one of the parties of its essential obligations under said agreement shall authorize the other party to terminate the Agreement earlier. ----------

469. When the repudiation is of all the obligations of the Agreement or of the existence of the Agreement, the repudiation excludes the other party from the Agreement, and, therefore, of what it was entitled to obtain pursuant to it. Therefore, the repudiation constitutes the most extreme essential breach. ----------

(c) Failure to act as a reasonable and prudent operator. ----------

470. Before analyzing if the failure to act as a reasonable and prudent operator entitles the party to terminate the Agreement, the Tribunal will analyze the scope of this obligation. ----------

471. Section 17.4 (d) of the Gas Supply Agreement sets forth: ----------

---

[56] See the Commercial Code with comments, directed by Adolfo A. N. Rouillon, vol. 1, pp. 445-51, La Ley, Buenos Aires, 2005. ----------

[57] Juan M. Farina, "Rescisión y resolución de contratos", ed. Orbir, p. 78 (1985). ----------

[58] National Court of Appeals in Commercial Matters, Division B, " Laboratorios Ortopédicos del Sur c. Circulo de Inversores SA de Ahorro para fines determinados et al.", June 30, 2004, La Ley January 12, 2005 (Annex AL10/SL10). ----------

[59] C.M. Bianca & M.J. Bonell, *Commentary on the International Sales Law. The 1980 Vienna Sales Convention*, Giuffre, Milano, 1987, p. 525.----------

"17.4) NOTICE AND RESTORATION OF USUAL PERFORMANCE ----------
Any of the PARTIES or PARTICIPANTS who mentions a release from its contractual duties due to FORCE MAJEURE or ACT OF GOD: ----------
[...]----------
d) will perform at its own cost and expense a REASONABLE AND PRUDENT OPERATION in order to remedy the failure, or mitigate the consequences of said situation over a shorter term as soon as possible." ----------

472. In turn, section 1.1 of the Gas Supply Agreement defines "reasonable and prudent operation" as follows: ----------
"REASONABLE AND PRUDENT OPERATION -when this term is used to describe this kind of conduct that shall be performed by any PARTY and/or PARTICIPANT in the compliance with its obligations by virtue of this AGREEMENT, it will mean that the level of diligence and prudence that, reasonably and normally, expert operators perform when acting in the oil, gas, natural gas transportation and electricity industries under the same circumstances and similar conditions, taking the necessary consideration to develop adequate practices and the rights of the other PARTIES and/or PARTICIPANTS." ----------
473. The Tribunal holds that, pursuant to its own terms, section 17.4(d) of the Gas Supply Agreement provides a standard of behavior to the party that alleges force majeure. Therefore, the Tribunal agrees with YPF that the obligation to act as a reasonable and prudent operator, as it is defined in section 1.1 of the Gas Supply Agreement, is originated in the cases of sections 17.4 (d) when a party alleges a force majeure event, and it is aimed at compensating the failure or mitigating the consequences of said situation as soon as possible. ----------
474. Notwithstanding the foregoing, the Tribunal does not agree with YPF's opinion according to which the field of application of this standard would be limited to cases of force majeure and act of God that affect the facilities or equipment. Section 17.4 refers to any case of "FORCE MAJEURE OR ACT OF GOD" which is defined in sections 17.1 and 17.2 broadly. Section 17.1 provides that "the definition, scope and effects of the FORCE MAJEURE OR ACT OF GOD shall be the ones specified in the Argentine Civil Code (Section 513, and subsequent and related sections) and this Section 17." In turn, section 17.2 defines "FORCE MAJEURE or ACT OF GOD OF YPF" as "any FORCE MAJEURE or ACT OF GOD that prevents YPF from offering PETROBRAS any quantity of GAS that YPF would be otherwise obliged to offer to PETROBRAS by virtue of this AGREEMENT, including the impossibility to supply and/or transport GAS to the POINT OF DELIVERY by the

FORCE MAJEURE OR ACT OF GOD OF TGN or by FORCE MAJEURE OR ACT OF GOD OF TGM, or comply with any other obligation of YPF by virtue of this AGREEMENT which was not an obligation to pay outstanding sums of money pursuant to the AGREEMENT." Consequently, the obligation to act as a reasonable and prudent operator is applied to any case of force majeure or act of God that may have been mentioned by one of the Parties or Participants to justify the breach of the obligations. This includes, for example, the events of regulatory force majeure as those mentioned by YPF to be released from its duty to deliver gas. ----------

475. This means that, having mentioned YPF an event of regulatory force majeure to be released from its contractual duty to deliver gas, the duty to act as a reasonable and prudent operator forced YPF to act with "the level of diligence and prudence that, reasonably and normally, expert operators perform when acting in the oil, gas, natural gas transportation and electricity industries under the same circumstances and similar conditions, taking the necessary consideration to develop adequate practices and the rights of the other PARTIES and/or PARTICIPANTS", in order to mitigate the consequences of the event mentioned as a case of regulatory force majeure, as soon as possible. ----------

476. Having determined the scope of the duty to act as a reasonable and prudent operator, the Tribunal concludes that the failure would enable the other party to terminate the Agreement to the extent that the breach to be justified through the force majeure event would be also an essential breach. The Party that alleges the force majeure to justify the breach of its obligations, pursuant to section 17.4 (d), shall act with diligence and prudence to repair the failure or mitigate the consequences of the event mentioned, and in that way, shall enable the "restoration of the usual performance" of its obligation. The breach of a standard of behavior imposed in section 17.4(d) entails that the party who alleges the force majeure has not made the necessary efforts to repair the failure or mitigate the consequences of the force majeure mentioned, contributing to the existence of an essential breach. In this way, the failure to act as a reasonable and prudent operator is merged with the essential breach that it tries to mitigate, enabling the other party to exercise the remedy for termination included in articles 49 and 73 of the Vienna Convention. ------

477. In this case, the obligation whose normal performance is interrupted by a force majeure event is the obligation of YPF to deliver gas. If, as argued by AESU and Sulgás, YPF failed to act as a reasonable and prudent operator with the purpose of mitigating the consequence of that force majeure (question that the Tribunal is not deciding now), such breach would directly affect the possibility of YPF to comply with its essential duty to deliver gas. In this way, the failure of YPF to

act as a reasonable and prudent operator would become an essential breach of the Agreement, to the extent that it would contribute to the existence of other essential breach, enabling AESU and Sulgás to terminate the Agreement pursuant to articles 49 and 73 of the Vienna Convention. -

478. In view of the foregoing, the Tribunal concludes that the remedy for termination was not limited to the cases included in section 3.5 of the Gas Supply Agreement, but it was also available as regards the other essential breaches of the Agreement. Therefore, the remedy for termination was available for AESU and Sulgás as regards the first cause mentioned, pursuant to sections 3.5 and 14.2.2 (ii) of the Agreement, regarding the second and third causes mentioned in the letter dated March 20, 2009, referring to essential breaches of the Agreement. This conclusion does not consider the effects of the waiver of AESU and Sulgás to terminate the agreement for failures to deliver gas, which effects are analyzed by the Tribunal below. ----------

(ii) Scope of the waiver of AESU and Sulgás in section 5 of the Supplementary Agreement. --------

479. Having determined that, pursuant to the original Gas Supply Agreement and the applicable law, the remedy for termination was available for AESU and Sulgás as regards all the causes mentioned, the Tribunal shall now decide if in the Complementary Agreements, AESU and Sulgás rejected to exercise such remedy. ----------

(a) General considerations ----------

480. In the Complementary Agreements, AESU and Sulgás waived to their right to terminate the Gas Supply Agreement during a particular term based on the failures to deliver gas, such right was specified in section 14.2.2(i) of the Gas Supply Agreement. ----------

481. The waiver of AESU and Sulgás was initially stated in section 10 of the First Conflict Resolution Agreement (also called "CR Agreement", Annex Y-52, T-I-9) which provides: ----------

"Over the Term of the Agreement, Sulgás and AESU reject to count any day of deficiency to deliver gas of YPF, to the effect of section 14.2.2(i) of the Agreement, and in any case, over the Term of the Agreement, they waive to their right to terminate the Agreement pursuant to section 14.2.2 (i) of the Agreement." ----------

482. Then, section 5 of the Supplementary Agreement (Annex Y-58, T-I-12) replaced section 10 of the First Conflict Resolution Agreement for the following reasons: ----------

"Over the Term of the Agreement, Sulgás and AESU waive to count any day of deficiency to deliver gas of YPF, to the effect of section 14.2.2(i) of the Agreement, and in any case, over the

Term of the Agreement, the right to terminate the Agreement pursuant to section 14.2.2 (i) of the Agreement shall only be exercised by the parties mutual consent." ----------

483. In turn, section 1.2 of the Supplementary Agreement provides that the "Term of the Agreement" "shall mean, to the effects of the CR Agreement and this Supplementary Agreement, the term from April 23, 2004 up to December 31, 2009." ----------

484. In the Tribunal's opinion, this waiver shall be jointly read with section 7.2 of the Supplementary Agreement (repeated in virtually identical terms in section 3.2 of the Second Conflict Resolution Agreement), which provides that: ----------

"The Parties acknowledge and agree that any of the statements and/or provisions set forth in this Supplementary Agreement or in the CR Agreement cannot be construed as: (i) a waiver from any of the parties to the positions that each Party has assumed upon the failure to provide natural gas under the Agreement: nor (ii) a YPF representation, statement or warranty YPF related to the provision of gas volumes, both during the summer and winter terms, in case of A YPF ACT OF GOD OR FORCE MAJEURE EVENT, regardless of the obligations expressly indicated in the Agreement and the CR Agreement (with its modifications and amendments) and this Supplementary Agreement. In any case, the Parties state that there are different opinions in the sense that YPF considers that the administrative acts ordered pursuant to Resolutions SE 265/2004, 503/2004 and 659/2004 (as amended by Resolution SE 1681/2005 and Resolution SE N° 752/2005) and/or Provision SSC N° 27/2004 and/or rules replacing them in the future constitute a YPF ACT OF GOD OR FORCE MAJEURE EVENT pursuant to the Agreement and their amendments: while AES considers that said administrative acts and the rules mentioned on which they are based shall not constitute a YPF ACT OF GOD OR FORCE MAJEURE EVENT which prevents YPF from complying with the gas supply pursuant to the Agreement and its amendments" ----------

485. The Tribunal holds that firstly the waiver of AESU and Sulgás is temporal: is valid only over the Term of Agreement (i.e., up to December 31, 2009). ----------

486. Secondly, the Tribunal holds that, pursuant to the provisions of section 5 of the Supplementary Agreement, the waiver only affects the exercise of the remedy provided in section 14.2.2(i) of the Agreement, which is originated in cases of failure of YPF to deliver gas; and not to the right of AESU and Sulgás that YPF delivers gas pursuant to sections 2 and 3.4 of the Agreement. AESU and Sulgás "reject to count any day of deficiency to supply gas of YPF to the effects of section 14.2.2(i) of the Agreement." Such right may be exercised only by the parties'

mutual consent over the Term of the Agreement; they do not waive the right to require YPF to deliver the gas due, or to pay the penalty which replaces such gas (DOP) in case it cannot deliver it. ----------

487. In this context, the Tribunal holds that, pursuant to article 45(2) of the Vienna Convention, in case of a breach of the seller, “the buyer will not lose its right to demand the compensation for damages even though it exercises any other action pursuant to law.” And that, in accordance with section 874 of the Argentine Civil Code "the intention to waive to the termination is not presumed and the interpretation of the acts that may lead to prove it shall be restrictive." The Tribunal holds that, in this case, the parties agreed upon a special compensation (or penalty clause) for cases of failure to deliver, which consists of the DOP penalty. The waiver to terminate the Agreement does not affect the right of AESU and Sulgás to demand compensation, except that they have waived to said right individually. Such waiver has not been proved. ----------

488. Consequently, although AESU and Sulgás are hindered over the Term of the Agreement to terminate the Agreement due to failure to deliver gas, they are not hindered to demand YPF to comply with this obligation or to pay the replacing penalty (except that they have waived expressly to collect it). This is ratified by the fact that, pursuant to section 7.2 of the Supplementary Agreement and section 3.2 of the Second Conflict Resolution Agreement, the parties clearly state that any of them waive to their positions regarding the existence of a regulatory force majeure event that releases YPF from its liability derived from the failure to deliver gas. The Tribunal holds that, through this section, AESU and Sulgás are expressing that any of the statements or agreements reached to allow the continuance of the Gas Supply Agreement may be interpreted as an acceptance that YPF was hindered to deliver gas due to a cause of regulatory force majeure. This reserve may only be aimed at keeping the right of AESU and Sulgás to request the compliance with the replacing compensation in case of failures to deliver (DOP penalty). ----------

489. This is also coherent with the argument of YPF which indicates that one of the purposes of the Complementary Agreements was to procure the continuance of the Gas Supply Agreement, despite the dispute over the existence of a regulatory force majeure event. From the mailing among the parties and the content of the Complementary Agreements, it is evident that neither YPF, on the one hand, nor AESU and Sulgás, on the other hand, would relinquish as regards their positions on regulatory force majeure. In the context of the dispute on force majeure, this waiver may only be understood as a temporary suspension to exercise the right to remedy in order to

keep the continuance of the Gas Supply Agreement. This is also coherent with the reciprocal licenses made by the parties in matters of TOP and DOP, and the payment of Segments A and B of Transportation, among others. ----------

490. In view of the foregoing, the Tribunal considers that the waiver of AESU and Sulgás included in section 5 of the Supplementary Agreement constitutes a temporary suspension of their right to exercise the remedy for termination due to the failure of YPF to deliver gas, but it does not constitute a waiver to demand the compliance with YPF obligation to deliver that gas or to pay the replacing compensation for its breach. ----------

(b) Does the waiver of AESU and Sulgás also include the right to terminate for other breaches? -----

491. The question that may arise is if this waiver also reaches the power of Sulgás to terminate the Gas Supply Agreement for the breaches of YPF mentioned by AESU and Sulgás to terminate the Agreement. The Tribunal will analyze each cause separately. ----------

(1) Failure to pay DOP penalties ----------

492. YPF argues that the obligation to pay DOP penalties is a replacing obligation of the duty to deliver gas and, therefore, the waiver to terminate due to a breach of the principal obligation includes the cases of breaches of the replacing obligation. AESU and Sulgás reject this argument, stating that they only waived to their right to terminate included in section 14.2.2(i) and not to that included in section 14.2.2(ii), and that pursuant to the Agreement the waivers shall be express and written. ----------

493. The Tribunal agrees with AESU and Sulgás. Firstly, the Tribunal holds that the parties considered that the obligation to pay DOP penalties was different enough from the obligation to supply as to establish a right to terminate independently in case of breach. The Agreement enables Sulgás to terminate by two express causes: failure to deliver gas (provided in section 14.2.2(i)) and failure to pay DOP penalties (section 14.2.2(ii)). Therefore, they shall be construed as two different obligations. ----------

494. Secondly, by its own terms, the waiver expressly referred not only to the right of Sulgás provided in section 14.2.2(i) of the Gas Supply Agreement, i.e. the right of Sulgás to terminate the Gas Supply Agreement in case that YPF "does not comply with its obligation to make the GAS available by virtue of this AGREEMENT for a term equal or superior to sixty (60) consecutive days or seventy five (75) alternate days for a term of one year." The waiver did not refer to the right of Sulgás to terminate the Agreement pursuant to section 14.2.2(ii), i.e. the right of Sulgás to terminate the Agreement if YPF failed, when required, to comply with its obligation to pay the

outstanding amount for the GAS that was not available (DELIVER OR PAY) […] in one hundred and eighty (180) days after the date of expiration of the corresponding debit note." ----------

495. If the intention of the parties had been to extend the waiver to the failure to pay DOP penalties, in accordance with the provisions of the Agreement, they would have had to expressly agree. In accordance with section 874 of the Argentine Civil Code "the intention to waive to the termination is not presumed and the interpretation of the acts that may lead to prove it shall be restrictive." Although pursuant to section 873 of the Civil Code the waivers may be express or tacit, except that the law requires an express waiver, section 18.4 of the Gas Supply Agreement provides that "every amendment to this AGREEMENT or its annexes shall be derived from proposals made in writing and expressly accepted by the PARTIES and the PARTICIPANTS, if they affect the PARTICIPANTS." Consequently, the parties wanted that every amendment to the agreement (including the waiver of rights) was express. Therefore, as they did not make an express and unequivocal waiver, it cannot be understood that the intention of the parties to procure the continuance of the Gas Supply Agreement implies a waiver to every right to terminate for the breach of the other party. ----------

496. Moreover, the Tribunal holds that the liability of YPF for DOP penalties was widely regulated in the Complementary Agreements. For instance, in the First Conflict Resolution Agreement, AESU waived to collect DOP in 2004, maintaining the validity of the obligation of YPF to pay DOP for the winter periods of 2005, 2006 and 2007, even in cases of regulatory force majeure (sections 5.2 and 7.1 of the CR Agreement). Besides, for every Special Term there was a limitation to the full liability of YPF for DOP (US$ 8.9 million for Special Period, US$ 12 million for each year of the agreement) (section 7.2 of the CR Agreement). Similarly, in the Supplementary Agreement, these agreements were extended to the winter periods of 2008 and 2009, and the limitations to liability for DOP taken by YPF were modified (section 4 of the Supplementary Agreement). Particularly, in the Second Conflict Resolution Agreement, AESU and Sulgás expressly waived to their right to claim for the breaches of the DOP obligations corresponding to 2005. This proves that the parties regulated in detail the modifications and waivers of their rights, and ratifies that if they had wanted to extend the waiver to terminate the Agreement to the failure to pay DOP penalties, they would have agreed that expressly. ----------

497. The Tribunal cannot accept the YPF's argument either, which argument indicates that until 2008, AESU and Sulgás had not proven their interest to collect DOP penalties. In accordance with section 18.3 of the Gas Supply Agreement, "if any of the PARTIES/PARTICIPANTS does not

exercise its right to claim for the failure of any of the obligations set forth in this AGREEMENT, that case may neither be deemed as a precedent, nor entail a waiver to the power to claim in the future for the breach committed or for future breaches." In accordance with such contractual sections, and also by the application of the aforementioned section 874 of the Civil Code, the mere course of time or delay of AESU and Sulgás to claim for the penalties cannot be construed as a waiver of their rights. ----------

498. Finally, the Tribunal holds that interpreting the waiver of AESU and Sulgás as limited to their power to terminate the agreement due to the failure to deliver gas, keeping the validity of the power to terminate for failure to pay DOP penalties, is not inconsistent with the continuance of the Gas Supply Agreement. YPF argued to be hindered to deliver gas, apparently due to restrictions issued by the Government of Argentina. However, if the DOP penalty was accrued pursuant to the Agreement, it was not hindered to pay it since it was a sum of money and the payment of sums of money was not hindered by the measures adopted by the Government of Argentina. So, in the Complementary Agreements, YPF was engaged in paying DOP penalties over the winter period even if the failure to deliver gas that caused the penalty derived from the regulatory force majeure (section 7.2 of the First Conflict Resolution Agreement, section 5.2 of the Supplementary Agreement). The validity of the right to collect DOP penalties (and to terminate the Agreement in case of failure to pay) is equivalent to an allocation of economic risks between the parties, similar to the allocation of risks related to the payment of transportation services. ----------

499. Therefore, the Tribunal concludes that the waiver of AESU and Sulgás to terminate by virtue of the deficiencies in the delivery of gas does not extend to their right to terminate by virtue of the failure to pay DOP penalties. ----------

(2) Repudiation of the agreement ----------

500. YPF argues that, even if the concept of repudiation was provided in the Gas Supply Agreement, the right to terminate for this cause would be reached by the waiver of AESU and Sulgás to terminate the Agreement for deficiencies in the delivery of gas. According to YPF, this is due to the fact that the consequence of the repudiation cannot be other than causing the failures to deliver gas, by which AESU and Sulgás engaged in non-terminating the Agreement. AESU and Sulgás reject this interpretation, arguing that the repudiation of the Agreement constituted grounds for the termination different and independent from those arising from the breaches of the Agreement. Particularly, they argue that the repudiation of YPF is constituted by their

manifestations on the non existence of the Agreement, not by the breach of the obligation to deliver gas. ----------

501. According to the Tribunal's opinion, the waiver to terminate for the failure to deliver gas does not include the right to terminate for the repudiation of the Agreement. This is due to the reasons mentioned *supra* related to the restrictive scope by which the waiver of rights shall be construed and because AESU and Sulgás do not simply argue that YPF has repudiated its obligation to deliver gas; they hold that YPF repudiated the existence of the contractual relation in itself. As it has been herein mentioned, the repudiation consists of the rejection of one of the parties to its essential obligations pursuant to the Agreement, either through the statement of one of the parties addressed to the other party saying that it will be engaged in an essential breach, or through a conduct that evidences that it will be engaged in an essential breach. When the rejection is made to all the obligations of an Agreement (and not to a specific obligation), or the existence of a legal relation, the repudiation is qualitatively different from the repudiated obligations. ----------

502. In this case, if it existed (which will be hereinafter analyzed), the repudiation of YPF would be shaped by its rejection to the existence or viability of the legal relation, not by the failures to deliver gas, regardless of the fact that this repudiation resulted in no more gas deliveries. Consequently, the waiver to terminate for the failure to deliver gas does not include the right to terminate for the repudiation of the Agreement. ----------

(3) Failure of YPF to act as a reasonable and prudent operator. ----------

503. YPF also alleges that, even if the remedy for termination had been available for cases of failures to act as a reasonable and prudent operator, this remedy would have been reached by the waiver of AESU and Sulgás to terminate the Agreement due to deficiencies in the delivery of gas. According to YPF's opinion, this is because the failure to act as a reasonable and prudent operator does not have other consequence than not supplying gas, and AESU and Sulgás had engaged in not terminating the Agreement for that reason. AESU and Sulgás reject this interpretation, alleging that the failure that would give rise to termination is not complying with the obligation provided in section 17.4(d) of the Gas Supply Agreement, which is different from that of delivering gas. ----------

504. In this case, the Tribunal agrees with YPF. As it has been herein mentioned, the obligation to act as a reasonable and prudent operator is originated once a force majeure event has been produced, whose purpose is that the party who mentions it will eliminate the event or mitigate

its effects, allowing the compliance with the principal obligation. Therefore, the breach of the obligation to act as a reasonable and prudent operator constitutes an essential breach only to the extent that it hinders that the party who has pleaded the force majeure comply with the obligation hampered by such force majeure (in the case of YPF, to deliver gas). After the obligation to deliver gas has been analyzed separately, the breach of the obligation to act as a reasonable and prudent operator would not be important enough to justify the exercise of the remedy for termination. ----------

505. In view of the foregoing, the Tribunal concludes that the waiver of AESU and Sulgás for deficiencies in the delivery of gas extends to their right to terminate due to the failure to act as a reasonable and prudent operator. Consequently, AESU and Sulgás will not be entitled to terminate the Agreement based on that cause. ----------

(iii) Was there a binding practice that hindered the exercise of the rights to termination? ---------

506. YPF holds that the signing of the Complementary Agreements and, in particular, the acknowledgment of the existence of a dispute over the regulatory force majeure gave rise to a binding practice among the parties that generated a legitimate expectation that any of them would be engaged in unilateral conducts which tend to terminate the Gas Supply Agreement, based on the legal position of each of the parties as regards the dispute over the existence of regulatory force majeure. ----------

507. YPF quoted section 7.2 of the Supplementary Agreement (repeated in virtually identical terms in section 3.2 of the Second Conflict Resolution Agreement), which provided that: ----------

7.2 "The Parties acknowledge and agree that ***none of the statements and/or provisions set forth in this Supplementary Agreement or in the CR Agreement can be construed as: (i) a waiver from any of the parties to the positions that each Party has assumed upon the failure to provide natural gas under the Agreement:*** nor (ii) a YPF representation, statement or warranty related to the provision of gas volumes, both during the summer and winter terms, in case of A YPF ACT OF GOD OR FORCE MAJEURE, regardless of the obligations expressly indicated in the Agreement and the CR Agreement (with its modifications and amendments) and this Supplementary Agreement. In any case, ***the Parties state that there are different opinions in the sense that YPF considers that the administrative acts ordered pursuant to Resolutions SE 265/2004, 503/2004 and 659/2004 (as amended by Resolution SE 1681/2005 and Resolution SE N° 752/2005) and/or Provision SSC N° 27/2004 and/or rules replacing them in the future constitute a YPF ACT OF GOD OR FORCE MAJEURE EVENT pursuant to the Agreement and its amendments: while AES***

considers that said administrative acts and the rules mentioned on which they are based shall not constitute a YPF ACT OF GOD OR FORCE MAJEURE EVENT which prevents YPF from complying with the gas supply pursuant to the Agreement and its amendments." (Emphasis added) ----------

508. YPF holds that this clause constitutes an "umbrella" clause, whose purpose was to put on hold the future settlement through a negotiation or arbitration of the question whether the measures adopted by the Government of Argentina which limited the gas exports constituted or not a force majeure event that excused YPF from complying with its duty to deliver gas, in order to allow the continuance of the Gas Supply Agreement despite such dispute. According to YPF, the Complementary Agreements (and particularly the aforementioned clause) created a binding practice among the parties pursuant to article 9(1) of the Vienna Convention which gave rise to a legitimate expectation of that, at least over the validity of the Complementary Agreements, the parties would not perform unilateral conducts which tend to terminate the Gas Supply Agreement, based on the legal position adopted by the other party in the dispute regarding the existence of regulatory force majeure. YPF also argues that this practice shall be used as a criterion to interpret the Agreement pursuant to the provisions of article 8(3) of the Vienna Convention. ----------

509. For that reason, and considering that the DOP penalties were only accrued if there was no force majeure, YPF argues that AESU and Sulgás could not terminate the agreement alleging the failure to pay a penalty without considering before if there was a force majeure that eliminates the obligation to pay such penalties. For such purposes, AESU and Sulgás may have appeared before an arbitral tribunal to solve the dispute on the existence of force majeure. Only then, the winning party could exercise the rights that may correspond, such as requesting the payment of DOP penalties or possibly proceeding to the termination of the agreement for the failure to pay those penalties. ----------

510. AESU and Sulgás denied the interpretation made by YPF of these sections, and the existence of a binding practice among them that has hindered the termination of the Agreement. AESU and Sulgás do not expressly refer to the argument of YPF on that the dispute about the existence of regulatory force majeure has hampered the accrual of the debt for DOP. However, they reject the argument of YPF on that in the Complementary Agreements, a "binding practice" has been developed among AESU, Sulgás and YPF to negotiate the disagreement under the Gas Supply Agreement, and that only after such negotiations the parties could file actions. Particularly, they

deny that there has been an agreement between the parties to keep the dispute as regards the existence or non existence of force majeure under an "umbrella" or in a "parentheses" to a future resolution through negotiation or arbitration. In any case, they hold that this is the arbitration proceeding that solves the matter. ----------

511. In this sense, AESU and Sulgás assert that the disagreement between YPF and AESU/Sulgás on the existence or nonexistence of a force majeure event is the only fact included in the Complementary Agreements; however, there is not a waiver to exercise the rights derived from this agreement (waiver that, pursuant to sections 18.3 and 18.4 of said Gas Supply Agreement, shall be express and in writing.) ----------

512. Article 8 of the Vienna Convention sets forth: ----------

"Article 8 ----------

1) For the purposes of this Convention, statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware of what that intent was. ----------

2) If the preceding paragraph is not applicable, statements made by and other conducts of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances. ----------

3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties." ----------

513. In turn, article 9 of the Vienna Convention sets forth: ----------

"Article 9 ----------

(1) The parties shall be bound by any usage to which they have agreed and by any practices which they have established between themselves. ----------

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned." ----------

514. After analyzing the positions of the parties, the Tribunal concludes that any of the complementary agreements to the Gas Supply Agreement, including, particularly, section 7.2 of the Supplementary Agreement and section 3.2 of the Second Conflict Resolution Agreement,

could have originated a "binding practice among the parties", pursuant to article 9(1) of the Vienna Convention. Besides, the positions of the parties in such agreements may not give rise, in the Tribunal's opinion, to a contextual interpretation, pursuant to article 8(3) of the Convention, which is aimed at releasing YPF from its duty to deliver according to the Gas Supply Agreement. ---

515. In the Tribunal's opinion, the intent of the parties, evidenced in section 7.2 of the Supplementary Agreement and section 3.2 of the Second Conflict Resolution Agreement (which YPF calls "umbrella" sections and that the Tribunal will call "clauses for the acknowledgment of the dispute"), was not to put in a "parentheses" -for its resolution through negotiations or arbitration- the dispute regarding if the restrictive measures to gas exports adopted by the Government of Argentina constituted or not a force majeure event that excused YPF of its duty to deliver gas. The parties clearly express in said sections their will to keep "the positions that each of them has adopted in the event of failures to deliver natural gas pursuant to the Agreement", maintaining their full force; therefore, their divergence on whether the measures adopted by the Government of Argentina constitute a cause of force majeure or act of God that hinders YPF to comply with its duty to supply gas. The parties neither engage in terminating this dispute before exercising their rights (including their rights to termination), nor limit the exercise of their rights in any way. On the contrary, in the Tribunal's opinion, this section evidences the intent of the parties to clarify that the amendments to the Gas Supply Agreement made through the Complementary Agreements are specific and limited, and that such amendments to the Gas Supply Agreement do not prove any acknowledgment as regards liability (or not) of YPF for the failures to deliver. The Tribunal agrees that those amendments were aimed at allowing the continuance of the Agreement, but only under the conditions stated in the Complementary Agreements. In these aforementioned sections the parties simply state that, despite the agreements reached to allow the continuance of the Gas Supply Agreement, an unresolved dispute among them continues as regards the existence of a force majeure event. ----------

516. YPF knew, or should not have ignored, that the intent of AESU and Sulgás was to keep their rights. If there has been a regulatory force majeure that hindered the compliance of YPF with its duty to deliver gas to Sulgás, it has been a matter at stake as from the Government of Argentina imposed the first restrictions to gas exports. This dispute was evidenced in the mailing among the parties, being expressly mentioned in the sections of acknowledgment of the disputes mentioned.----------

517. The post-contractual conduct of the parties ratifies this interpretation of the Tribunal. The conduct of AESU and Sulgás (evidenced in the letters sent to YPF) proves that they always rejected (i) the existence of a regulatory force majeure; (ii) the application of the deductions on exports, their inclusion in the price of gas without having complied with the provisions of section 13.1 of the Gas Supply Agreement, and the claim of YPF that AESU and Sulgás are responsible for the royalties as a result of this increase in the price; and (iii) the renegotiation of the Gas Supply Agreement in its entirety based on the theory of unforeseen contingencies mentioned by YPF. Therefore, in the Tribunal's opinion, the conduct of AESU and Sulgás does not evidence that their intent was to limit, more than it was expressly agreed, their power to terminate such agreement. It is neither possible to infer from the reserve of rights that the parties introduced in the Supplementary Agreements the creation of a common usage or contractual practice, by virtue of article 9(1) of the Vienna Convention, which hinders AESU and Sulgás to exercise its right to terminate the Gas Supply Agreement based on an essential breach of YPF (Vienna Convention, articles 72-73). ----------

518. As a consequence of the foregoing, the Tribunal can only conclude that, after the signing of the Complementary Agreements, the parties kept the rights and duties agreed in the Gas Supply Agreement, with the amendments to the Complementary Agreements, maintaining the power to terminate such agreement in the case of meeting the requirements set in the Vienna Convention, except in the cases expressly agreed. In fact, although in the Complementary Agreements AESU and Sulgás engaged in suspending (or waiving temporarily) the power to terminate the Agreement for the failure to deliver gas over the Term of the Agreement (as defined in paragraph 483 *supra*), it may not be inferred from this suspension a waiver to terminate the Gas Supply Agreement for causes different from the failure to deliver gas. In no event did AESU and Sulgás waive to terminate the Gas Supply Agreement neither for the failure to pay DOP penalties nor for any other essential breaches different from the failure to deliver gas; thus, the only "parentheses" that limited AESU and Sulgás's power to terminate the agreement was this (temporary) waiver to terminate for failure to deliver gas. ----------

519. By virtue of the foregoing, the Tribunal concludes that the clauses of the Complementary Agreements on the existence of the dispute about force majeure did not prevent AESU and Sulgás from exercising their rights to terminate the Gas Supply Agreement, particularly in the case that those agreements may not be construed as "[...] a waiver [...] of the positions that each of the Parties has adopted considering the failures to supply natural gas pursuant to the

Agreement[60]". Consequently, if AESU and Sulgás considered that there were not causes of force majeure that hindered the failures to deliver, they would keep the right to demand the payment of the corresponding DOP penalty and, in case that this was not paid, to terminate the Agreement. If YPF considers that this penalty is not accrued for the existence of a force majeure event, it shall pose this argument as defense, as it has herein expressed. And, the corresponding court (in this case the Arbitral Tribunal) shall determine if there was a force majeure event that hindered the accrual of the debt. It is not the existence of a dispute which hinders the accrual of the DOP penalty but the existence of force majeure. As the parties have a dispute regarding the existence of such force majeure event, the competent court shall decide if the requirements of this cause have been met to prevent AESU and Sulgás from claiming the payment of the DOP penalty. ----------

520. Therefore, this Tribunal shall determine if the measures adopted by the Government of Argentina that limited the gas exports constituted or not a force majeure event that excuses YPF from its duty to deliver gas or hinders the accrual of DOP penalties. ----------

*** ----------

521. The Tribunal has decided that the remedy for termination was available for AESU and Sulgás for two of the causes mentioned: the invoked failure to pay the DOP penalty and the argued repudiation of the Agreement. Then, the Tribunal will analyze if the termination based on each of these causes was legally exercised, that is to say, pursuant to the Agreement and the law. ----------

3. First cause mentioned by AESU and Sulgás to terminate the Gas Supply Agreement: failure to pay the invoice for the *deliver or pay* penalty ----------

522. The first cause invoked by AESU and Sulgás to terminate the Gas Supply Agreement was the failure to pay the Debit Note No. COM/001/2008 dated July 16, 2008 for a DOP penalty that AESU and Sulgás argued that it was originated in the interruptions to supply gas over certain days of the year 2006, for a total amount of US$ 2,711,424. Particularly, the letter dated March 20, 2009 sent by AESU and Sulgás pointed out: ----------

"Pursuant to the provisions of section 14.2.2 of the Agreement, due to the failure of YPF to pay, in the terms provided in the Agreement (even when the obligation to pay is questioned), the debit note No. COM/001/2008 dated July 16, 2008 amounted to US$ 2,711,424 (two million

[60] Supplementary Agreement, section 7.2, repeated in virtually identical terms in section 3.2 of the Second Conflict Resolution Agreement. ----------

seven hundred and eleven thousand four hundred and twenty four United States dollars) by which it incurred in default on August 1, 2008, the Agreement and the Complementary Agreements are hereby terminated by your own and exclusive negligence and fraud."----------

523. The Tribunal will firstly analyze the challenges of YPF to the termination of AESU and Sulgás for this cause (a), then the position of AESU and Sulgás (b), and finally its own analysis(c). ----------

a. Position of YPF----------

524. As it was hereinbefore analyzed, YPF firstly argues that the remedy for termination was not available for AESU and Sulgás in cases of failure to pay DOP penalties, as the waiver of AESU and Sulgás to terminate the Agreement for the deficiencies in the delivery of gas also include the breaches of DOP penalties, which is its replacement provision.----------

525. However, even if the remedy for termination would have been available for AESU and Sulgás based on the cause of section 14.2.2 related to the failure to pay DOP penalties, YPF asserts that the penalty billed by AESU and Sulgás, in which they founded the termination, has never been accrued. YPF argues that, in accordance with section 14.1.2.1 of the Gas Supply Agreement (according to modifications made by the Complementary Agreements), DOP penalties were not to be accrued if the failure to deliver was caused by force majeure or act of God. ----------

526. According to YPF, in dates in which AESU and Sulgás claimed for the payment of DOP, YPF was under a force majeure event and it timely informed such situation to AESU and Sulgás. YPF holds that the delivery of the 68% of the gas counted by AESU and Sulgás to bill the DOP penalty was affected by a situation of force majeure caused by labor unions. The remaining gas counted by AESU and Sulgás was affected by a regulatory force majeure. ----------

527. In any case, YPF argues that 22% of the penalty billed was wrongly assessed, so, the quantity affected by the regulatory force majeure amounts only to 10%. ----------

528. However, even if the claimed DOP penalty has been accrued, YPF argues that the amount of the debt is not important enough so that the failure to pay it could be deemed an essential breach of the Agreement pursuant to the provisions of the Vienna Convention. However, it does not justify the exercise of the remedy for termination, which shall be the *ultima ratio* solution. Particularly, YPF argues that the debt mentioned (amounted to US$ 2,711,424) is insubstantial and even derisory in comparison to the reasons included in the Gas Supply Agreement and with the amounts that YPF excused AESU to pay in the Complementary Agreements, and therefore it does not justify the exercise of a remedy for termination. YPF argues that, although AESU and Sulgás also claimed the debt for *deliver or pay* corresponding to the days out of the winter period

2007/2008, it was not such alleged and unproven debt which possibly motivated the termination of the Gas Supply Agreement, as they had never even billed such debt, so it was never payable pursuant to the provisions of the Agreement, and moreover, the 180 days required by the Gas Supply Agreement as a reparation period did not pass. ----------

529. Additionally, YPF argues that the parties developed a binding practice in order to maintain the dispute with respect of whether the measures of the Government of Argentina constituted or not a force majeure under an "umbrella", thus allowing the continuance of the Gas Supply Agreement despite such dispute. YPF holds that this practice created a legitimate expectation on that any of the parties would exercise unilateral acts which tend to terminate the Gas Supply Agreement found in the legal position of each party as regards the dispute on the existence of a regulatory force majeure event. Therefore, the exercise of the remedy for termination based on the failure to pay a DOP penalty contravened the binding practice among the parties of, on the one hand, keeping the regulatory force majeure under an "umbrella" and, on the other hand, negotiating and adapting the Gas Supply Agreement to procure its continuance. ----------

530. YPF also alleges that the exercise of the remedy for termination was untimely. YPF holds that the DOP penalties whose failure to pay was mentioned by AESU and Sulgás to suspend and then terminate the Gas Supply Agreement were accrued apparently in different days from 2006. However, AESU and Sulgás billed such penalty to YPF on July 16, 2008, terminating the agreement on March 25, 2009. In other words, AESU and Sulgás decided to claim the payment of these penalties two years after they were apparently accrued. The foregoing occurred in a context where AESU and Sulgás had expressly acknowledged that the accrual of such penalties was in question by the parties and that in each of the Complementary Agreements it had waived its collection. ----------

531. Likewise, YPF argues that, although the termination of the Gas Supply Agreement was made in a term duly specified in the agreement (180 days after the expiration of the requirement for the payment of the Debit Note), it is not reasonable that the penalties for failure to delivery, which were apparently accrued in 2006, were billed almost a year and a half later, and that such case of breach justifies the termination of the Agreement. In this sense, YPF asserts that the parties to the Gas Supply Agreement agreed a reasonable term over which the Buyer had to issue a debit note for the penalties accrued. According to YPF, section 15.2.2 of the Gas Supply Agreement provides that the guideline of reasonability in the billing of the penalties accrued, that should not be read together with articles 49.2 and 73.2 of the Vienna Convention that establish

that the termination of an agreement shall be exercised in a reasonable term as from the breach on which it is based. ----------

532. Finally, YPF argues that the alleged DOP debt mentioned by AESU and Sulgás to terminate the Gas Supply Agreement was merely an excuse to try to evade their responsibilities pursuant to the Gas Supply Agreement and the regime of vicarious liability, seeking to transfer the liability to YPF, and so, it was in bad faith. The Tribunal will refer to this argument in Part VII.A.6 *infra*. ---------

b. Position of AESU and Sulgás ----------

533. AESU and Sulgás reject the arguments of YPF. Firstly, as it has been hereinbefore mentioned, they hold that the remedy for termination was expressly available in the Agreement in cases of breach of the obligation of YPF to pay DOP penalties, and that the waiver to terminate for deficiencies in the delivery of gas does not reach the right to terminate for failure to pay DOP penalties. ----------

534. Secondly, they assert that the breach mentioned indeed occurred. In this sense, they reject that a force majeure event has occurred which hinders the accrual of the penalty. Particularly, they reject that the measures adopted by the Government of Argentina -which limited exports- constitute an event of regulatory force majeure. Regarding the force majeure derived from the actions of labor unions, AESU and Sulgás do not deny the facts mentioned by YPF, buy they reject their classification as force majeure events pursuant to the Gas Supply Agreement. They also argue that the consideration of this force majeure is untimely and that the requirements stipulated in the agreement were not fulfilled for their notice. ----------

535. Regarding the argument of YPF on that a 22% of the penalty was wrongly assessed, AESU and Sulgás allege that the argument is untimely. ----------

536. AESU and Sulgás reject that the amount of the penalty that justify the termination was insubstantial. They argue that, although the debt billed is US$ 2,711,424, the outstanding amount is approximately US$ 30 million. In this sense, they assert that, as per the letter dated June 25, 2008, they notified YPF of the existence of a DOP penalty for approximately US$ 28 million, sum that YPF refused to pay. Therefore, the amount that justifies the termination is not insubstantial.--

537. As it has been mentioned, AESU and Sulgás reject the argument of YPF on that in the Complementary Agreements there has been a "binding practice" among AESU, Sulgás and YPF to negotiate the disagreements with the Gas Supply Agreement, that have limited the exercise of their rights to terminate. ----------

538. AESU and Sulgás also reject that the termination based on the failure to pay the DOP penalty corresponding to 2006 has been untimely. In this sense, they hold that section 18.3 of the Gas Supply Agreement allows the parties to exercise the remedies and actions at any time, without losing any of their effects. Additionally, section 15.2.2 of the Gas Supply Agreement expressly allows the parties to bill in any month during the validity of the Agreement. Particularly, the aforementioned section states that the Parties may inform the existence of a payment and bill it "in any following MONTH" and not "in the following month". In AESU and Sulgás opinion, this allows to inform, bill and collect the penalties not only in the following month but also in the following months. The Gas Supply Agreement does not establish any penalty or consequence for not filing a claim in the following month, and it should not do it, as pursuant to the Argentine law, the terms for the Statute of limitations cannot be modified by the agreement of the parties. --------

c. Analysis ----------

539. The Tribunal has already determined that the remedy for termination was available for cases of failure to pay DOP penalties. It has also determined that there was not a binding practice between the parties that may hinder the exercise of this remedy for termination. ----------

540. Then, the Tribunal will analyze the remaining arguments of YPF in relation to this cause of termination and whether the breach that motivated the termination existed, that is to say, if the DOP penalty billed was accrued by AESU and Sulgás. Subsequently, it will determine whether the amount of the penalty allegedly outstanding justifies the exercise of the remedy for termination. If so, it will analyze if the exercise of the remedy for termination was appropriate. ----------

(i) Was the DOP penalty mentioned by AESU and Sulgás to terminate the Agreement accrued?---

541. YPF argues that the penalty billed by AESU and Sulgás in which they founded the termination has never been accrued. YPF argues that, in accordance with section 14.1.2.1 of the Gas Supply Agreement, DOP penalties were not to be accrued if the failure to deliver was caused by force majeure or act of God. According to YPF, in dates in which AESU and Sulgás claimed for the payment of DOP, YPF was under a force majeure event. Additionally, YPF argues that a part of the penalty claimed was wrongly assessed. As it has been hereinbefore mentioned, AESU and Sulgás reject those arguments. ----------

542. Below, the Tribunal will analyze the content of the right of AESU and Sulgás to collect DOP penalties, for then determining if the penalties mentioned by AESU and Sulgás to terminate the Gas Supply Agreement were accrued. ----------

(a) The right of AESU and Sulgás to collect DOP penalties. ----------

543. In the original version of the Gas Supply Agreement, AESU and Sulgás were entitled to collect DOP penalties except that the breach of YPF was due to an event of "force majeure or act of God", as it was defined in the Agreement. Particularly, section 14.1.2.1 of the original version of the Gas Supply Agreement provided: ----------

"14.1.2.1) DELIVER OR PAY ----------

Except in the event of FORCE MAJEURE OR ACT OF GOD, in case of the failure of YPF to deliver the DAILY SCHEDULED AMOUNT, in the POINT OF DELIVERY, being the failure either total or partial, YPF shall pay PETROBRAS as a unique and total compensation for such breach the sum of the REMAINING QUANTITY, multiplied by a hundred and fifty per cent (150%) of the COMMODITY PRICE 1 in force in the MONTH when the failure had occurred." (Emphasis added) ----------

544. In turn, the force majeure or act of God event is ruled by section 17 of the Gas Supply Agreement, as follows: ----------

"Section 17 –FORCE MAJEURE OR ACT OF GOD ----------

17.1) DEFINITION, SCOPE AND EFFECTS ----------

The definition, scope and effects of the FORCE MAJEURE OR ACT OF GOD shall be the ones specified in the Argentine Civil Code (section 513, and related sections) and in this Section 17." ----

17.2) FORCE MAJEURE OR ACT OF GOD OF YPF ----------

FORCE MAJEURE or ACT OF GOD OF YPF stands for any FORCE MAJEURE or ACT OF GOD that prevents YPF from offering PETROBRAS any quantity of GAS that YPF would be otherwise obliged to offer to PETROBRAS by virtue of this AGREEMENT, including the impossibility to supply and/or transport GAS to the POINT OF DELIVERY by the FORCE MAJEURE OR ACT OF GOD OF TGN or by FORCE MAJEURE OR ACT OF GOD OF TGM, or comply with any other obligation of YPF by virtue of this AGREEMENT which was not an obligation to pay outstanding sums of money pursuant to the AGREEMENT. ----------

In the event of FORCE MAJEURE OR ACT OF GOD OF YPF, YPF shall not be liable before PETROBRAS for damages, being the compliance with the duties of the PARTIES suspended, which duties were made after the FORCE MAJEURE OR ACT OF GOD, as long as the cause that gave rise to it lasts, including the PRICE OF SEGMENT A OF TRANSPORTATION and the PRICE OF SEGMENT B OF TRANSPORTATION. ----------

[...] ----------

17.4) NOTICE AND RESTORATION OF USUAL PERFORMANCE ----------

Any of the PARTIES or PARTICIPANTS who invoke a release from its contractual duties due to FORCE MAJEURE or ACT OF GOD: ----------

a) shall immediately notify the other PARTY about the circumstance mentioned as FORCE MAJEURE or ACT OF GOD; ----------

b) in the aforementioned FORMAL NOTICE, or as soon as possible after such notice, shall give the information on the event, the actions and the time deemed necessary to normalize the situation, supporting said information with any document or record available; ----------

c) shall immediately grant the other PARTY when possible, the access to any facility affected by such event for inspect the place, at the own cost and risk of the PARTY who makes the inspection;

d) shall perform at its own cost and expense a REASONABLE AND PRUDENT OPERATION in order to remedy the failure, or mitigate the consequences of said situation over a shorter term as soon as possible; ----------

e) in relation to any of the matters affected by the event of FORCE MAJEURE OR ACT OF GOD, shall exercise its rights in good faith and duly considering the interests of the other PARTY, providing, however, that any of the PARTIES shall be forced to agree through the mediation of a labor conflict, unless in the way they deem proper at its own opinion, and providing, moreover, that YPF shall not be obliged to replace the GAS with another natural gas." ----------

545. In turn, sections 513 and 514 of the Argentine Civil Code set forth: ----------

"SECTION 513. –The debtor shall not be liable for the damages and interest originated to the creditor for the failure to comply with the duty, when they turn to be force majeure or act of God events, unless debtor would have not taken the responsibility for the consequences of the force majeure event, or this had been its fault, or it had felt in arrears, that was not motivated by force majeure or act of God. ----------

SECTION 514. –Act of God is that one that has not been foreseen, or if foreseen, it could not be avoided." ----------

546. In the Complementary Agreements, the parties agreed on several matters for the "winter periods" from 2004 to 2009 that affected the duty of YPF to pay DOP penalties in cases of failures to deliver. Particularly, in the First Conflict Resolution Agreement, the parties kept the general standard pursuant to which the duty to pay the DOP penalty arose despite that the failure to deliver was caused by an alleged event of force majeure or act of God, but during the winter periods of 2005, 2006 and 2007 YPF was engaged in paying the penalty even in the cases when the failure to deliver was caused by restrictions imposed by the Government of Argentina, which

constituted a cause of force majeure or act of God for YPF but not for AESU and Sulgás (hereinafter also referred as "regulatory force majeure".) Section 7.2 of the First Conflict Resolution Agreement replaced section 14.1.2.1 of the Gas Supply Agreement for the winter periods of 2005, 2006 and 2007, as follows: ----------

"For the Period 2005/2006/2007 {previously defined as the periods between May 16 and September 15 of those years}, section 14.1.2.1 of the Agreement will be replaced with the following: ----------

'14.2.1.1) DELIVER OR PAY ----------

Except in case of an YPF ACT OF GOD OR FORCE MAJEURE event, in case of YPF non-compliance with its obligation to provide gas, at the POINT OF DELIVERY, the DAILY SCHEDULED AMOUNT, whether total or partial non-compliance, YPF shall pay Sulgás as sole and complete compensation the difference between the variable cost of the Power Station generation (duly documented by AESU) and the actual and documented cost of the energy that AESU had to buy through one or more energy sales agreement to compensate for its failure to generate for omission to deliver to YPF. In case AESU does not enter into one or more agreements to obtain alternative energy which cannot generate for the lack of gas and shall buy energy in the spot market, YPF shall pay as sole and complete compensation the difference between the variable cost of the Power Station generation (duly documented by AESU) and the actual and documented price of the energy acquired by AESU in the spot Market, plus actual and documented penalties, which AESU is obliged to pay for the failure to have an agreement. It is understood that Sulgás and AESU shall make all reasonable efforts to mitigate any cost to be compensated by YPF. ----------

Notwithstanding the foregoing, ***YPF, with spirit of contribution, also undertakes to pay the previously mentioned penalty for failing to provide at the POINT OF DELIVERY the DAILY SCHEDULED AMOUNT, in case the provision deficiency is caused by a restriction imposed upon YPF by the Energy Secretariat or the Fuel Under-secretariat, or any other competent authority, pursuant to Resolutions SE N° 265/2004, 659/2004 or the ones that may replace them in the future, restrictions which YPF considers AN ACT OF GOD OR FORCE MAJEURE EVENT but AESU does not consider them as such***". (Emphasis added) ----------

547. This agreement was later extended to the winter periods of 2008 and 2009. It also added to the second paragraph a reference to the restrictions imposed by Resolution SE No. 1681/2004 and 752/2005 (section 5.2 of the Supplementary Agreement). ----------

548. Notwithstanding the inclusion of the second paragraph of section 14.1.2.1 amended, YPF argues it was never changed the general standard establishing that the penalties for failure to deliver (DOP) in the cases of force majeure and act of God were not accrued. YPF argues that the second paragraph was included "with an aim of cooperation to keep the image of an agreement of firm supply against the regulatory agency of electricity of Brazil over the 'winter period'". (Y-MD, ¶359). ----------

549. In this sense, the witness for YPF, Teodoro Marcó, explains that the idea behind the "winter period" was that AESU would not nominate gas in winter. However, AESU could not openly declare itself that he could not generate electricity, as the agreement it entered into with the distribution companies foresaw a physical and firm support of electricity. Consequently, it was finally agreed that during the winter period, AESU would not accrue TOP for taking quantities of gas less than the volumes engaged and it should be declared with "flexibility zero" against the Operador do Sistema Eléctrico de Brasil ("ONS") so that the power plant was not required to generate electricity. This was accompanied by a contractual penalty if it did not make such declaration, losing the right to collect DOP (section 7 of the First Conflict Resolution Agreement.) However, this did not eliminate the risk that the ONS also required AESU to generate energy, and in that case AESU did not have other alternative than nominating gas to YPF. In this case, YPF should supply gas, even during the period of the winter period (Deposition of Teodoro Marcó, ¶¶17-24). Mr. Marcó asserted that the second paragraph of section 14.1.2.1 was included in this context, and it did not imply an amendment to the aforementioned general rule: ----------

"Section 14.1.2.1 of the Gas Export Agreement was not amended with respect to that YPF did not incur in DOP if there was a force majeure event. We also added a clause that expressly clarified that the dispute on whether the interference measures adopted by the Government of Argentina constituted or not regulatory force majeure remained among the parties, dismissing and not recognizing rights in this regard. With the purposes of formally keeping the appearances before the Brazilian regulatory agency of that, even in winter, AESU was entitled to obtain gas, we agreed that YPF would pay DOP, despite the existence of a force majeure cause, if AESU was urged to dispatch although it had declared itself with zero inflexibility." (Deposition of Teodoro Marcó, ¶22) ----------

550. AESU and Sulgás do not disagree with this interpretation of YPF. However, the Tribunal cannot ignore the content of section 14.1.2.1 amended by the First Conflict Resolution Agreement and the Supplementary Agreement. In the Tribunal's opinion, as a consequence of

these agreements, the right to collect DOP penalties due to the failure to deliver during the winter periods of 2005, 2006, 2007, 2008 and 2009 was not accrued in the cases that the delivery of gas was hindered by a force majeure event or act of God, save that the alleged force majeure event or act of God were the restrictions to export imposed by the Government of Argentina (that is to say, regulatory force majeure), in which case the obligation to pay the penalty would be accrued. On the contrary, in the terms other than these winter periods, any force majeure event or act of God pursuant to the Agreement (regulatory or otherwise) would hinder the right to collect DOP penalties. ----------

551. YPF argues that, on the dates considered by AESU and Sulgás to assess the claimed DOP (i.e., the dates on which apparently YPF did not supply nominated gas, thus creating the obligation to pay DOP), YPF was under a force majeure event that hindered the gas supply; such situation was timely informed to AESU and Sulgás. ----------

552. The Tribunal holds that the dates considered by AESU and Sulgás to assess the DOP claimed correspond to January, February, March, April, September (days 19 and 20), October, November and December 2006 (Annexes A17/S17, Y-81, Y-134). Therefore, all days considered to assess DOP were not included in the winter period (which lasted from May 16 to September 15.) ----------

Period	**Volume (m3)**
January	426,028
February	906,334
March	99,292
April	1,207,180
September [days 19 and 20]	623,754
October	592,880
November	8,221,349
December	50,991
Total	**12,127,808**

553. As the days assessed were not included in the winter period, the original section 14.1.2.1 of the Gas Supply Agreement is applied to the right to collect DOP penalties, according to which

section the right to collect DOP is not accrued when the failure to deliver was caused by a force majeure or act of God event. The amendment to section 14.1.2.1 of the Gas Supply Agreement is not applied to the terms during the winter period, period in which the deliveries hindered by the regulatory force majeure would be accrued. ----------

554. YPF asserts that it was hindered to deliver the gas volumes mentioned in those dates due to two different force majeure events: a labor conflict that paralyzes the gas exports and the transportation system (which is called "force majeure caused by labor unions"), and the restrictions to exports imposed by the Government of Argentina (which is called "regulatory force majeure".) Additionally, it argues that 22% of the debt claimed was wrongly assessed. ----------

(b) Was the 22% of the DOP penalty claimed for 2006 wrongly assessed? ----------

555. YPF alleges that the quantity claimed by AESU and Sulgás as compensation for the DOP penalty is based on wrong assessments that affect 22% of the amount claimed. YPF holds that AESU and Sulgás include what YPF calls "self-inflicted penalties" that correspond to days when AESU discretionally consumed volumes less than those confirmed by YPF.----------

556. Particularly, YPF argues that during January 18, 24, 25 and 28; February 3, 4, 5, 8, 10, 11, 12, 13 and 23; March 15, 16 and 17; September 19 and 20; October 1, 2, 3, 4, 6, 18 and 20; and December 1, 2006, for operative reasons of the Uruguayana power plant, AESU consumed volumes less than those confirmed by YPF and wrongly included the differences in the DOP assessment. According to YPF, the error in the assessment made by AESU was that it considered as a variable the difference between volumes nominated by it and those voluntarily used by it, instead of comparing these last volumes with the volumes that YPF confirmed as available for consumption and transportation. ----------

557. YPF argues that these "self-inflicted penalties" represent 22% of the total amount of the outstanding Debit Note for DOP that AESU and Sulgás used to suspend and then terminate the Gas Supply Agreement. This corresponds to 2,699,479 m3[61] of 12,127,808 m3, or in economic terms, US$ 596,513.28 of US$ 2,711,424 (Y-MC, ¶¶11 (ii), 92 and ss.) ----------

558. Therefore, YPF holds that the "Tax volume" (that represents the volume assessed delivered to AESU) during the days claimed does not evidence the lack of gas of YPF but the (i) unbalances made by AESU for operative reasons of the Uruguayana power station, as it is AESU that controls every day the gas volumes that effectively uses pursuant to its needs to generate electricity,

[61] In the Closing Argument, YPF refers to 2.317.379 m3 (Y-AF ¶83.) ----------

and/or the (ii) nominal restrictions (not real) of TGN implemented in order to correct the past unbalances generated by AESU in its gas field. ----------

559. YPF argues that the DOP penalty stipulated in the Gas Supply Agreement include only those situations in which the consumption of AESU/Sulgás below its nomination corresponds to a breach of YPF when omitting to confirm all the gas nominated, but AESU/Sulgás may not collect a penalty with respect to the volumes nominated and not consumed by their exclusive will. ----------

---

560. AESU and Sulgás do not question the existence of those errors in assessment. They only argue that YPF did not timely mention their existence, holding that in its deposition Dante Kogan acknowledged to have been aware of the Debit Note for DOP in July 2008, buy only within the framework of this arbitration it was asked to analyze if the volumes of gas claimed were correct (A/S-Replication, ¶¶73-81, 111-122.) ----------

561. YPF holds that such situation was not true, and argues that on July 18, 2008 replied the letter sent by AESU on July 16, 2008 to which the Debit Note was attached for the DOP penalty to be analyzed (Annexes Y-81, A17/S17), rejecting the assessment made by AESU as it is "wrong and incorrect" (Annex Y-82.) ----------

562. In the absence of a questioning of AESU and Sulgás regarding the assessment errors mentioned by YPF, the Tribunal considers that the factual arguments of YPF are proved. This means that 22% of the DOP penalty claimed does not evidence the unavailability of gas of YPF, but unbalances or other technical problems of the Uruguayana power plant or the transportation system. The Tribunal agrees with YPF in that the right to collect DOP penalties for failures in the delivery arises only when such failures are based on a breach of YPF (section 14.1.2.1 of the Gas Supply Agreement.) Therefore, the Tribunal agrees with YPF in that 22% of the penalty claimed for 2006 had not been accrued. ----------

563. The Tribunal also rejects the argument of AESU and Sulgás on that the claim of YPF is untimely. YPF timely notified AESU and Sulgás of their disagreement regarding the assessment of the penalty, although YPF did not state at that moment that the assessment should be considered “wrong and incorrect.” In fact, the letter dated July 18, 2008 (Annex Y-82) quoted by YPF rejects for “wrong and incorrect” the assessment of DOP penalties for 2007 and 2008 through the letter sent by AESU on June 25, 2008, and not the assessment made for 2006 through the letter sent by AESU on July 16, 2008. YPF replied the letter of AESU sent on July 16, 2008 through the letter sent on August 1, 2008 (Annex Y-83), in which YPF ratified and repeated

the terms of its letter dated July 18 and rejected the terms of the letter of AESU dated July 16. YPF particularly rejects the calculation made for the DOP penalty, but it neither expressly points out that it considered that the assessment is wrong and incorrect, nor alleges that it was caused by the existence of "self-inflected penalties." Particularly, YPF states: ----------

"In this regard, we hereby ratify and repeat the terms of our note dated July 18, 2008, and reject each and every term of your note, in particular the calculation made, considering that the claim to collect sums of money as "Deliver or Pay" pursuant to the Agreement is inadmissible and illegitimate. This is as the Agreement expressly establishes that the penalties for failure to deliver the Daily Scheduled Amount (Deliver or Pay) are not applicable when such failure to deliver is caused by force majeure or act of God events (in this case the intervention of authorities) that suspend the obligations of YPF and release it from any contractual or tort liability for the failure to make the volumes of natural gas available pursuant to the Agreement. In any case, we hereby prove that even in the hypothetical case (that we dismiss) in which it is considered that there has not been an event of force majeure or act of God, there are other causes such as the contractual breaches of AESU and the break in the reciprocal contractual relation that obstruct the admissibility of a sum as Deliver or Pay. Finally, ***we reject the assessment made by you in the note and in the page thereto attached***." (Annex Y-83, emphasis added.) ----------

564. In turn, AESU and Sulgás argue that YPF should have subjected itself to the procedure established in section 15.5 of the Gas Supply Agreement. This clause sets forth: ----------

"In case of disagreement with respect to any invoice and/or debit note, the PARTY who disagrees ***shall timely pay the amount which is not in dispute*** and immediately notify the other PARTY of the reason of such disagreement. At the election of the PARTY who shall pay, ***the amount in dispute shall be: (i) paid subject to a potential reimbursement, or (ii) deposited in an "escrow" account*** that accrues interests in a bank located in New York, provided by the mutual agreement of the PARTIES and PARTICIPANTS. PETROBRAS [Sulgás] and YPF agrees on negotiating in good faith, as soon as possible, once they were notified of any invoice or debit note in question, in order to try to solve such dispute in a mutual agreeable manner. However, if such dispute is not resolved in a term of (30) days, therefore, at YPF and PETROBRAS request, the dispute shall be subject to arbitration pursuant to section 20.2 [...]." (Emphasis added) ----------

565. In this case, YPF questioned the entirety of the penalty billed. Consequently, YPF had two alternatives: (i) pay it, subject to a potential reimbursement, or (ii) deposit it in an "escrow" account. There is not a dispute that YPF did not adopt any of these measures, and so, it

contravened section 15.5 of the Gas Supply Agreement. However, this does not modify the conclusion of the Tribunal on that the penalty was not accrued for being wrongly assessed. In fact, the Tribunal has resolved the dispute among the parties regarding the 22% of the penalty, and it has determined that it is not outstanding. The contravention of section 15.5 of the Gas Supply Agreement by YPF shall be construed as a violation of a procedure established in the Gas Supply Agreement, and AESU and Sulgás are entitled to claim the compensation for damages that this violation might have caused, if any, pursuant to the general rules during the damages stage of this arbitration proceeding. ----------

(c) Was there any force majeure event caused by labor unions that hindered the accrual of 68% of the debt for DOP? ----------

566. YPF argues that 68% of the debt for the DOP claimed by AESU and Sulgás has never been accrued as the deliveries were hindered by an alleged event of force majeure caused by labor unions. ----------

567. YPF asserts that between November 15 and 23, 2006, there was a labor union strike in the facilities for the production and transportation of natural gas in the different production areas of Argentina, including Neuquén Basin, which affected all the operators of the gas industry, including YPF and TGN. YPF explains that the labor unions of the oil and gas sector claimed the federal government to reduce the taxable price of the income tax applicable to the salaries of the workers of said unions. According to YPF, the measure taken by the labor unions caused a political conflict out of the natural gas producers' control, whose solution depended on a measure of the federal government in matters of income tax. ----------

568. YPF holds that this conflict forced it to suspend the operation of "Loma La Lata" oilfield and, in particular, the natural gas injection coming from there in the transportation systems operated by TGN and Transportadora de Gas del Sur SA ("TGS".) On November 15, 2006, the Energy Secretariat ordered the total cut of exports from Neuquén Basin and the ban on carriers to transport natural gas destined to export. For the following days, the Energy Secretariat allowed the export of several volumes, until November 24, when the transportation system was normalized. Particularly, on November 16 the export of 1,200,000 m3/d intended to supply the AESU power plant was authorized, on November 17, the export of 2,000,000 m3/d, and on November 18, YPF confirmed the total volume nominated by AESU (2,700,000 m3/d.) However, YPF asserts that between November 18 and 23, TGM authorized the transportation of volumes of natural gas lower than those confirmed by YPF, explaining that, according to Dante Kogan,

"maybe {TGM} should use the gas injected so that the gas pipeline could recover the stock of gas or line-pack that it had lost as a consequence of the time that the supply of gas was stopped due to the labor union strike." (Testimony of Dante Kogan, ¶¶69-82, Annex Y-67.) ----------

569. YPF argues that this event constituted an act of God or force majeure event pursuant to the Gas Supply Agreement (Y-MC, ¶¶50-69). Quoting the Legal Opinions of Aida Kemelmajer and Antonio Boggiano, YPF holds that "the general strikes should be considered as force majeure events, particularly those of political origin, whose solution is out of the worker's control" (Y-MC, ¶50). ----------

570. Additionally, YPF points out that section 17.4(e) of the Gas Supply Agreement expressly provided the strike as a force majeure event, even when it was not general but only affected the party who claims, in which case it was not obliged to mediate. YPF argues that, taking into account that this case was a general labor union conflict of a political nature, whose solution was completely out of producers' control, the strike that affected the supply from November 15 to 23, 2006, undeniably constitutes a force majeure event. ----------

571. YPF holds that this force majeure event caused by labor unions was both public and evident, as well as notified to AESU through several emails sent by TGN, TGS and the Argentine authorities to the different operators of the system, among whom there was AESU. YPF adds that AESU did never question the force majeure event caused by labor unions until the DOP was billed two years after the strike occurred. ----------

572. YPF asserts that this force majeure event caused by labor unions affected 68% of the gas volume counted by AESU and Sulgás in order to assess the DOP claimed in the Debit Note attached to its letter dated July 16, 2008 (particularly, affected 8,211,349 m3 of the total 12,127,808 m3 counted to assess the DOP debt, equivalent to US$ 1,843,768.32 of the US$ 2,711,424 claimed.) Consequently, YPF argues that 68% of the alleged debt for the DOP claimed by AESU and Sulgás has never been accrued as the deliveries of gas were hindered by an alleged event of force majeure caused by labor unions. ----------

573. AESU and Sulgás reject the allegation of force majeure caused by labor unions of YPF. Although they do not reject the facts alleged by YPF, they reject their considerations as force majeure events pursuant to the Gas Supply Agreement, and they argue that the consideration of such force majeure is untimely and that the requirements imposed in the agreement for their notification were not followed. AESU and Sulgás also allege that YPF failed to comply with the

procedure established in section 15.5 of the Gas Supply Agreement for those cases in which the admissibility of the DOP penalty is in question. (A/S Replication, ¶¶73-81, 91-110.) ----------

574. Firstly, AESU and Sulgás allege that, pursuant to the Gas Supply Agreement, YPF was obliged to immediately notify the existence of a force majeure event (section 17.4 (a)). This notice shall be formal, as detailed in the Gas Supply Agreement, and it shall be accompanied by information (including the supporting documents) about the event, actions and time deemed necessary to normalize the situation (section 17.4 (b)). Moreover, YPF should give to the affected Party immediate access to the affected facilities to conduct an inspection in the premises. AESU and Sulgás assert that YPF did not comply with any of these obligations. ----------

575. Particularly, AESU and Sulgás assert that YPF has never informed them of this alleged force majeure event caused by labor unions (neither through a formal notice nor through any other means.) They also denied to have been informed through emails sent by TGN, TGS and the Argentine authorities. They assert that "neither Sulgás nor AESU are aware of having received an email related to this topic" (A/S-Replication, ¶99.) In any case, in the emails attached by YPF of Annex Y-67 it is not mentioned that the detailed facts have been therein considered as force majeure events pursuant to the Gas Supply Agreement. ----------

576. AESU and Sulgás add that the emails attached by YPF (Annex Y-67) do not comply with the requirements of notification included in the Gas Supply Agreement. In this sense, they argue that one or more emails sent by third parties not related to the Party that should plead the force majeure event, in which said event is not mentioned and in which there is no prove of their effective reception, do not comply with the requirements of the Gas Supply Agreement. In any case, they point out that the duty to notify belongs to the Party that alleges to suffer an event considered as force majeure, and that it cannot be released from such breach through the action of a third party (in this case, TGN.) This notice shall be addressed to the affected Party (in this case, Sulgás), and not to any participant (in this case AESU.) They add that YPF does not even mention that it informed any situation, by any means, to Sulgás. ----------

577. Beyond the failure to comply with the formal requirements of notification, AESU and Sulgás reject the classification of the labor union conflict as a force majeure event pursuant to the Gas Supply Agreement. In this sense, they argue that "as YPF did not immediately communicate the facts which are now referred by YPF as force majeure events, it should be pointed out that, at that moment, it did not consider those events in that way, whether having or not a reason to do it" (A/S-Replication, ¶107). Even if Sulgás had been aware of the situation (which AESU and

Sulgás deny), this would have not been enough to consider that YPF was facing a force majeure event, to the extent that YPF did not mention it in that way. In the absence of such consideration, neither Sulgás nor AESU were under the conditions, or had a reason to evaluate if a certain situation of fact did really meet all the conditions to be considered as force majeure or act of God. AESU and Sulgás argue that this was particularly true, considering that YPF, in previous occasions, could deal with similar events without committing breaches of the Gas Supply Agreement (AESU and Sulgás quoted a letter sent by YPF on April 15, 2006 (Annex A15/S15) in which it informed that it could minimize the impact of the requirements of Additional Injection and Permanent Additional Injection despite the blocking of roads and protests in the Province of Neuquén.) ----------

578. Finally, AESU and Sulgás also allege that YPF failed to comply with the procedure established in section 15.5 of the Gas Supply Agreement for those cases in which the admissibility of the DOP penalty is in question. According to AESU and Sulgás, even if YPF did not agree with the Debit Note, this provision forced it to pay such note subject to reimbursement or to deposit it in an "escrow" account. If after negotiations among the parties there was not an agreement, the dispute should be subject to arbitration. However, YPF did neither pay the Debit Note nor deposit it in escrow; on the contrary, it opted for suspending its obligations and rejecting the claim made by AESU and Sulgás. ----------

579. YPF rejects the arguments of AESU and Sulgás (Y-Rejoinder, ¶¶51-74). With respect to the arguments related to the failure to notify, YPF asserts that it formally and immediately notified AESU and Sulgás of the existence of an event which was considered force majeure, complying with the provisions of section 17.4.a) and b) of the Gas Supply Agreement, and it attached a copy of two letters sent to AESU and Sulgás on November 15 and 20, 2006, respectively (Annexes Y-210 and Y-212). YPF argues that AESU was also notified by TGN of the cuts on gas exports by virtue of the strike made by the labor unions (Annex Y-67 (pages 50 and 54) emails of TGN dated November 15, 2006, addressed to the operators of the affected market, among which there was AESU.) Finally, YPF holds that the strike made by the labor unions and its consequence –cut on the export of gas- were publicly known (see Annex Y-67 where there are several articles of the Argentine press; Annex Y-213, article of the Brazilian press), and that according to the Argentine law, the debtor is released from proving a force majeure event when it is public and evident (Y-Rejoinder, ¶71, quoting Annexes YL-189 and YL-208.) Therefore, YPF argues that the alleged omission of notice lacks grounds, and in any case "it is a reproach exclusively ritualistic that do

not alter the consideration of the circumstances as force majeure or act of God, pursuant to the provisions of sections 513 and 514 of the Civil Code, and it has not damaged AESU and Sulgás" (Y-Rejoinder,¶ 74.) ----------

580. YPF also rejects the arguments of AESU and Sulgás in relation to section 15.5 of the Gas Supply Agreement. YPF argues that this section obliges the party to whom the invoice or debit note are addressed to deposit the amount in question; it is not logical to expect that YPF would deposit in escrow or pay invoices subject to a potential reimbursement for items that had never been accrued. On the contrary, YPF argues that AESU and Sulgás were those who contravened this clause when they did not subject the dispute on DOP to arbitration before suspending their obligations to terminate the Agreement, and when they did not pay several invoices due to YPF through the years. In any case, YPF holds that the alleged breach of clause 15.5 of the Gas Supply Agreement is irrelevant to decide the legitimacy of the Agreement's termination, since considering if the penalties billed by AESU and Sulgás were accrued or not is the most important fact to know. (Y-Rejoinder, ¶¶91-104) ----------

581. The Tribunal holds that there is not dispute related to the facts pleaded by YPF. AESU and Sulgás do not deny that between November 15 and 23, 2006, there was a labor union strike in the facilities for the production and transportation of natural gas in the different production areas of Argentina, including Neuquén Basin. They do not either deny, as a consequence of this conflict, that on November 15 the Energy Secretariat declared the total cut on exports from Neuquén Basin and the ban on the carriers to transport gas for export and that the gas exports were restored for the following day until their normalization on November 24. AESU and Sulgás hold that YPF ratified the total volume nominated on November 18, and they seem to question the reasons given by YPF to justify the delivery below this ratification between November 18 and 23 (which according to YPF was due to the fact that "probably {TGM} had to use the gas injected so that the gas pipeline could recover the stock of gas or *line-pack* that had lost as a consequence of the time in which the supply of gas was stopped for the block made by the labor union." (Testimony of Dante Kogan, ¶82). However, they do not provide another explanation. Considering this lack of dispute, the Tribunal states that the events alleged by YPF were proved. ---

582. The Tribunal also holds that AESU and Sulgás do not disagree in that a labor union strike, as the one detailed by YPF, qualifies as a force majeure event pursuant to Argentine law, and in that the labor conflicts such as the one in question were expressly included in section 17.4(e) of the Gas Supply Agreement. However, AESU and Sulgás disagree in that if YPF pleaded the labor union

conflict as a force majeure event pursuant to the Gas Supply Agreement, and if it made the corresponding notice with the adequate requirements (and to the right person). ----------

583. Despite the arguments of AESU and Sulgás, the Tribunal considers that YPF has sufficiently proved that it sent a formal notice, both to AESU and to Sulgás, according to the provisions of section 17.4 of the Gas Supply Agreement, and that, in these notices, it mentioned the labor union strike deemed as a force majeure event to justify the interruption of the gas delivery. Particularly, YPF includes as Annex Y-210 a letter addressed to Sulgás the same date in which the conflict arose (accompanied by a report as proof of the fax sending), in which it expressly notifies Sulgás about the strike and pleads the force majeure pursuant to the Gas Supply Agreement. Specifically, the letter states: ----------

"Today, there have been important conflicts in the oilfields of Neuquén Basin, including –but not limited to- the oilfields of Loma de la Lata and El Portón operated by YPF S.A., which caused the stop of the production activities therein. ----------

In fact, persons who said to be members of labor unions have entered the oilfields by force, stopping in that way the activities therein. ----------

YPF has acted to preserve the integrity of the staff and the premises. Likewise, the corresponding filings were made before the competent authorities. ----------

Any deficiency in the natural gas supply that may be produced shall be caused by the force majeure event hereinbefore explained." ----------

584. The question is whether the total volume of gas that YPF failed to deliver between November 15 and 23 was hindered by the force majeure event caused by labor unions, or if a part of it was hindered by the regulatory force majeure. In this sense, YPF informed AESU through the letter dated November 20, 2006 (Annex Y-212) in relation to the events notified on November 15, that: ----------

"In this regard, we hereby point out that oilfields of Neuquén Basin operated by YPF are ***not currently affected by the labor unions conflicts mentioned in our letter dated November 15, 2006***. However, the ***Energy Secretariat*** (according to the instructions received by email today) ***keeps maximum volumes to export by virtue of which we are forced to affect the supply of natural gas pursuant to the Agreement.*** Likewise, we have received the new schedules made by Transportadora de Gas del Norte S.A. that modify the volumes authorized to export for YPF. --------

YPF does not have other choice than complying with such instructions, in order to avoid bigger losses for the same company and its customers, such as the possible suspension or expiration of the relevant authorizations to export." (Emphasis added) ----------

585. Additionally, the witness Dante Kogan declared (without being its testimony repealed by AESU and Sulgás) that "the restrictions to transportation of TGN during November 18 to 23, 2006" refer to the "time that took to the carrier company to recover the necessary levels of gas for a correct operation of the gas field, after the labor union strike of previous days." (First Testimony of Dante Kogan, ¶82.) ----------

586. By virtue of the foregoing, the Tribunal concludes that the failures to deliver of YPF analyzed in this part were caused by a force majeure event of labor unions. Pursuant to section 14.1.2.1 of the Gas Supply Agreement, the right of Sulgás to collect the DOP penalty for failures to deliver was not accrued in cases in which such delivery was hindered by a force majeure event. Therefore, during those days the DOP penalty claimed by AESU and Sulgás was not accrued. This affects 68% of the alleged debt for the DOP penalty for 2006 mentioned by AESU and Sulgás to terminate the Gas Supply Agreement. ----------

587. With respect to this argument of AESU and Sulgás on that YPF did not follow the procedure established in section 15.5 of the Gas Supply Agreement, the Tribunal repeats what has been stated in paragraph 565 *supra*: Although YPF was contractually obliged to pay the amount in question which is subject to a potential reimbursement, or deposit it in an "escrow" account, the breach of YPF of this obligation does not modify the conclusion of the Tribunal on that the 68% of the penalty billed had not been accrued. Therefore, the contravention of section 15.5 of the Gas Supply Agreement of YPF shall be construed as a violation of the procedure established in the Agreement, and AESU and Sulgás are entitled to claim a compensation for damages derived from this contravention, if any, pursuant to the general rules during the stage of damages of this arbitration. ----------

(d) Was there any regulatory force majeure event that hindered the accrual of DOP not affected by the force majeure event caused by labor unions? ----------

588. YPF holds that the remaining 10% of the debt for the DOP billed by AESU and Sulgás has never been accrued, for being YPF under regulatory force majeure events. Additionally, YPF argues that the existing dispute between the parties regarding the regulatory force majeure hindered AESU and Sulgás to claim the payment of DOP penalties, whose accrual depended on the absence of such force majeure. ----------

589. The Tribunal has already rejected the second argument of YPF (see paragraphs 514 and ss, *supra*). With respect to the regulatory force majeure, the Tribunal holds that AESU and Sulgás do not dispute that the amount of DOP affected by this regulatory force majeure is approximately 10% of the amount mentioned to terminate the Agreement, that is to say, approximately US$270,000. The question then is whether the amount is important enough to justify the exercise of the remedy for termination pursuant to the Vienna Convention. The Tribunal holds in this sense that AESU and Sulgás have alleged that the real amount of the DOP debt is higher than that mentioned to terminate, as another debt of YPF for DOP shall be added to it for approximately US$ 28 million. Therefore, in order to be efficient, before determining if the regulatory force majeure alleged by YPF exists, the Tribunal will analyze the DOP debt and if it justifies the right to exercise the termination. ----------

(ii) Does the amount allegedly outstanding justify the exercise of the remedy for termination? --

590. YPF argues that, even when the penalty claimed by AESU and Sulgás would have been accrued (question denied by YPF), the exercise of the remedy for termination provided in section 14.2.2(ii) was illegitimate and abusive, as the penalty mentioned (amounting to US$ 2,711,424) is insubstantial to justify the termination. According to YPF, the failure to pay a debt for such amount is not important enough to be considered as an essential breach that may justify the remedy for termination pursuant to the Vienna Convention. ----------

591. Supported by the legal opinion of Antonio Boggiano, YPF holds that, according to the Vienna Convention, the termination of the agreement shall be exercised as an *ultima ratio solution*, in the sense that this remedy may only be used (i) when there has been an "essential breach" of the agreement, or (ii) when a supplementary reasonable term for the compliance with the obligations of the breaching party has been granted but it has not been produced or the party rejects to comply; and provided that (iii) the termination would be exercised in a reasonable term from the respective breach (article 49 of the Vienna Convention, Annex YL-31 and Legal Opinion of Antonio Boggiano,¶ 130.) ----------

592. YPF adds that, in order that the breach would be considered essential, and in that way, as a valid cause for termination, this has to meet two essential requirements: (i) the substantial lack of what the person affected by the breach was entitled to wait by virtue of the agreement; and (ii) the foreseeable nature of the damages caused by the breaching party and/or by a reasonable person of the same condition (see article 25 of the Vienna Convention, Annex YL-31 and Legal Opinion of Antonio Boggiano, ¶134.) ----------

593. In view of the foregoing, and considering the economic importance, the development that the Gas Supply Agreement has had and the cancellations for sums much higher than those made by YPF, YPF argues that the failure to pay the DOP penalty mentioned by AESU and Sulgás (for the sum of US$ 2,711,424) did not cause an essential damage to AESU and Sulgás in order to prevent them from what they were substantially entitled to expect by virtue of the Gas Supply Agreement. Additionally, the decision of AESU and Sulgás to terminate the Agreement constituted an unreasonable and disproportionate exercise of the right for termination granted to the parties pursuant to the Gas Supply Agreement and the Complementary Agreements. --------

594. YPF points out that the Debit Note by which AESU and Sulgás terminated the Gas Supply Agreement amounted only to US$ 2,711,424, which qualifies as a derisory amount compared to the amounts included in the Gas Supply Agreement and to the amounts which YPF excused AESU from paying in the Complementary Agreements. Particularly, YPF states that: ----------

a. The debt owed by AESU and Sulgás as *take or pay* in 2004 was US$ 34,072,115, that is to say twelve times the DOP amount mentioned to terminate the agreement. ----------
b. The amount for take-or-pay -not disputed by AESU and Sulgás- that YPF discharged in the First Conflict Resolution Agreement was US$ 4,075,641.87. ----------
c. The debt that AESU and Sulgás accrued as the price of Segment B of transportation in 2006 was US$ 9,817,923.51, that is to say, four times the alleged debt of the *deliver or pay* of YPF. ----------
d. The debt of AESU and Sulgás for outstanding taxes on export amounted to US$ 1,656,254.28 at the date of the Payment Agreement. ----------
e. The sum paid by AESU and Sulgás for Segment A of transportation, only after some days of the declaration of the suspension, was US$ 4,063,136.21. ----------

595. Likewise, YPF asserts that these debts gave rise to successive notifications of YPF; however, despite the reluctance to pay of AESU and Sulgás, they have never been used by YPF to terminate the Agreement earlier. ----------

596. AESU and Sulgás reject that the debt of YPF as DOP penalty lacks the importance to justify the exercise of their right to terminate. AESU and Sulgás hold that section 14.2.2(ii) of the Gas Supply Agreement does not require that the breach for failure to pay the debt for DOP is an essential breach in order that the remedy for termination could be exercised. In any case, they assert that it is an essential breach, since the failure of YPF to pay DOP penalties prevents AESU and Sulgás from the service alternative to the failure to deliver gas. That is to say, YPF fails to

comply not only with the obligation to deliver gas, but also with the alternative stipulated for such circumstance. In that way, YPF deprives the Gas Supply Agreement of any economic content for AESU and Sulgás. Given the seriousness of the breach, AESU and Sulgás argue that its consequences were foreseeable at the moment of executing the Gas Supply Agreement and at the moment in which such breach occurred. In any case, they argue that the breaching party (i.e. YPF) has to prove the unforeseeability.----------

597. Additionally, they argue that if the sum was so low, YPF could pay it and request the application of section 15.5 of the Gas Supply Agreement. In not doing that, YPF showed a complete disregard of its obligations.----------

598. In any case, AESU and Sulgás assert that the amount of the outstanding debt of YPF as DOP penalties is approximately US$ 30 million. In this sense, they explain that the sum of US$ 2,711,424 is only that for which the Debit Note was issued. They hold that, additionally, for 2007 and 2008, a DOP penalty of US$ 28,089,320 was accrued, which was notified to YPF as per the letter dated June 25, 2008 (Annex Y-78, A15/S15). According to AESU and Sulgás, this sum "for its own importance, justifies the suspension of the obligations" (A/S-MC, ¶643.) ----------

599. YPF acknowledges that AESU and Sulgás also claimed the payment of a DOP penalty for 2007 and 2008 for US$ 28 million, but rejects its admissibility and importance[62]. Particularly, YPF argues that this debt has never been billed pursuant to the provisions of section 15.2.2 of the Gas Supply Agreement, so it has never been due pursuant to the terms of the Gas Supply Agreement. As a consequence of the foregoing, neither YPF incurred in default, nor the 180 days stipulated in section 14.2.2(ii) of the Gas Supply Agreement passed for AESU and Sulgás to terminate. YPF argues that the actions of AESU confirmed this understanding, since in the letter dated March 20, 2009, AESU and Sulgás did not mention this alleged and not proved debt to justify the termination of the Gas Supply Agreement.----------

600. AESU and Sulgás acknowledge that they have never issued the debit note corresponding to this alleged DOP penalty for 2007 and 2008, and give for that different reasons[63]. In the Opening Brief, they assert that "if the remaining payable amount {referring to the US$ 28 million} did not give rise to the issue of a Debit Note, it was only to the extent of not increasing the damages of AESU, given the taxable impact that such issue entails" (A/S-MD, ¶574.) In the Closing Argument,

[62] The remaining arguments of YPF with respect to the admissibility of this debt are detailed in Part VII.B.3 *infra*.----------

[63] The remaining arguments of AESU and Sulgás in relation to the admissibility of this debt are detailed in Part VII.B.3 *infra*.----------

they explain that, as YPF had clearly declared that it would not pay such debt for U$S 28,089,320; and it had also rejected the payment of the Debit Note for US$ 2,711,424, it was futile to issue a debit note for higher amounts. However, they assert that "such higher amounts, in that case, were part of the damages claimed in this arbitration" (A/S-AF, ¶201.)----------

601. YPF rejects the argument of AESU and Sulgás concerning that they did not bill the DOP for US$ 28,089,320.50 in order not to increase their damages, and it asserts that YPF had to bill approximately US$ 34 million to be able to claim the payment of the amount owed by AESU and Sulgás as TOP for 2003/2004. ----------

602. Despite the arguments of AESU and Sulgás, the Tribunal concludes that it cannot consider the additional debt that, as they state, existed for approximately US$ 28 million. To the extent that such debt was not mentioned as grounds for termination, it is irrelevant with the purposes of determining whether the termination was justified, or not. It would be unlawful to examine, now, if it might have given rise to termination. ----------

603. Having determined in part (a) above that 90% of the debt mentioned by AESU/Sulgás to terminate the agreement was wrongly included as there were not failures to deliver attributable to YPF (either for assessment errors or for a force majeure event caused by labor unions), even if the remaining 10% (that YPF anyway disputes as it considers it supported by the regulatory force majeure) would have been granted, the sum would amount to US$ 270,000; amount which is evidently meager to justify the exercise of the remedy for termination. ----------

604. It is worth considering that, according to article 49 of the Vienna Convention, the buyer will be able to terminate the agreement in cases of essential breaches. In turn, article 25 of the Vienna Convention sets forth that "a breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive such party of what it is entitled to expect under the contract, unless the breaching party has not foreseen such outcome and a reasonable person of the same kind in the same circumstances would not have foreseen it either". ----------

605. Given the amounts involved in the Gas Supply Agreement, it is evident that the failure to pay a debt of US$ 270,000 does not cause AESU and Sulgás such damage to deprive them of their rights pursuant to the agreement. This failure to pay, considered in isolation, does not either "give grounds to infer that an essential breach will occur with respect to future deliveries", in which case article 73(2) of the Vienna Convention allows the termination of the Agreement in the

future. It is worth mentioning that the Tribunal would get the same conclusion even in the case that YPF owed the total US$ 2,711,424 billed. ----------

606. Argentine domestic law gives an identical solution. Although neither the Civil Code nor the Commercial Code expressly requests it, it is peacefully admitted -either in legal books of authority and case law- that the termination of an agreement is an extreme remedy, which may only be used in situations of severe, important or essential breaches. This is based on the principles included in section 1198, 1st part of the Civil Code, which establishes the effectiveness of the rules on good faith in the execution of agreements, and in section 1071, which bans the abusive exercise of rights[64]. ----------

4. Second cause mentioned by AESU and Sulgás to terminate the Gas Supply Agreement: the repudiation of the Agreement ----------

607. In the letter dated March 20, 2009 (Annex Y-106, A15/S15), AESU and Sulgás mentioned, as a second cause to justify the termination of the Gas Supply Agreement, the "repeated, unjustified and fraudulent repudiation of the Agreement and its obligations" by YPF. Particularly, AESU and Sulgás state: ----------

"Likewise, without prejudice to the self-sufficiency of the provisions of the paragraph above, and as an independent cause of what has been stated in 1, due to the repeated, unjustified and fraudulent repudiation of the Agreement and its obligations pursuant to the Agreement by YPF, the Agreement and the Complementary Agreements are hereby declared terminated (which is

[64] Unlike article 25 CISG, the Argentine Civil Code does not describe the breach. However, both the books of authority and case law of Argentina insist on that the creditor is able to attempt termination as an extreme remedy, and he shall prove not only that the breach was not generated by him but also the importance of the breach. See, for example, "*CNCom.* (National Court in Commercial Matters), *SALA* (Division) C, *abril 23 -984,-Peralta Hnos., S. A v. Citroen Argentina, S.A, EO del 6/8/84, p. 4*"; *"CNCom., sala B, mayo 8 -987. -Automóviles Saavedra, S. A c. Fiat Argentina, S A, LA LEY, 1987-0,419; CNCom., sala A, agosto 22 -984 -Persechini, Norberto P. c. Estevez, Manuel, LA LEY, 1985-B, 108*". The books of authority tend to found this requirement as derived from the general principles of good faith, unconscionability, and preservation of the legal act. See, for example, LORENZETTI, Ricardo *"Tratado de los Contratos". Parte General*, Rubinzal-Culzoni, Santa Fe, 2004, p. 655 ALTERINI, Atilio A., *"Carga y contenido de la prueba del factor de atribución en la responsabilidad contractual"*, LA LEY 1988-B, 947. López de Zavalia founds his assertions on the principle of good faith to support that not all thecomplains of the creditor for the breach of an obligation justifies the rescission or termination of the agreement. See LOPEZ DE ZAVALIA, Fernando J. *"Teoría de los Contratos"* [Theory of Contracts], 4a. Ed., Reimp., T. I, *Parte General*, Zavalia, Buenos Aires, 2003, page 619 ("... However, will it be enough with any complain? We agree in the doctrine of those who teach that it is not enough any complain, because admitting it would mean disregarding the scope of section 1198, so a level of breach considered pursuant to the circumstances is necessary..."). In this sense, see RAMELLA, Anteo *"La Resolución por Incumplimiento"*, Astrea, Buenos Aires, 1975, pp. 54 and ss.

not relieved by the false and not proved allegations of an alleged and nonexistent force majeure)." ----------

608. Following the analysis, the Tribunal will use this Part 4 to determine if AESU and Sulgás exercised the remedy for termination pursuant to the Agreement and the applicable law. For this cause, the Tribunal will firstly sum up the position of AESU and Sulgás (a), then YPF's position (b), and finally it will develop its analysis (c). ----------

a. Position of AESU and Sulgás ----------

(i) YPF repudiation of the Agreement ----------

609. AESU and Sulgás hold that, YPF not only repeatedly breached its obligations pursuant to the Gas Supply Agreement (particularly it failed to deliver gas) but also expressed through several letters that it would not comply with its obligations pursuant to the Agreement, and, in its opinion, this was not in force. AESU and Sulgás argue that, through these arguments, YPF repudiated the Agreement (a). AESU and Sulgás reject that these letters have been aimed at suggesting an overall renegotiation of the Agreement or expressed the regulatory changes imposed since 2004 (b). They also reject that this repudiation was compensated by partial deliveries of YPF (c). Additionally, AESU and Sulgás argue that YPF conditioned the compliance with its obligations pursuant to the Agreement to the compliance of AESU and Sulgás with services not contractually agreed (d) (A/S-MD,¶¶ 557-623.) ----------

(a) The statements of YPF represent a repudiation of the agreement. ----------

610. AESU and Sulgás assert that, from the letter dated July 27, 2006 (Annexes Y-64, A15/S15), YPF seemed to suggest that it would not comply with the Gas Supply Agreement and that this Agreement, for YPF, was not in force. This has been repeated by YPF in the following letters: -------

a. Letter dated July 18, 2008 (Annexes Y-82, A15/S15) ----------
b. Letter dated August 1, 2008 (Annexes Y-83, A15/S15)----------
c. Letter dated September 5, 2008 (Annex A15/S15 {YPF points out the Annex Y-86 but only the first page should be considered})----------
d. Letter dated September 12, 2008 (Annexes Y-88, A15/S15)----------
e. Letter dated October 21, 2008 (Annexes Y-83, A15/S15) ----------
f. Letter dated November 17, 2008 (Annex A15/S15) ----------
g. Letter dated December 4, 2008 (Annex Y-96, A15/S15) ----------
h. Letter dated January 7, 2009 (Annex A15/S15) ----------

i. Letter dated January 23, 2009 sent to TGM with copies to AESU and Sulgás (Annex A15/S15) ----------

611. The rest of the mailing quoted in this part may be found in Annex A15/S15, unless otherwise provided. ----------

612. AESU and Sulgás hold that, in all of these letters, YPF used a language that may only be interpreted as a repudiation of YPF of its obligations pursuant to the agreement and of the Gas Supply Agreement itself. AESU and Sulgás point out that the letter dated July 18, 2008, in which YPF informed AESU and Sulgás that the measures adopted by the Government of Argentina about the restrictions on natural gas exports had "disintegrated" the Gas Supply Agreement, causing the break of the reciprocal relation in the agreement. YPF added that "the Agreement is not viable under the current terms, since the purpose agreed upon by the parties when executing it failed. This is due to the authorities' intervention that has disintegrated the Agreement and based on the theory of unforeseen contingencies, the failure of the purpose of the agreement, the general principle of good faith, the unconscionability and the fairness." (Annexes Y-82, A15/S15). YPF repeated these statements in the following letters, in particular, terms such as "disintegration of the Agreement", "break of the reciprocal relation" and non-viability of the Agreement. ----------

613. According to AESU and Sulgás, in order to repudiate an agreement there is no need of legal terms, it is enough if the party that repudiates informs the other that the agreement will not be complied with. AESU and Sulgás quote article 72 of the Vienna Convention which authorizes the termination of the agreement in situations in which the breach of one of the parties is evident. Additionally, they hold that article 73 authorizes the termination of agreements with successive considerations if the failure of one of the parties to deliver gives the other party reasonable reasons to infer that an essential breach will occur in future deliveries. ----------

614. AESU and Sulgás also hold that the official comments of the *Uniform Commercial Code (UCC)* of the United States of America point out that "*[a]nticipatory repudiation centers upon an overt communication of intention or an action which renders performance impossible or demonstrates a clear determination not to continue with performance*" (UCC, article 2-610, Comment 1) [there appears the translation in Spanish of this extract][65]. They also quote Ronald A. Anderson, who says in this regard that "*[s]ince there is no regulation of the form or content of the anticipatory repudiation, any words or conduct that manifest the necessary repudiating intent is sufficient*"

[65] Translation made by the Tribunal----------

[there appears the translation in Spanish of this extract][66] (A/S-Replication ¶574, Annex AL21/SL21). Due to the foregoing, the argument of YPF according to which a complete breach of the obligations is necessary to repudiate does not have grounds.----------

615. In a context of continuous breaches, according to AESU and Sulgás, it is also sufficient that one of the parties says that the agreement is no longer viable (which means that it will continue breaching), or says with no grounds that the purpose of the agreement has failed (which again means that it will continue breaching). AESU and Sulgás argue that the continuous references of YPF to the "disintegration" of the Agreement (which classifies as a "recent legal concept" A/S-MD,¶ 586) make it easy to note that YPF considered that the agreement did not exist any longer. According to AESU and Sulgás, the message was unequivocal: that YPF would not comply with the Gas Supply Agreement, which it considered unviable, disintegrated, failed and without reciprocal relation. This was ratified by the fact that YPF continued noncomplying with the Gas Supply Agreement. ----------

616. According to AESU and Sulgás, the message of YPF should be considered not only within the framework of the continuous breaches of the obligation to supply natural gas pursuant to the Gas Supply Agreement, but also in the light of public documents of YPF in which it was clear that YPF did not make the necessary explorations and exploitations in order to comply with its obligations to supply gas in a short term basis, and within the framework of inactivity and arrears in the defense of its rights. ----------

617. AESU and Sulgás add that the repudiation of YPF of the Gas Supply Agreement was fraudulent and malicious, since that among all the alternatives it had, it opted for the one that would cause more damages to AESU and Sulgás. ----------

(b) The letters may not be construed as a notice of regulatory changes or as a proposal for the renegotiation of the Agreement. ----------

618. AESU and Sulgás reject the arguments of YPF through which it denied the existence of repudiation. Firstly, AESU and Sulgás reject that the declarations of YPF could be interpreted as an attempt to express the regulatory changes that had been produced. According to AESU and Sulgás, the repeated references of YPF to the unviability of the Agreement, and particularly to that "any reference in the present -or in the future- made to the Agreement, could not be construed as an acknowledgment of the existence of a viable agreement and/or reciprocal

[66] Translation made by the Tribunal.----------

relation in force" (letter dated October 21, 2008) make it clear that the intent of YPF was not to being involved in the Agreement. ----------

619. According to AESU and Sulgás, this conclusion was confirmed by the inconsistency of the arguments of YPF. The first letter in which YPF implies the repudiation is that dated July 27, 2006; however, in the letters of 2008, YPF asserts that the disintegration of the Agreement dated from 2004, that is to say, from the adoption of the first restrictive measures on exports. Between 2004 and 2007, the parties were involved in a continuous process of negotiation which resulted in the Complementary Agreements. According to AESU and Sulgás, YPF never informed them that it considered that the Agreement was disintegrated from 2004. Therefore, the references to this disintegration in 2008 cannot be construed as an attempt to notify AESU and Sulgás of a change in the circumstances. ----------

620. AESU and Sulgás also reject that the purpose of the letters of YPF has been to urge AESU and Sulgás to renegotiate the Agreement. YPF expresses this attempt only in some of the letters (letters dated July 27, 2006, March 27, 2008, July 18, 2008, September 5, 2008 and October 21, 2008). In other letters, YPF only mentioned that the Agreement was disintegrated and that it was not viable (letters of YPF dated August 1, 2008, September 12, 2008, November 17, 2008, December 4, 2008 and January 23, 2009). However, even if this attempt would have been expressed in all the letters, AESU and Sulgás reject that it is compatible with the argument that the Agreement was not in force stated in such letters.----------

621. Additionally, AESU and Sulgás argue that the suggestion of YPF was not a renegotiation but actually a new agreement, knowing that that was impossible. YPF knew that it had run out of gas and that it would not have it in the future, so this new agreement could only be aimed at delivering less quantities of gas, which AESU and Sulgás could not accept, given the needs of the Uruguayana Power Station. Moreover, YPF knew that the Government of Argentina would never approve a new agreement on the export of gas. Therefore, AESU and Sulgás argue that YPF could not have serious attempts to negotiate.----------

622. According to AESU and Sulgás, if YPF had really wanted to mediate, it would have also invited the rest of the Participants to the Gas Supply Agreement (TGN, TGM and PDSA) to negotiate, since section 18.4 of the Agreement stipulated that any integral renegotiation of the Agreement required the signature of all the Participants. ----------

623. In any case, AESU and Sulgás assert that they always rejected the complete renegotiation of the Gas Supply Agreement. Particularly, in the letters dated August 14, 2008, September 15, 2008

and November 3, 2008, AESU and Sulgás expressed that they were not willing to renegotiate in the terms that YPF proposed. Therefore, the insistence of YPF in the following letters could not be aimed at negotiating.----------

624. Likewise, AESU and Sulgás hold that neither did YPF try to correct the impressions of AESU and Sulgás after AESU informed the suspension of its obligations on September 15, 2008 (suspension that AESU partially justified in the repudiation of the Agreement), nor adopted any measure to avoid that AESU and Sulgás considered that the Agreement was repudiated. YPF did not question the termination of the Agreement for that reason either. ----------

625. In AESU and Sulgás's opinion, the foregoing confirms that the only thing that YPF sought was to be released from its obligations pursuant to the Gas Supply Agreement.----------

(c) The deliveries of gas of YPF do not distort the repudiation. Restrictions to gas deliveries. ----------

626. Finally, AESU and Sulgás reject the argument of YPF according to which the repudiation did not occur because, after the letter dated July 27, 2006, YPF continued delivering gas in 2006, 2007 and part of 2008. Firstly, AESU and Sulgás argue that an agreement may be repudiated even when it is being performed. Quoting article 71(1) of the Vienna Convention (the Tribunal holds that the reference is to article 72(1)), AESU and Sulgás hold that the arguments of YPF are the ones which constitute the repudiation. In any case, AESU and Sulgás argue that the deliveries of YPF for those terms were sporadic and that since 2008 (before the letter of AESU suspending its obligations) YPF has not delivered gas again. ----------

627. In relation to the quantities of gas that YPF asserts that it delivered on August 26, 27 and 28, 2008, AESU and Sulgás argued that YPF not only did not retract but also deepened its repudiation. AESU explains that it faced the urgent need of having small quantities of gas to make tests in the power station, and not having another source of gas than YPF, for those days (that is to say, during the winter period) AESU requested YPF a minimum supply for August 26, 27 and 28, 2008 (500 dam3 the first two days and 250 dam3 the third one). AESU and Sulgás argue that, YPF, knowing that the need for that gas of AESU, not only delivered 65, 3 and 172 dam3, respectively each one of those days (quantities much smaller than those requested) but also took advantage of this situation to condition the supply to the payment of withholdings on exports (without considering the regime provided in section 13.1 of the Gas Supply Agreement) and royalties due to the provinces (which was not provided in the Gas Supply Agreement and that YPF knew that AESU and Sulgás rejected to pay). AESU and Sulgás assert that, given the urgent need to make the tests, they exceptionally accepted those conditions upon those deliveries, but they

reserved their rights and made it clear that YPF was taking advantage of the need of AESU (Annex Y-151). ----------

628. AESU and Sulgás add that this situation was followed by another six letters of YPF insisting on the disintegration of the Gas Supply Agreement, with similar concepts (letters dated September 5 and 12 and October 21, 2008 and January 7, 8 and 23, 2009) and for a complete breach of the Gas Supply Agreement. Therefore, it cannot be construed that the supply of gas for those days constituted a retraction of YPF's repudiation. On the contrary, when conditioning the delivery of gas to compensations not provided in the agreement, YPF incurred in new grounds for repudiation. In any case, the following letters of YPF ratified and repeated its repudiation to the Gas Supply Agreement. ----------

629. AESU and Sulgás add that their decision to request gas and its acceptance, given the need, of the restrictions imposed by YPF cannot be considered as a discharge of AESU or Sulgás of the repudiations of YPF or its acceptance of the conditions to pay higher withholdings to export or royalties. In any case, YPF continued with its actions of repudiation which eliminate any hypothetical discharge (letters dated September 5 and 12, and October 21, 2008, and January 7, 8 and 23, 2009.) ----------

(ii) The repudiation of YPF was unjustified ----------

630. AESU and Sulgás assert that they never accepted the reasons of YPF to fail to comply with its obligations. In this sense, they point out that they never accepted the force majeure event mentioned by YPF, evidencing this repudiation both in the letters sent by AESU and Sulgás to YPF and in the Complementary Agreements. AESU and Sulgás also timely noted that what has been declared by YPF implied an unacceptable repudiation of the Gas Supply Agreement (for example, in the letters of AESU dated September 15 and November 3, 2008.) ----------

631. In any case, AESU and Sulgás argue that none of YPF arguments to justify this repudiation are valid. They assert that there has not been a break in the reciprocal relationship and that the purpose of the Agreement has not disappeared. In the opinion of AESU and Sulgás, the Agreement was still in force. ----------

632. Firstly, AESU and Sulgás hold that the restrictions on natural gas exports imposed by the Government of Argentina did not constitute a force majeure event that prevented YPF from

complying with its obligations. Particularly, the following requirements for force majeure, among others, did not occur[67]: ----------

a. The aforementioned restrictions have never prevented YPF from complying with its export obligations. ----------
b. The requirement of alienation is not met, since the conduct of YPF (the failure to explore and produce) led to the shortage of gas, and also, led the government to adopt measures to restrict exports that YPF mentioned as justification. ----------
c. The requirement of unforeseeability is not met either, since such measures did not change the regulatory framework existing at the moment of executing the Gas Supply Agreement, that according to AESU and Sulgás, highlighted that gas exports to other countries depended on the domestic supply. ----------

633. AESU and Sulgás argue that the requirements of the theory of unforeseen contingencies are not met either. Firstly, there was neither an extraordinary nor an unforeseen circumstance. There was not excessive onerousness for YPF either, and there was not a circumstance that turned the Gas Supply Agreement impossible to be complied with or that turned its compliance more grievous. Supported by a report made by AGM Finanzas, AESU and Sulgás assert that YPF could always comply through the regimes of flexibility stipulated in the rules, and its costs would neither have been impossible nor serious to bear by YPF, particularly, considering the economic success of YPF in the previous years and the minor importance of the Gas Supply Agreement in YPF general operations. ----------

634. AESU and Sulgás assert that the purpose of the agreement was not frustrated either. According to AESU and Sulgás, the frustration of an agreement requires that "a bilateral agreement, in the case of continuing performance, for supervening reasons extraneous to the normal risk of the business, lacks interests for the parties due to external reasons -and if such situation refers to only one of the parties, such circumstances should have been known by the other party when executing the agreement or be a part of the known cases of, or on which the agreement was based" (A/S-MD ¶603). However, none of these cases herein described occurred:

a. The reciprocal relationship has always been in force and the purpose of the Agreement has never been frustrated. The Gas Supply Agreement was still useful and possible to be complied with by its Parties, that is to say, YPF and Sulgás. YPF could still deliver natural gas, when it had enough quantities of gas or using the flexibility regime provided in the

[67] The complete position of AESU and Sulgás regarding force majeure is detailed in Part VII.B.1 *infra*.----------

rules. The increase in the costs that YPF might have suffered to use the flexibility regimes would not have been enough to break the reciprocal relationship. Sulgás could also keep on complying with its duty to pay for the gas delivered. ----------

b. YPF cannot plead the frustration of the Agreement with respect to AESU, which is not a Party but a Participant, and it is not related to YPF supply. The rise in the tax on gas exports affected AESU, but not Sulgás, and even for AESU it was a problem that may be overcome. In any case, it was YPF who conditioned the compliance with the Gas Supply Agreement to the payment of those taxes. ----------

c. YPF cannot plead the frustration of the agreement as this situation was caused by a breach of YPF of its legal and contractual obligations: the circumstance that provoked the alleged frustration of the Agreement was caused by YPF, among others, when it did not comply with its legal (particularly those included in Acts No. 17319 and 24076) and contractual obligations, related to the exploration and exploitation of reserves. ----------

635. AESU and Sulgás also reject that the repudiation of YPF could have been justified by the principle of good faith. It was YPF who did not act in good faith when it favored its own shareholders and affiliates, and it was YPF who did not try to remedy the situation. Particularly, AESU and Sulgás assert that as from 2001, YPF began to pay dividends to its shareholders for much higher amounts than those paid by YPF in the past. They argue that if YPF had destined part of those dividends to improve its situation on producing natural gas, this would have resulted in a higher supply of natural gas about the middle of the decade. YPF also acted opposite to good faith when pleading a nonexistent force majeure event. ----------

636. With respect to the duty to negotiate in good faith, Mr. Bueres assert that "a failure to cooperate in the 'renegotiation' of the agreement should not be attributable to AESU, if 'renegotiation' is understood as an adaptation (or adjustment) of an ***agreement in force*** based on good faith." He adds that the renegotiation of long-term agreements entails an agreement in force and the characteristic of force majeure regarding the economic unbalances. He concludes that "strictly speaking, if the agreement was 'repudiated' it ***is no longer in force*** and such suspected 'renegotiation' may only entail the creation of an agreement ***a novo***." (Bueres, ¶10; emphasis in the original paper). ----------

(iii) The impact of the increase in gas royalties in YPF business ----------

637. Although they assert that the repudiation of YPF may not be justified by the theories mentioned by YPF, AESU and Sulgás argue that the increase in the gas royalties had a dramatic economic impact on YPF, which forced it to abandon the Gas Supply Agreement. ----------

638. AESU and Sulgás explain that the Hydrocarbons Act urges the companies in charge of exploiting hydrocarbons to pay 12% of the crude oil and natural gas production -as royalties to the provinces where the respective oilfield is located- (section 62 of the Hydrocarbons Act.) The valuation of the natural gas production is made on the basis of the hydrocarbon "wellhead value", which results from the taking off of the selling price of natural gas to third parties different than the seller, the cost of freight of the product to the place considered as the base to fix its commercial value and other expenses (section 56 of the Hydrocarbons Act.)----------

639. The Emergency Law 25.561 enacted in 2002 banned that, for the assessment and payment of royalties to the provinces, the wellhead value could be diminished by the hydrocarbons export duties. As a consequence of this law, AESU and Sulgás argue that, when YPF exports natural gas, YPF cannot assess the royalties only over the price of the gas collected from its customers, but it is obliged to add to the price of the product the amounts paid as export duties. On the contrary, when YPF trades natural gas in the domestic market, it can use for the assessment of the royalties the price derived from the sale of the product, resulting a much lower amount. ----------

640. AESU and Sulgás hold that, as a consequence of the raise in the export duties and its impact on royalties, this asymmetry and its economic consequences turned the supply of gas pursuant to the Agreement unprofitable for YPF. It was much more convenient for YPF to destine the gas that should be delivered to AESU and Sulgás to the domestic market. AESU and Sulgás argue that, bearing this in mind, in 2008, YPF began to insist on that the Gas Supply Agreement was disintegrated, in order to stop being a party to an Agreement that turned to be unprofitable, to use the gas for profitable purposes in the domestic market. ----------

(iv) The termination was timely performed and it did not contravene any binding practice between the parties. ----------

641. AESU and Sulgás reject that the exercise of the right to terminate, based on the repudiation of YPF, has been untimely performed or illegitimate, or that it has contravened any binding practice between the parties. ----------

642. Firstly, they argue that the termination motivated in the repudiation was not untimely performed. In this sense, they hold that section 18.3 of the Gas Supply Agreement allows to delay the exercise of a right up to the moment when the party who opts for such exercise deemed it

convenient; for such reason the right in question may not suffer any kind of reduction. Since this was expressly agreed by YPF in the Gas Supply Agreement, it takes priority over any other circumstance or legal source from which other conclusions may be drawn.----------

643. Secondly, AESU and Sulgás reject that there was a binding practice between the parties that forced them to negotiate before exercising their rights for termination. In any case, they hold that the suspension and termination of the Agreement by AESU and Sulgás was made in a situation qualitatively different from the negotiations that ended with the Complementary Agreements. Those negotiations were based on that the Agreement was essentially viable and that the purpose was to solve specific problems, whereas the suspension and termination by AESU and Sulgás was held as a consequence of the repudiation of the agreement by YPF from July 2006, and requests of YPF to renegotiate a new agreement. ----------

644. AESU and Sulgás also mentioned article 8 of the Vienna Convention in relation to which the intent of a party or the understanding a reasonable person would have had depend on the conduct of the parties. In this sense, they argue that their conduct (particularly the mailing with YPF) shows that they have always rejected the overall renegotiation of the Gas Supply Agreement. This mailing also evidences that AESU and Sulgás have always rejected the existence of a force majeure event and claimed YPF its several breaches (letters dated June 25, 2008 and August 14, 2008, in which DOP was claimed; letter dated May 26, 2008, in which the inactivity of YPF was questioned as regards the challenges of the resolution issued by the Government of Argentina; and the letter dated September 15, 2008, in which the repudiation of the Agreement is attributed to YPF). Finally, the mailing also confirms that AESU and Sulgás have always rejected the inclusion of the taxes on exports to the gas price without complying before with the provisions of section 13.1 of the Gas Supply Agreement, and the expectation of YPF on that AESU and Sulgás be responsible for the royalties as a result of this increase in the price (letters dated August 9, 2006, September 4, 2006 (both in A77/S77), September 23, 2008 and November 3, 2008.) ----------

(v) AESU and Sulgás did not repudiate the Agreement when suspending their obligations. ---------

645. AESU and Sulgás reject the argument of YPF on that they were the ones who repudiated the Agreement when suspending their obligation on September 15, 2008. The Tribunal will deal with the detailed arguments of AESU and Sulgás on this topic in Part VII.A.5 *infra*. ----------

(vi) The repudiation was not an excuse to abandon the Gas Supply Agreement. ----------

646. AESU and Sulgás reject that they have pleaded the repudiation of the Agreement as an excuse to hide a strategy to undo the Gas Supply Agreement, and they assert that they terminated the Agreement as a consequence of the breaches and illegal conducts of YPF, including the repudiation of the Agreement in the terms already explained. AESU and Sulgás urge the Tribunal to consider the facts as a whole as from 2004, and not only from 2008 as YPF expects. Particularly, they assert that YPF executed the Gas Supply Agreement without having enough gas to comply with its commitments and it did nothing to get it, on the contrary, it carried out a conduct which was not compatible with the compliance of its contractual obligations. ----------

(vii) YPF incurred in default. ----------

647. AESU and Sulgás assert that the repudiation of the Agreement by YPF makes it unnecessary to consider it in default (A/S-AF, ¶291.) Quoting a decision handled by the National Court of Appeals in Commercial Matters, they assert that "requesting a claim aimed at obtaining the payment when the debtor (whether expressly or implicitly) has denied it in the first place entails a futile requirement. So, in these cases, it is important to purely and simply consider the failure and the means of the creditor to obtain the termination of the agreement.[68]" They also point out that the repudiation of the obligations entails an automatic default.[69] ----------

b. Position of YPF ----------

648. YPF argues that the termination of the Gas Supply Agreement based on this ground was illegal and unjustified, for the following reasons[70]. ----------

(i)YPF did not repudiate the Gas Supply Agreement. ----------

649. Even if the remedy for termination was available for the cases of repudiation, YPF rejects to have repudiated the Gas Supply Agreement. ----------

650. YPF argues that the case of repudiation of YPF of the Gas Supply Agreement was a distortion of AESU and Sulgás regarding the legal position adopted by YPF from 2004 with respect to the

---

[68] *Cámara Nacional de Apelaciones en lo Comercial* (National Court of Appeals in Commercial Matters), *sala* (Division) C, August 28, 1978, in the case entitled *Herrero, Dionisio c. Luva, S. A.* (Annex AL37/SL37).----------

[69] *Cámara Nacional de Apelaciones en lo Civil* (National Court of Appeals in Civil Matters), *sala* (Division) A, April 22, 1994, in the case entitled *Central Corporation SA c. Comisión Municipal de la Vivienda* (Annex A38/S38): "the position of the debtor that anticipates its will to reject the compliance with its obligation entails a hypothesis of automatic deafult which turns unnecessary any other claim, since against such unilateral consideration, the claim would be formal and vacuous.----------

[70] As herein analyzed, YPF also argues that the remedy for termination was not available for cases of repudiation. The Tribunal rejected this argument in Part VII.A.2 *supra*----------

measures taken by the Government of Argentina which provided for the interruption and subordination of the Gas Supply Agreement to meet the domestic demand. As per those measures, YPF pleaded the act of state (that is to say, force majeure) which pursuant to section 17.2 of the Gas Supply Agreement releases YPF from its contractual obligations. According to YPF, this is a concept completely different from repudiation as per the English law. ----------

651. In any case, quoting the *Restatement (Second) of Contracts* of the American Law Institute, YPF holds that, for the common law concept of "repudiation" to be established, there has to be a clear statement of one of the parties of its intent to fail to comply with the agreement, and that such failure should grant the other party a right to claim for damages for a complete breach. YPF argues that nothing of that derived from the mailing quoted by AESU and Sulgás. On the contrary, YPF asserts that its statements "were not aimed at reporting the abandonment of the agreement or the intent of YPF to fail to comply, but at showing the regulatory changes produced, urging the opposing parties, once again, and consistently with the binding practice developed, to renegotiate alternatives that enabled the continuance of the agreement" (Y-MC, ¶404.) ----------

652. Particularly, YPF points out that at least two of its letters (that dated July 27, 2006 and that dated September 12, 2008) were motivated by the increase in the gas export tax and the impact of such increase in the payment of gas royalties that YPF should have paid to the provinces[71]. Specifically, YPF holds that in the letter dated July 27, 2006, it had the Resolution MEyP No. 534/2006 as context, which increased the rate of the gas export tax to 45% and provided that the base for the assessment of the natural gas was the price of the agreement with Bolivia, approximately US$ 5 per MMBTU (when the Gas Supply Agreement established a price of approximately US$ 2 per MMBTU.) As a consequence of the impact of the increase in the tax on royalties that YPF should have paid to the provinces, YPF invited AESU and Sulgás {the letters says to the "Buyer"} to form a working team with YPF in order to achieve the following objectives:-------

---

---

[71] YPF admits that the additional royalties had a negative impact on export producers of natural gas, including YPF. It explains that the companies in charge of the exploitation (such as YPF) shall pay royalties equal to 12% of the production of the natural gas produced, valued according to the price in the wellhead of natural gas (i.e., the selling price less the withholdings admitted by the applicable rules, such as the costs of gas processing.) The Emergency Law 25561 established that in any case the tax on exports could decrease the price in the wellhead for the assessment and payment of royalties to the provinces, so the Argentine provinces creditors of royalties started to claim that the 12% royalty was assessed not over the price received by the producer (in the case of the Gas Supply Agreement, 2 US$/MMBtu) but over the sum of that price plus the tax on exports borne by the purchaser from abroad. YPF asserts that after Resolution MEP 127/2008, it reaches 19 US$/MMBtu.----------

"(i) Comprehensive renegotiation of the Agreement, taking into account the Restrictions (that YPF ratifies as regulatory force majeure) and the new regulatory conditions and those imposed by the market. ----------

(ii) Agreement of the compensation of the Buyer to YPF SA for the increase in the payment of royalties that may be caused by Resolution {No. 534/2006 of the Ministry of Economy and Production} and for any other negative effect that it may cause." ----------

653. Similarly, YPF holds that its letter dated September 12, 2008 was motivated by Resolution MEyP No. 127/2008 and the External Note issued by the General Customs Administration No. 75/2008, which increased again the base for the assessment of the natural gas exports taking it to US$ 15.117 per MMBTU. As a consequence of the impact of this increase in the gas royalties, the witness for YPF, Alejandro Fernández, explains that "YPF informed AES-U -as it did with all its export customers- that if AESU did not pay the difference in royalties, it would not be viable that YPF could export gas pursuant to the Gas Supply Agreement." (Testimony of Alejandro Fernández, ¶30.) ----------

654. According to YPF, this evidences that "the aim of these letters, that AESU and Sulgás construed as repudiation, was really to find a way to continue with the performance of the Gas Supply Agreement, making it possible in any way through a renegotiation that will consider the problem caused by the impact of the Argentine tax on gas exports over the gas royalties." (Y-MC, ¶408). ----------

655. YPF adds that in several of its letters it expressed its intent to solve the differences among the parties. Particularly, it points out that in the letter dated July 18, 2008, it provided AESU and Sulgás with information that they had requested YPF, saying that "despite the complex situation, we understand that it would be useful to continue with the existing process of meetings to achieve a new agreement considering the new regulatory and market conditions."[72] ----------

656. Additionally, YPF argues that those letters were sent in the context of a binding practice carried out among the parties consisting of not allowing that the measures adopted by the Government of Argentina frustrated the agreement and keeping its continuance, placing the dispute regarding the force majeure under an "umbrella." In this context, YPF asserts that its conduct was always destined to save the contractual relationship. ----------

657. In relation to the argument of AESU and Sulgás on that YPF should have ceased to call for negotiations after the letter of AESU and Sulgás dated September 15, 2008, YPF replies that such

[72] The Tribunal holds that YPF has quoted the letter dated August 1, 2008 for this last sentence, but that the correct reference is to the letter dated July 18, 2008.----------

letter was very vague and it did not specifically state the repudiation as a breach that justifies the suspension of the obligations of AESU and Sulgás (YPF asserts that the only cause mentioned to justify the suspension was the failure to pay the DOP penalty), and in particular, it did not quote any letter or declaration of YPF. Therefore, YPF continued including those calls to negotiation in the following letters. ----------

658. In any case, YPF asserts that it did not fail to comply with the Agreement but that it continued its performance in any item which was not affected by force majeure. In this sense, it asserts that after the first letter in which YPF apparently mentioned the alleged repudiation to the Gas Supply Agreement (July 27, 2006), YPF continued delivering gas volumes to the extent allowed by the Government of Argentina until AESU definitely stopped the nomination of natural gas in May 2008. ----------

659. Besides showing the compliance with its obligations, YPF argues that the acceptance of these deliveries entails a waiver of AESU and Sulgás to claim the cause of the repudiation. YPF quotes the Supreme Court of Justice of the United States of America, which has decided that: -----

"Acceptance of performance under a once-repudiated contract can constitute a waiver of the right to restitution that repudiation would otherwise create. Restatement (Second) of Contracts § 373 comment; Restatement of Restitution § 68 comment.[73] *[There appears the translation of the extract in Spanish]*[74] ----------

660. YPF admits that it attempted to transfer the cost of additional royalties to its customers abroad who had taken the risk and the cost of the higher taxes on gas exports, including AESU, but it rejects to have conditioned or suspended the gas deliveries based on this argument. It holds that this was a claim posed in the letters but it had not produced any retaliation or restriction. ----------

661. Likewise, YPF asserts that opposite to the arguments of AESU and Sulgás, from January 1, 2008 to May 20, 2008 (including five days after the commencement of the winter period, during which YPF was released from delivering to the Importer), date on which AESU definitely stopped nominating gas, YPF delivered the total quantities of gas that the Government of Argentina authorized to export to AESU/Sulgás, which was an average of 920,000 m3/day. (See Annex Y-157.) That is to say (i) YPF delivered AESU/Sulgás enough gas volumes to generate 192 MWh, and

---

[73] Supreme Court of the United States of America, "MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC., Petitioner, v. UNITED STATES. Marathon Oil Company, Petitioner, v. United States." Nos. 99-244, 99-253. June 26, 2000 (Annex YL-144).----------

[74] Translation made by the Tribunal----------

(ii) YPF delivered an average of 77% of the volume of 1,200,000 m3/day authorized by the Temporary Energy Agreement. In view of the foregoing, YPF argues that its behavior cannot be considered as repudiation. ----------

662. Therefore, YPF argues that its behavior could never been included in articles 72 and 73 of the Vienna Convention, which provided the possibility that one of the parties could terminate the agreement "if the breach by one of the parties of any of its obligations related to any of the deliveries gives the other party grounds to infer that an essential breach to the agreement will be produced with future deliveries [...]" ----------

(ii) If there was a break in the reciprocal contractual relationship ----------

663. In any case, YPF acknowledges its statements and asserts that, in its opinion, the measures adopted by the Government of Argentina which interfered with the export agreements effectively constituted a "break in the reciprocal contractual relationship" and caused a "disintegration of the grounds" of the businesses related to Argentine natural gas exports, including the Gas Supply Agreement. According to YPF, this is due to, at the moment of executing the agreement and until 2004, the fact that neither the Argentine law nor the Gas Supply Agreement provided that the Gas Supply Agreement was subordinated to the previous compliance of YPF of possible future obligations that may be imposed by the Government of Argentina to cover the increasing demand. YPF argues that AESU acknowledged in Brazil that the measures adopted by the Government of Argentina entailed a break of the reciprocal contractual relationship, and that this also was recognized by the ANEEL in the processes of termination of the PPAs of AESU in Brazil. ----------

664. In this sense, the expert for YPF, Aida Kemelmajer, points out that, in theory, the measures adopted by the Government of Argentina could have caused the frustration of the Gas Supply Agreement, although she does not conclude that this situation has occurred in this case. (Kemelmajer, ¶176). However, the expert concludes that, in this case, AESU and Sulgás were obliged to renegotiate, and that the letters sent by YPF were aimed at urging a negotiation (Kemelmajer, ¶¶180-182.). Mrs. Kemelmajer points out that, in the context of a long-term agreement, unbalanced by the supervening circumstances, the parties were obliged to try a renegotiation to restore the original reciprocal contractual relationship of the covenants. In this case, the expert asserts that the obligation to renegotiate, besides emerging from the duty of good faith, arises from section 23(c) of the Gas Supply Agreement which establishes that: ----------

"The PARTIES and PARTICIPANTS are engaged in making their best efforts to solve between them and in good faith every conflict that may be caused by the execution of the agreement to preserve the balance of compensations and the regularity and stability of their respective rights and duties." ----------

665. The expert interprets the letters that YPF sent to AESU in 2008 as a coherent conduct with the duty to act in good faith and try to renegotiate. (Kemelmajer,¶¶ 180-181). She adds that "if the grounds for the business had been definitely frustrated and in this context YPF invited the other contracting party to renegotiate and the latter did not accept, YPF was entitled to terminate the agreement" (Kemelmajer, ¶¶181-182.) ----------

666. YPF rejects that the notice to AESU and Sulgás related to the break of the reciprocal contractual relationship has been untimely. YPF does not clearly explain when it considers this break occurred, but it asserts that its principal obligation pursuant to the Gas Supply Agreement - the firm engagement to supply gas each time AESU nominates it- "was disintegrated and hindered by the measures adopted by the Government of Argentina that from 2004, with different importance and extension, periodically interrupted and subordinated the gas supply and transportation service agreements for export." (Y-Duplication, ¶273). YPF adds that the question was posed on the negotiation from the beginning of the measures in 2004, and that this was the reason of the negotiation in the Complementary Agreements of 2004 and 2006. However, the signing of these Agreements did not put an end to all the problems that the measures taken by the Government of Argentina caused over the Gas Supply Agreement, so YPF insisted on the break of the original reciprocal contractual relationship and the need to find a balance for it again. According to YPF, those expressions that AESU and Sulgás interpret as repudiation did not represent anything that would be unknown by them. ----------

(iii) The termination was unreasonable, untimely performed and contravened the binding practice among the parties. ----------

667. YPF argues that, even if there had been a repudiation (which YPF denies), the exercise of the termination for this alleged cause was unreasonable, untimely performed and contravened the binding practice among the parties. ----------

668. Supported in the legal opinion of Antonio Boggiano, YPF argues that "the exercise of the termination founded in legal expressions included in some mailings from which there is not a denial to comply with the contractual obligations appears as illegitimate according to the Gas Supply Agreement, as it is not considered a cause for termination, and unreasonable in the light

of the principle of the Vienna Convention that the termination shall be always used as an *ultima ratio remedy*." ({First} Legal opinion of Antonio Boggiano, ¶176). ----------

669. Additionally, YPF argues that the termination was untimely performed. AESU and Sulgás waited more than two years between the first letter of YPF that they understand evidences the repudiation of YPF and the date in which they effectively exercised the termination for such reason. AESU and Sulgás never informed YPF that they considered its statements as a breach that may cause the termination of the Gas Supply Agreement, and they did not demand YPF to repair its conduct. Although in the letter of suspension dated September 15, 2008 they referred to the alleged repudiation evidenced by YPF in the Gas Supply Agreement, they did not attribute any penalty or consequence to such situation, and they did not even imply that this could result in the termination of the Gas Supply Agreement. This was logical as it was not viable under its provisions.----------

670. YPF also argues that the exercise of termination for this reason "seems to contravene the existing practices and uses between the Parties that obliged the Parties to firstly try the negotiation of the dispute and to enable the continuance of the Gas Supply Agreement" ({First} Legal opinion of Antonio Boggiano,¶ 176.) ----------

(iv) AESU and Sulgás were the ones who repudiated the Gas Supply Agreement. ----------

671. Finally, YPF argues that it was AESU and Sulgás who repudiated the Agreement when suspending their obligations on September 15, 2008. The Tribunal will deal with the detailed arguments of AESU and Sulgás on this topic in Part VII.A.5 *infra*. ----------

(v) The alleged repudiation was an excuse to hide the real reasons of AESU and Sulgás to terminate the Agreement. ----------

672. Therefore, YPF holds that the alleged "repudiation" of the Agreement is simply a cause made up by AESU and Sulgás to hide their real reasons to terminate the Gas Supply Agreement. ----------

673. On the one hand, YPF insists on that the real reason of AESU and Sulgás to terminate the Agreement was dissolving their electrical business in Brazil. YPF argues that, in March 2008, the business of AESU had become not viable, since as a consequence of the significant increases in the tax on gas exports provided by Resolution MEyP No. 127/2008, AESU should pay an amount much higher for the purchase of Argentine natural gas than the price it would receive for the sale of electricity by virtue of the PPA. Consequently, YPF holds that AESU decided to end its business, and in June 2008, it filed the case before the ANEEL to terminate their engagements to sell

energy in Brazil. On the other hand, it did no longer nominate gas to YPF (the winter period enabled it not to nominate gas since May 2008), and it began to make up excuses that then enabled it to allege a termination by YPF's fault. ----------

674. YPF argues that, being aware of the fact that it had waived to terminate for failures to deliver energy, AESU thus decided to bill YPF penalties apparently accrued two years before, which it had never expected to bill. On September 15, 2008, when the purpose of the winter period forced it to resume its nominations, it notified YPF the suspension of its obligations. Finally, in March 2009 together with Sulgás, it terminated the Gas Supply Agreement. YPF argues that, being aware of the weakness of its termination expectations if it was only founded on a penalty for a negligible amount, never claimed and even excused for force majeure, AESU and Sulgás decided to add some other excuses for termination, making up the causes for failure to act as a prudent and reasonable operator and the repudiation that is now being attributed to YPF. -----

675. On the other hand, YPF seems to allege that the real reason by which AESU and Sulgás terminated the Agreement is particularly the breach of YPF for its failure to supply gas, question by which it had waived the termination of the Agreement. YPF asserts that "in item 305 of the Reply Brief, AESU and Sulgás assert that if YPF had delivered gas upon the conditions agreed, they would have continued with the Gas Supply Agreement. That is to say, that beyond all the alleged repudiations of YPF -according to the Importer- if YPF had supplied gas upon the conditions agreed, it would have continued with the Gas Supply Agreement. This is the clear acknowledgment that AESU and Sulgás formally found the suspension and later termination exclusively based on the failure to deliver gas of YPF, question in relation to which, as we have seen, they had waived to terminate the Gas Supply Agreement, and consequently, suspend it" (Y-Replication, ¶269.) ----------

c. Analysis ----------

676. Following the analysis, the Tribunal shall determine in the first place whether the breach mentioned by AESU and Sulgás to justify the termination of the Gas Supply Agreement (in this case, the repudiation of YPF) exists. In order to do that, the Tribunal will firstly deal with the conditions so that the repudiation could exist and the legal requirements for the exercise of the remedy for termination (Part (i) *infra*.) Once those conditions are established, it will determine whether, in the facts, YPF repudiated the Gas Supply Agreement (Part (ii) *infra*) and whether AESU and Sulgás complied with the legal requirements for the exercise of the remedy for termination (Part (iii) *infra*). ----------

677. Before arriving at the conclusion on the legal nature of the termination of the Agreement, the Tribunal will analyze whether AESU and Sulgás failed to comply with the Gas Supply Agreement upon the suspension of their obligations on September 15, 2008. Due to the extension and difficulty of these arguments, the Tribunal will deal with this topic in Part 5 *infra*. ---

678. As hereinbefore mentioned, the Tribunal will analyze whether the exercise of the remedy for termination was in good faith in Part 6 *infra*.----------

(i) Conditions to constitute repudiation ----------

679. As it has been hereinbefore mentioned (see paragraph 465 *supra*), the Tribunal holds that the concept of repudiation of the agreement as the rejection of one of the parties to its essential obligations under such agreement, either because one of the parties expresses that the other will commit an essential breach, or because its behavior shows that it is evident that a breach will occur. When the rejection is to all the obligations of the Agreement or to the existence of the Agreement, the repudiation excludes the other party from the Agreement, and, therefore, of what it was entitled to obtain pursuant to it. Therefore, the repudiation constitutes the most extreme essential breach.----------

680. The concept of repudiation of the Agreement is included in article 72 of the Vienna Convention which provides that:----------

"Article 72 ----------

1) If prior to the date for performance of the contract it is clear that one of the parties will commit a ***fundamental breach*** of contract, the other party may declare the contract avoided. ------

2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance. -------

3)The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations."----------

681. The *travaux preparatoires* of the Vienna Convention confirm that, for one of the parties to be entitled to terminate the agreement pursuant to article 72(1), it is not necessary to find an express statement of the other party of its intent to breach a fundamental obligation of the agreement. It is sufficient that this breach be "clear", that is to say, evident or express. In fact, in the discussions that surrounded the adoption of the Vienna Convention, it was dealt with how to express the will to repudiate the agreement. Whereas the delegation of the United States suggested that it was important to interpret the will or possibility of compliance based on the conduct of the breaching party, adopting the form of the Hague Convention on Uniform Law on

the International Sale of Goods ("ULIS")[75], other delegations expressed themselves in favor of a broader provision, authorizing the action to terminate the agreement as long as it is clear that the breaching party cannot comply or is not able to comply.[76] ----------

682. Which are the circumstances that make a breach "clear", or the imminence of such breach? The books of authority and case law related to article 72 CISG suggest that it is a factual question that must be decided by the interpreter under the circumstances of the case. Thus, in some cases it has been interpreted that the mere statement that it will not comply with constitutes a "repudiation" of the agreement that justifies the early termination,[77] whereas other courts have decided that in order to justify the early termination of the agreement it is sufficient to confirm a "high probability" or a *"very high probability"* -instead of an absolute certainty- that the other party will commit a fundamental breach of the agreement.[78] The application of article 72 requires from the judges "a high dosage of prudence and a detailed consideration of the circumstances of the situation", because the rule requests an "advanced level of certainty that the other party will stop complying with their contractual obligations"[79] rather than the mere expectation or supposition. Even when the evidence of the future breach may come out of several considerations or conducts, "it is not enough to have a reasonable doubt, there must also exist an almost absolute certainty" of a future breach.[80] It may be noted that the Convention, which in some cases requires the future breach to be "apparent" (art. 71(1))[81], or that the creditor has "founded grounds to conclude that it will be produced" (art. 73(2))[82], the case in question requires that it be "clear" that such breach will be produced[83]. Thus, it is evident that the level of probability required to suspend the compliance with the obligations pursuant to

---

[75] ULIS, art. 56 ("[...] *when* [...] *either party so conducts himself as to disclose an intention to commit a fundamental breach of the contract* [...]").----------

[76] See the Comments of the UNCITRAL Secretariat on article 63 of the draft of the 1978 Convention (current article 72 of the Vienna Convention) in http://www.cisg.law.pace.edu/clsg/text/secomm/secomm-72.html.

[77] John Honnold, Uniform Law for International Sales under the 1980 United Nations Convention, 3rd ed. (1999), p 437-8.----------

[78] *Landgericht* (court of original jurisdiction), Berlin (Germany), 99 O 123/92,30 Sept. 1992, UNILEX D.1992-21, http://cisgw3.law.pace.edu/cases/920930g1.html; OLG Dusseldorf, 17 U 146/93, 14 January 1994. CLOUT 130, UNILEX D.1994-2.«----------

[79] Garro, Alejandro M. and Zuppi, Alberto L.: *Compraventa Internacional de Mercadearías. La Convenclón de Viena de 1980* ed. Abeledo-Perrot, Buenos Aires, 2012, pp. 325 and 326.----------

[80] Calvo Caravaca, Alfonso L.: *"Incumplimiento previsible y contratos con entregas sucesivas"*, in Diez-Picazo, Luis (Dir.): *La compraventa internacional de mercaderías. Comentario de la Convención de Viena*, ed. Civitas, Madrid, 1998, pp. 570 and 571.----------

[81] The English version of the Convention uses *"becomes apparent"*.----------

[82] *"Good grounds to conclude",* in the English version.----------

[83] *"It is clear",* in the English version.----------

article 71 is lower than that required by article 72 to terminate the agreement[84] which is explained by the higher seriousness this last remedy has. In that way, it has been understood that one of the parties is entitled to terminate the agreement after the other party has expressed to be "no longer obliged" to comply with[85]. It has also been understood that the buyer is entitled to terminate the agreement when the seller subjects the delivery of goods to conditions that have not been agreed upon.[86] ----------

683. If the conditions to consider that it is clear that the debtor will fail to comply with a fundamental obligation occur, the creditor shall be empowered to terminate the agreement. However, article 72(2) of the Vienna Convention urges the creditor, unless there is no time, to inform his intent to terminate based on such ground, and to grant the debtor a reasonable term to provide adequate assurance of his performance. This duty of the creditor may, in large part, mitigate the risks of an intent of the creditor to terminate the agreement founded in a most likely future breach, as finally, the debtor, when replying the communication, will have the chance to clear up doubts and bring the assurances of his performance. ----------

684. Notwithstanding the foregoing, according to article 72(3), the requirements of article 72(2) are not applied when the debtor has stated that he will not comply with his obligations. In this case, as there is a similar statement of the debtor, it is reasonable that the legal text releases the creditor from the duty to inform that he will use the remedy for termination. However, in order to make that possible, such statement "must be final, that is to say, it must be clear that the party ignores -'repudiate' in English- the agreement in its entirety and that he will neither change his mind nor comply with it on time.[87] ----------

685. Additionally to the requirements specified in article 72 of the Vienna Convention, it is clear that, to be correctly exercised, the remedy for termination must be timely exercised. Although article 72 of the Vienna Convention does not establish a specific term to exercise the right for termination, such as article 49(2) and article 73(2) (which specify that the termination must be exercised in a "reasonable term"), in line with those provisions, it has been understood that the exercise of the right to terminate of article 72 must be also exercised in a reasonable term.[88] ------

---

[84] Lookofsky, Joseph M.: *Understanding the CISG*, ed. Kluwer Law International, 3° edition, 2008, p. 124.-----

[85] *Federal District Court for the Northern District of Illinois* (court of original jurisdiction) (USA) Magellan International v. Salzgilter Handel, 7 Dec. 1999.----------

[86] *Schiedsgericht der Hamburger freundschafltichen Arbitrage* (arbitral award), Hamburg (Germany), December 29, 1998.----------

[87] Calvo Caravaca, Alfonso L.: op. cit. p. 572.----------

[88] CHRISTIANA FOUNTOULAKIS, Article 26 CISG,¶ 16, in SCHLECHTRIEM & SCHWENZER, Commentary on the UN Convention on the international Sale of Goods (CISG), 3rd ed., Oxford University Press, 2010: "[...],

686. Finally, it has been also understood that in the Vienna Convention the remedy for termination is an *ultima ratio* remedy, in the sense that it may only be used in particular circumstances. Particularly, the remedy must only be exercised in a case of fundamental breach of the Agreement (Firs Report of A. Boggiano ¶¶129-141.) ----------

(ii) Did YPF repudiate the Gas Supply Agreement? ----------

687. The Tribunal shall determine if the requirements included in article 72 of the Vienna Convention are met in order to consider a repudiation of YPF. In order to do that, the Tribunal shall determine in the first place if it was "clear" that YPF would breach all its obligations under the Agreement. For this purpose, the Tribunal will analyze the representations and conduct of YPF, taking into account the factual circumstances that surrounded the termination of the Agreement. The Tribunal has followed in particular article 8 of the Vienna Convention (quoted in paragraph 512 *supra*.) ----------

688. AESU and Sulgás argue that the repudiation of YPF was first carried out in the letter dated July 27, 2006 (Annex Y-64, A15/S15, text quoted in paragraph 170 *supra*). However, there is not a dispute in that YPF continued delivering gas after such letter for 2006 and 2007, although the deliveries were partial. Therefore, even if this letter could be considered as a statement of repudiation, YPF repaired such statement and rejected any possible repudiation with its later conduct. ----------

689. On the contrary, most of the members of the Tribunal[89] hold that the series of letters of YPF from July 18, 2008[90] onwards considered jointly with the conduct of YPF in this period, constitute indeed a repudiation of the Gas Supply Agreement, understood as a total rejection of YPF of the contractual relationship, making it clear that YPF would breach its fundamental obligations upon it. ----------

(a) Important facts ----------

---

it seems appropriate to impose a reasonable period of time within which avoidance must be declared also in cases without explicit time limits." The expert for YPF, Antonio Boggiano, confirms this conclusion (First Report of A. Boggiano, ¶¶142-148.) ----------

[89] Prof. Roque J. Caivano dissents from this item. His dissenting opinion is hereto attached. As a consequence of this dissent, the determinations and conclusions derived from this decision are adopted by most of the members of the Tribunal.----------

[90] Letter dated July 18, 2008 (Annexes Y-82, A15/S15); August 1, 2008 (Annexes Y-83, A15/S15); September 5, 2008 (Annex A15/S15); September 12, 2008 (Annexes Y-88, A15/S15); October 21, 2008 (Annexes Y-87, A15/S15); November 17, 2008 (Annex A15/815); December 4, 2008 (Annex Y-96, A15/815); January 7, 2009 (Annex A15/815), and January 23, 2009 (Annex A15/S15).----------

---

---

690. The Tribunal considers pertinent to present the important facts as from March 2008[91] ----------

a. On March 12, 2008, the Government of Argentina issued the Resolution MEyP No. 127/2008 (Annexes YL-110, AL-3/SL-3), through which (i) the rate of the taxes on gas exports was increased from 45% to 100%; and (ii) the base for assessment over which the export tax was assessed was modified, using "the highest price" to which Argentina imported gas at every moment. ----------

b. As per the letter dated March 27, 2008 (Annex A15/S15), YPF informed AESU and Sulgás that the Resolution MEyP No. 127/2008 had increased 100% the tax on exports, and that by virtue of the provisions of section 13.1 of the Agreement, it would adjust the amounts billed to AESU as export price and duties. YPF also informed that such Resolution had an impact on the royalties payable to the provinces where the gas is produced, and that its effect was turning the Agreement excessively onerous. Consequently, it called Sulgás to a meeting to "agree the compensation of Sulgás to YPF for the increase in the payment of royalties [...] in order to make the natural gas deliveries viable pursuant to the Agreement." ----------

c. On May 16, 2008, the winter period started, in which AESU was not obliged to nominate gas, but YPF was not released from delivering it. YPF admits (see testimony of Teodoro Marcó ¶¶17-24) that if AESU nominated natural gas, YPF was obliged to deliver it. ----------

d. Both parties agree that the last "real" nomination of AESU and the last "real" delivery of YPF were carried out on May 20, 2008. The Tribunal uses the expression "real" because Annex Y-157 specifies some minor deliveries that may be due to involuntary gas deliveries, as well as deliveries required for tests in the power station, as explained below. During the previous months, the parties had exchanged mailing related to the failures to deliver gas; however, it is not in question that YPF delivered gas (at least partially) up to May 20, 2008. ----------

e. On June 25, 2008, AESU notified YPF of its failure to deliver gas from September 9, 2007 up to that date for a total quantity of 136,323,198 m3, generating a DOP penalty of US$

[91] A more detailed description of those facts, as well as the content of the aforementioned documents, are included in paragraphs 201 and ss. *supra*.----------

28 million (Annex Y-80, A15/S15). As hereinbefore discussed (see paragraph 600 *supra*), AESU and Sulgás did not issue a debit note for such penalty. ----------

f. On July 16, 2008, AESU claimed YPF the payment of the DOP penalty accrued in 2006 for US$ 2.7 million, issuing the corresponding debit note (Annex Y-81, A17/S17.)----------

g. YPF replied the letter detailed in item (e) through the letter dated July 18, 2008 (Annexes Y-82, A15/S15), which AESU and Sulgás consider as constituent of the repudiation. In such letter, YPF rejected the admissibility of the DOP debt of US$ 28 million for reasons of force majeure, alleged assessment errors, and alleged unidentified breaches of AESU, among others. After rejecting the DOP debt, YPF stated that the Gas Supply Agreement was disintegrated and it was no longer viable. Particularly, YPF stated that "the authorities have -from 2004- restricted the natural gas exports of the Argentine producers, and have acted over the natural gas export agreements (including the Agreement) ***disintegrating its content and breaking the reciprocal contractual relationship"***. YPF added that *"**the Agreement is not viable anymore under its current terms, since the purpose agreed upon by the parties when executing it failed***. This is due to the authorities' intervention, which has ***disintegrated*** the Agreement, and based on the theory of unforeseen contingencies, the failure of the purpose of the agreement, the general principle of good faith, the unconscionability and the fairness." YPF added that it would be useful to continue with the existing process of meetings "in order to ***enter into a new agreement*** that includes the new regulatory and market conditions" (emphasis added) ----------

h. As per the letter dated August 1, 2008 (Annex Y-83, A15/S15), YPF rejected the terms of the letter of AESU quoted in item (f) above, repeating the terms of the letter dated July 18. ----------

i. As per another letter dated August 1, 2008 (Annex A15/S15), YPF informed AESU that, in accordance with the External Notes issued by the General Customs Administration 52/2008 and 57/2008, the base of assessment of the export tax had been modified. YPF pointed out that, given the effects of this tax on royalties payable to the provinces, "***it is not viable for YPF to export natural gas pursuant to the Agreement***" (emphasis added). --

j. As per the letter dated August 14, 2008 (Annex Y-84, A15/S15), AESU rejected the terms of the letters of YPF dated July 18 and August 1. AESU asserted that, in particular, up to that date it had complied with all its obligations pursuant to the Agreement and the

Conflict Agreements, pointing out that YPF had not identified or explained the alleged breaches. AESU alleged that, on the contrary, it was YPF who had breached its obligations to deliver. Consequently, AESU repeated its requirements of payment for the two DOP penalties (for US$ 28 million and US$ 2.7 million).----------

k. On August 25, 2008, YPF notified AESU that the restrictions on natural gas exports continued, which in YPF's opinion constituted a force majeure event (Annex Y-85, A15/S15). It added that "as long as the force majeure event continues existing, the contractual obligations of YPF will be suspended, being YPF released from any liability derived from the unavailability of the natural gas volumes pursuant to the Agreement." ---

l. In this moment, the gas nominations of AESU were suspended due to the winter period. However (and as specified in Annexes Y-151, Y-100 and Y-157), AESU made less nominations on August 26, 27 and 28, since it needed gas to make tests in the power station. YPF conditioned the deliveries upon the fact that AESU accepted bearing the export taxes and royalties (Annex Y-151)[92]. AESU, given its need to have that gas, accepted to exceptionally bear those payments in relation to those deliveries (Annex Y-151)[93]. YPF accepted the new schedule for those days (Annex Y-152), but it partially complied with the foregoing and for much less of what it had been agreed: on August 26 and 27, AESU needed 500,000 m3/day, but YPF delivered approximately 65,000 and 3,800 m3/day; on August 28, AESU needed 250,000 m3/day, and YPF delivered approximately 172,000 m3/day (Annex Y-157). ----------

m. As per the letter dated September 5, 2008 (Annex A15/S15), YPF repeated its allegations on force majeure, disintegration of the Agreement and breaches of AESU (again without

[92] By the email dated August 25, 2008 addressed to Juan Carlos Cotoia from YPF (Annex Y-151), Ricardo Cyrino from AESU pointed out that "YPF has shown that, in order to make the delivery of gas for the tests to AESU, it will require AESU to bear the export duties that may be paid in relation to the exceptional gas delivery and, in this only and exceptional case, the payment of royalties to the provinces (12%), which costs are exclusive of YPF under the terms of the Agreement." YPF has not contradicted such assertion. ----------

[93] Ricardo Cyrino adds in the same email that: "having taken into account the need of AESU to have the gas to make tests in the power station, AESU accepts to bear the export duties and, exceptionally and in this single occasion, the costs of provincial royalties (12%) that may be directly related to the Delivery Of Gas for Tests, expressly specifying that this did not entail any modification to the terms and conditions of the Agreement and/or Conflict Agreements, which are in force. The acceptance of AESU to pay the provincial royalties (12%) directly related to the exceptional delivery of gas could neither be construed as a waiver of the rights of AESU pursuant to the Agreement and/or Conflict Agreements, nor as an acceptance or acknowledgment that those taxes were, either totally or partially, borne by AESU in previous purchases of gas or, if borne by AESU, either totally or partially, in future purchases of gas, both inside or outside the Agreement" (Annex Y-151).----------

identifying the specific breaches.) Regarding the disintegration of the Agreement, YPF pointed out that: ----------

"The illegal and inadmissible conduct of the Government of Argentina regarding the Agreement and the conduct of AESU has also caused: ----------

---

(i) ***the disappearance of the "grounds" of the Agreement***. In this sense, since April 2004 with the issuance of Provision 27/2004, YPF has seen that the factual and legal assumptions that the Parties considered when signing the Agreement have disappeared. These are the long term sale of natural gas within a steady legal and taxation framework. ----------

(ii) ***the disintegration of the Agreement*** through the issue of rules, acts or factual means, out of YPF's control, that as a prudent and reasonable operator could not and should not foresee. In this sense, we highlight that any reference that in the present -or in future- made in the Agreement, ***cannot be construed as an acknowledgment of the existence of a viable agreement with a reciprocal contractual relationship in force.***" (Emphasis added) ----------

n. As per the letter dated September 12, 2008 (Annex Y-88, A15/S15), YPF notified AESU that the General Customs Administration had issued the External Note 75/2008, which fixed the price that would be applied as a base for the assessment on natural gas exports to the effect of export tax, from August 13 to August 29, 2008, in 15.1170 US$/MMBTU. YPF repeated that this had a substantial impact on the royalties payable to the provinces and that "if {AESU} does not bear -besides the export duties- the payment of royalties, ***it is not viable for YPF to export natural gas pursuant to the Agreement***." YPF ratified the force majeure, and that the "***Agreement is disintegrated, having been broken*** -with the issue of the rule limiting the natural gas exports- the ***reciprocal contractual relationship***, for causes external and not attributable to YPF." (Emphasis added) ----------

o. On September 15, 2008 (date on which the winter period ended), AESU notified the suspension of its obligations (Annex Y-89, A15/S15). AESU considered these declarations as a guilty repudiation of the Agreement and suspended the compliance with its obligations under the Agreement, in the following terms: ----------

"We take into account your reference to that the Agreement would have been "disintegrated" and that "the grounds of the Agreement would have disappeared." If with these statements you would like to mean the impossibility of YPF to comply with it, such alleged impossibility was actually caused by the breach of YPF of its obligations, among

these, the execution of a reasonable and prudent operation, as requested in the Agreement and in section 1198, paragraph 10, of the Argentine Civil Code. In any case, ***we understood such unusual concepts, as well as the content of your aforementioned letters (including your inadmissible request to transfer the costs that do not correspond to AESU pursuant to the Agreement, and the overall review of this last item), as a guilty repudiation of your obligations under the Agreement and the Agreement in itself***." (Emphasis added)----------

In that same letter, AESU repeated the claim for the payment of DOP penalties apparently owed by YPF made in the letters dated June 26 and August 14, 2008, and "considering the serious breaches and continuous defaults of YPF, in accordance with the doctrine that arises from the provisions of sections 510, 1201 and related sections of the Argentine Civil Code" suspended the compliance with its obligations under the Gas Supply Agreement and the Complementary Agreements. Likewise, AESU reserved its right to exercise the legal actions that may correspond "regarding the breaches and repudiation of YPF." ----------

p. As per the letter dated September 23, 2008 (Annex Y-91, A15/S15), AESU repeated that "we keep in force the suspension of our contractual obligations stated in our letter dated September 15, 2008 and we reserve the rights to exercise the legal actions that may correspond against the breaches and repudiation of the Agreement by YPF." Additionally, it rejected the request of YPF to transfer the cost of the hydrocarbon royalties to AESU. ---

q. In the following months (September 2008 to January 2009), the parties exchanged correspondence repeating their positions and rejecting the positions of each other (letters of YPF dated October 21, 2008, November 17, 2008, December 4, 2008 and January 7, 2009 (Annexes A15/S15, Y-96), and letters of AESU and Sulgás dated November 3, 2008, December 2, 2008, December 30, 2008, February 5, 2009 and February 27, 2009 (Annexes A15/S15, Y-96, Y-97 and Y-105)). Particularly: ----------

i. YPF repeated that it was under a force majeure event, so, according to section 17.2 of the Agreement, the obligations of YPF were suspended, and therefore, there was not an obligation to pay DOP penalties. AESU rejected the existence of this force majeure and argued that YPF had not acted as a reasonable and prudent operator, as established in the Agreement against a force majeure event. ----------

ii. YPF rejected the suspension of AESU obligations as they were inadmissible, and it insisted on other breaches of AESU (without identifying them), adding that those breaches entitled it to terminate the Agreement. AESU, in turn, justified and repeated the suspension of its obligations and rejected to have breached the Agreement. ----------

iii. AESU rejected the interpretation made by YPF regarding section 13.1 of the Gas Supply Agreement and the claim of YPF to transfer to AESU the cost of the export taxes and hydrocarbon royalties. YPF rejected the interpretation made by AESU, and insisted on the urgent need of a new overall review of the Agreement. ----------

iv. YPF billed to AESU Segments A and B of transportation, however, AESU rejected those invoices. As AESU failed to pay the first of these invoices, on December 4, 2008, it notified that it suspended the natural gas deliveries pursuant to section 14.1.1 of the Agreement (Annex Y-96, A15/S15.) ----------

r. . Additionally, YPF continued making statements of the non-viability of the Agreement. Particularly: ----------

i. As per the letter dated October 21, 2008, it repeated that the grounds of the Agreement had disappeared and that it was disintegrated, pointing out again that "any reference that in the present -or in the future- we make to the Agreement, could not be construed as an acknowledgment of the existence of a viable agreement and/or of a reciprocal contractual relationship in force" (Annex A15/S15.) ----------

ii. As per the letter dated January 7, 2009, YPF held that the repeated breaches of AESU entitled it to terminate the Agreement, "if it may be considered in force after its disintegration by actions taken by the Authority" (Annex A15/S15.) ----------

iii. As per the letter dated January 23, 2009 addressed to TGM in copies to AESU and Sulgás, in which it refers to the disintegration of the Gas Supply Agreement, YPF repeated the "situation of unbalance and frustration of the agreement that involves us considering the measures adopted by the Government of Argentina, unforeseeable, external and out of YPF's control that have disintegrated the grounds and premises considered by the parties when executing the agreement" (Annex A15/S15.) ----------

s. In turn, AESU rejected such declarations of non-viability, alleging that “if the grounds of the Agreement or the reciprocal contractual relationship have disappeared or have been affected in anyway, this was exclusively due to the breaches of YPF, its conduct opposite to a reasonable operator and the permanent lack of diligence that affected not only the

usual compliance with the Agreement but also its present and future possibilities to comply with the obligations arising from the agreement previously accepted" (letter of AESU dated November 3, 2008, Annex A15/S15, Y-94). Additionally, as per the letter dated February 5, 2009, AESU stated that, as long as the situation that gave rise to the suspension of the obligations of AESU continues, and YPF does not revert such situation, AESU will continue without requesting the delivery of gas and without nominating the daily quantity in accordance with the provisions of section 6 of the Agreement (Annex A15/S15.) ----------

t. The mailing between the parties ended with the letter of AESU dated March 20, 2009, in which, in exercise of its own rights and in Sulgás behalf, informed to YPF that it has decided to terminate the Gas Supply Agreement (Annex Y-106, A15/S15.) ----------

u. On March 25, 2009, AESU and Sulgás filed an arbitral request against YPF, giving rise to Arbitration CCI No. 16202. ----------

v. YPF did not reply the letter of AESU, but on April 6, 2009, it filed an arbitral complaint against AESU, Sulgás and TGM, giving rise to this Arbitration CCI No. 16232. ----------

(b) Statements of YPF: Do they evidence a repudiation of the Agreement or were they an attempt to renegotiate? ----------

691. After analyzing the statements made to be interpreted according to the understanding that a reasonable person of the same kind would have had, as well as all the facts and circumstances that surrounded those statements, in accordance with article 8 of the Vienna Convention, the Tribunal concludes that YPF repudiated the Gas Supply Agreement. ----------

692. The Tribunal interprets that the statements of YPF in the aforementioned letters regarding the "disintegration of the Agreement or the disappearance of its grounds, and its statement on that "any reference that in the present –or in the future- we made of the Agreement cannot be construed as an acknowledgment of the existence of a viable agreement with a reciprocal relation in force", as true denials of the existence of a contractual relationship. This evidences the clear attempt of YPF not to comply with its obligations. If one of the parties states to the other that the agreement does not exist or it is not in force, it arises from such statement that such party is not involved in the agreement by any obligation. This means that such party does not expect to comply with its obligations which considers as non-existent. ----------

693. The conclusion of the Tribunal is particularly based on the terms that YPF decided to use. If the Agreement has been "disintegrated", it means that it has been destroyed or dissolved.[94] If the grounds of the Agreement have disappeared, it means that the elements forming the agreement do not longer exist, so there is not an agreement. If the acknowledgment of a viable agreement with a reciprocal relationship in force is denied, the existence of the bilateral relationship that gathers the parties and their mutual obligations is also denied. ----------

694. The Tribunal rejects the argument of YPF on that the objective of those statements was to express the regulatory changes that had been produced, urging the parties to renegotiate alternatives to continue with the agreement. The Tribunal holds that the argument of YPF is that the regulatory changes quoted in the letters broke the contractual balance and the reciprocal contractual relationship and/or destroyed the grounds of the Agreement, and that, based on the "theory of unforeseen contingencies, the frustration of the purpose of the agreement, the general principle of good faith, the unconscionability and the fairness" (letter of YPF dated July 18, 2008, Annex Y-82, A15/S15), YPF was entitled to request the overall review of the Agreement.-

695. The Tribunal does not ignore that, both under the Argentine law and other legal systems, a supervening onerous obligation that essentially affects the balance of the agreement authorizes the party at a disadvantage to request the renegotiation of the agreement.[95] The legal experts of both parties acknowledge that the Argentine law, to a greater or lesser extent, applies the theories mentioned by YPF, in particular, the theory of unforeseen contingencies and the frustration of the grounds.[96] Particularly, section 1198 of the Argentine Civil Code (that applies the theory of unforeseen contingencies) establishes in its corresponding part that: ----------

"Section 1198 ----------

[...] ----------

If, in bilateral commutative contracts and unilateral onerous contracts, and in commutative contracts with deferred or continuous performance, the performance of one of the parties becomes excessively onerous because of extraordinary and unforeseeable events, the

[94] The Royal Spanish Academy defines "*pulverizar*" [disintegrate] as "reducing something to nothing" or "to get rid of something intangible" (*RAE*, *Diccionario de la Lengua Española* [Dictionary of the Spanish language] -Vigésima segunda edición [Twenty second edition]). ----------

[95] See for example, articles 6.2.1, 6.2.2 and 6.2.3 of the UNIDROIT Principles on International Commercial Contracts 2010. See also section 1467 of the Italian Civil Code, which is the source of section 1198 of the Argentine Civil Code. ----------

[96] Legal opinions of Aida Kemelmajer de Carlucci (¶¶116-145) and Alberto Bueres (¶10). The Tribunal holds that although in the letters YPF justifies its statements of non viability in the unconscionability and fairness, none of the parties filed argments on those legal entities, and they were not dealt with by their experts either.----------

disadvantaged party may demand the termination of the contract. The same principle shall apply to aleatory contracts when excessive onerousness results from causes external to the very risk of the contract. ----------

In contracts of continuous performance, termination shall not affect what has already been complied with. ----------

Termination shall not be granted if the disadvantaged party acted with negligence or was in default. ----------

The other party may prevent termination by offering to improve the effects of the contract in an equitable manner." ----------

696. Similarly, although neither the theory of unforeseen contingencies nor other theories mentioned by YPF are expressly accepted by the Vienna Convention, there are recent legal precedents and an important tendency in books of authority that support the position that entails a change in the circumstances that increase the onerousness of an obligation disproportionately may constitute an obstacle in the sense of article 79 of the Convention,[97] entitling the party who pleads such supervening onerousness to claim the renegotiation of the contract.[98] Additionally, section 23(c) of the Gas Supply Agreement obliged the Parties "to make their best efforts to solve, between them and in good faith, every conflict that may be caused by the execution of the agreement in order to safeguard the balance of claims and the regularity and stability of their respective rights and duties." ----------

697. However, after analyzing the statements of YPF and the context in which they were made, the Tribunal concludes that the regulatory changes mentioned by YPF do not justify a renegotiation of the Agreement, under any of the theories invoked. On the contrary, its plea

---

[97] Article 79 of the Vienna Convention:----------
"1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it, or its consequences.----------
[...]"----------

[98] Hof van Cassatie, Belgium, 19 June 2009 (Scafom International BV v. Lorraine Tubes SAS.), http://cisgw3.law.pace.edu/cases/090619b1.html. The reasoning of the Supreme Court of Belgium was the following: the CISG does not regulate the theory of unforeseen contingencies, but in the event of some loopholes article 7(2) CISG orders the tribunal to apply "the general principles on which this Convention is based or, in the absence of those principles, in accordance with the applicable law by virtue of the rules of the private international law." The Court held that *"[u]nder these principles, as incorporated inter alia in the Unidroit Principles of International Commercial Contracts, the party who invokes changed circumstances that fundamentally disturb the contractual balance, as mentioned in paragraph 1, is also entitled to claim the renegotiation of the contract."*----------

within the framework of the statements of "disintegration" of the Agreement confirms its repudiation. ----------

698. The Tribunal holds that YPF mentions two regulatory changes to justify the alleged call to renegotiation: the restrictions on gas exports imposed by the Government of Argentina, and the rise of the export tax and its impact on gas royalties. The Tribunal will deal with them individually.

(1) Restrictions on gas exports. ----------

699. It is clear for the Tribunal that the purpose of the letters of YPF was not to renegotiate the Agreement to adjust it to the restrictions on export. Those restrictions have been imposed since 2004, but in July 2008, YPF stated that they have "disintegrated" the Agreement. On the contrary, the conduct of YPF up to that date evidences that YPF considered that the Agreement could continue with the restrictions on gas exports. In fact, through the Complementary Agreements executed between 2004 and 2006, the Parties adjust the methods of the contractual relationships as a consequence of the restrictions on gas exports, always reserving their positions on whether such restrictions constituted force majeure or act of God. This adjustment shall be in force up to December 31, 2009. Under these circumstances, the Tribunal does not justify that YPF tried to distance from the relations agreed in order to adapt the *modus vivendi* of the Agreement to the shortage of gas. ----------

700. The Tribunal also holds that YPF did not need to declare the unviability of the Agreement to refrain from complying with its duty to deliver gas. By virtue of section 17.2 of the Agreement, an event of force majeure or act of God would suspend the compliance with the obligations under the agreement and release YPF from the liability for damages. Between 2004 and 2008, YPF invoked the force majeure to suspend the compliance with its obligations in several occasions. The Tribunal has not found in the file any statement of YPF pointing out that the force majeure event invoked has disappeared. Therefore, it is clear that the statement of YPF on that the Agreement was "disintegrated" was not aimed at releasing it from the compliance of an excessive onerous or complex consideration, as the contractual regime in force allowed it to fail to comply without any liability. It is true that the question on whether the force majeure in question was founded was still open, but the liability of YPF for the failures to deliver gas was anyway limited to the payment of DOP, whose maximum annual amounts had been reduced in the Complementary Agreements[99]. ----------

---

[99] The question on the force majeure invoked by YPF was founded, and it is analyzed in Part VII.B.1 of this Award.----------

701. However, even if the Tribunal accepts that YPF wanted to renegotiate the Agreement to adapt it to the restrictions on gas exports, none of the theories invoked by YPF entitled the latter to request a revision of the Agreement. ----------

702. As already indicated, the Vienna Convention does not expressly regulate the right of one of the parties to require a revision of the Agreement when there is a supervening onerousness that affects the balance of the obligations. ----------

703. The Tribunal holds in the first place that, due to the hierarchy of the rules applicable to this case (see Part V.B.1 *supra*), the Tribunal shall firstly apply the provisions of the Gas Supply Agreement. In this case, an event of supervening onerousness or unbalance in the considerations of the Parties is ruled by clause 23(c) of the Gas Supply Agreement, which obliges the Parties "to make their best efforts to solve, between them and in good faith, every conflict that may arise from the execution of the agreement in order to preserve the balance of considerations and the regularity and stability of their respective rights and duties." However, in the letters quoted, YPF did not invoke clause 23(c) of the Gas Supply Agreement to demand a revision of the Agreement as a result of the restrictive measures on exports. But, even if it had done that, the Tribunal considers that AESU and Sulgás would have not been obliged to accept: the *modus vivendi* of the Agreement had already been adjusted considering those restrictions, and neither clause 23(c) nor the principle of good faith obliged AESU and Sulgás to renegotiate the Agreement forever. ----------

704. Additionally, YPF has not proven how those restrictions on gas exports have destroyed the equivalence of the Gas Supply Agreement in a way that damages YPF. For that reason, the theories on unforeseen contingencies and frustration of the agreement also collapse.[100] As hereinbefore mentioned, although those theories are not expressly accepted by the Vienna Convention, there are judicial precedents that accept that a change in the circumstances that increase the onerousness of an obligation disproportionately could constitute an obstacle in the sense of article 79 of the Convention. For such purposes, it is essential that the party who alleges it proves the excessive supervening onerousness. ----------

705. In this case, YPF has not provided evidenced on the fact that the restrictions on exports have caused an excessive onerousness in the breach of its obligation or of an unbalance in the equivalence relation. YPF has alleged that these restrictions constituted a force majeure event or act of God that prevented it from complying with its obligation. However, both pursuant to the Argentine law (that the Parties chose to regulate the force majeure) and to the Vienna

[100] The Tribunal holds that, although in the letters YPF also invokes that unconscionability and fairness, it has not submitted arguments on this regard. Therefore, the Tribunal will not deal with these topics.----------

Convention, the force majeure is a ground for discharge from liability, not a factor that allows the revision or termination of an agreement. Furthermore, under the Vienna Convention, the force majeure that affects the compliance with the obligations of the seller does not authorize the termination of the Agreement; this is a right only set in favor of the buyer (articles 49, 72 and 73 of the Vienna Convention.) ----------

706. The conclusion would be the same pursuant to the Argentine domestic law, even if it were applicable. ----------

707. According to the expert of YPF, Aida Kemelmajer, the essential requirement for the application of the theory of unforeseen contingencies (included in section 1198 of the Argentine Civil Code) is that the unforeseen and inevitable fact causes an excessive onerousness on the compliance with the obligation due. According to the expert, it should be questioned if only the allocation of a debt from the perspective of the debtor should be taken into account, or if an unbalance in the equivalence relation is also necessary. According to some authors, the fact shall establish an excess in that onerousness that is rationally measured in relation to the other obligation; it is an economic relation in which one thing is given in exchange of another one which is similar, according to the market valuations. Therefore, it entails an objective relationship and not one derived from utility (Kemelmajer, ¶¶116-117.) ----------

708. As hereinbefore mentioned, YPF has not proved that the restrictions on exports have caused an excessive onerousness in the breach of its obligation, and it has not proved an unbalance in the equivalence relation[101]. In any case, the theory of unforeseen contingencies strictly authorizes the termination of the agreement, and in this case, there are no doubts that YPF did not terminate the Agreement. ----------

709. The revision of the Agreement would neither be justified in the theories on the grounds of the business or the frustration of the agreement accepted by Argentine books of authority and case law, considering that they were relevant. According to Mrs. Kemelmajer, those theories enable the revision of the agreements when the grounds of a legal business disappear or its purpose is frustrated (Kemelmajer, ¶¶120-123). Mrs. Kemelmajer points out that "in the event that the obligations of the parties were altered in a way that the original reciprocal contractual relationship of the agreement was lost, there has been an essential modification in the economic grounds of the business, and that is framed in the theory on the frustration of the agreement" (Kemelmajer, ¶176). However, the Tribunal holds that Mrs. Kemelmajer does not express

[101] AESU and Sulgás also argue that the restrictions were neither unforeseen nor unavoidable, but the Tribunal deals with this argument hereinafter, in the context of force majeure.----------

whether, in this case, the reciprocal contractual relationship of the agreement is broken. In fact, as already mentioned, YPF has not proved whether the obligations of the parties were modified in a way that the original reciprocal contractual relationship of the agreement was broken. ---------

710. For those reasons, the Tribunal concludes that the restrictions on gas exports do neither justify the fact that YPF stated, in July 2008, that the Agreement was "disintegrated", nor a revision of the Agreement. On the contrary, the insistence of YPF on the negotiation of a new agreement confirms its repudiation of the existing Agreement. ----------

(2) The increase in export taxes and its impact upon the gas royalties.----------

711. The increase in gas export taxes, by itself, did not justify a statement of unviability of the Agreement or a call for renegotiation either. YPF has always held that the correct interpretation of clause 13.1 of the Agreement is that taxes on exports should be borne by AESU and Sulgás. Therefore, it would not make sense that YPF invites AESU and Sulgás to renegotiate this clause. For the same reason, the increase in the tax could not have caused YPF a supervening onerousness to justify a statement of "disintegration" of the Agreement: ultimately, the supervening onerousness would affect AESU and Sulgás, not YPF.----------

712. YPF could have only been motivated to say that the Agreement was unavoidable, and could have possibly justified a call for renegotiation, by the impact of the increase in the export taxes on gas royalties that YPF should pay to the provinces. YPF wanted (and expressed that in its letters) to transfer the cost of such royalties to AESU and Sulgás.----------

713. YPF admits that the additional royalties had a negative impact on the export producers of natural gas, including YPF. It is not in question that the companies in charge of the exploitation (such as YPF) were obliged to pay a royalty amounted to 12% of the produced natural gas production, valued according to the natural gas price in the wellhead. It is not in question that, as a consequence of Emergency Law 25561, the tax on exports could not reduce the price in the wellhead for the assessment and payment of royalties to the provinces, so the Argentine provinces creditors of royalties started to claim that the 12% royalty was assessed not over the price received by the producer (in the case of the Gas Supply Agreement, 2 US$/MMBtu) but over the sum of that price plus the tax on exports borne by the buyer from abroad. YPF asserts that after Resolution MEP 127/2008, it reached 19 US$/MMBtu. ----------

714. However, although the increase in royalties raised the costs of YPF, YPF was not entitled to claim the renegotiation of the Agreement. YPF has not proved that the increase in royalties has turned the Agreement excessively onerous for YPF. There has not been proven either that it has

caused an unbalance in the relation of equivalence: on the contrary, the increase in the tax makes the Agreement more expensive for both Parties (AESU and Sulgás shall bear the increase in the tax, whereas YPF shall bear the increase in royalties). Therefore, YPF could not invoke theories based on the supervening onerousness or frustration of the Agreement, either pursuant to the Vienna Convention or the Argentine domestic law, to justify an overall revision of the Agreement. ----------

(c) The conduct of YPF ----------

715. The conduct of YPF also confirms its repudiation. It is worth mentioning some clarifications. --

716. From January 1, 2008 up to May 20, 2008, YPF partially complied with its obligations. YPF asserts that it delivered the total quantities of gas that the Government of Argentina allowed to export to AESU/Sulgás and it represented an average of 920,000 m3/day (YPF quotes the eSIGAS form of 2008, Annex Y-157). This means that YPF (i) delivered to AESU/Sulgás enough gas volume to generate 192 MWh, and (ii) delivered an average of 77% of the volume of 1,200,000 m3/day authorized by the Temporal Energy Agreement between Argentina and Brazil (Y-Replication,¶267). According to YPF, 23% of the remaining volume was not delivered to AESU/Sulgás due to the cuts made by the Secretariat of Domestic Commerce (Annex Y-157, Y-MC, ¶463 and Deposition of Dante Kogan, ¶¶ 32-33). Notwithstanding the reasons given by YPF, the Tribunal holds that YPF admits that the compliance with its obligations was partial, since in this period, the nominations of AESU and Sulgás fluctuated between 1,400,000 and 2,800,000 m3/day (Annex Y-157)[102]. ----------

[102] YPF argues that in those dates, AESU could not nominate 2.800.000 m3/day, as the generation capacity of the Uruguayana power station had reduced 50% after a technical problem occurred on October 13, 2007 (see also paragraph 182 *supra*.) YPF argues that, as a result, the maximum capacity of nomination of AESU was 1,400,000 m3/day. In spite of the foregoing, from March 26 to April 20, 2008, and from April 25 to May 20, 2008, AESU again "inflate" its requests by over-nominating volumes of 2,800,000 m3/day that it knew thoroughly exceeded what it used to generate energy and the Government of Argentina authorized in the Temporal Energy Agreement. According to YPF, this evidences the bad faith of AESU and Sulgás (Y-Replication, ¶268).The Annex Y-157 confirms those nominations. ----------
AESU and Sulgás do not reject either the technical problem or the capacity to generate the power station; however, they do not expressly accept it. Considering what they nominated 2,800,000 m3/day in 2008, the witness Cyrino testified that "[s]ince AES Uruguaiana remained obliged to comply with the PPAs and was subject to penalties if it did not do so, it nominated 2,700,000 m3/day from September 16, 2007, to December 11, 2007, and 2,800,000 m3/day from December 12, 2007, to the next winter period, in 2008, in order to test the real availability of the gas and, consequently, plan its future operation" (Deposition of Abreu Sampaio Cyrino, ¶6). ----------
The Tribunal considers that the alleged over-nomination of AESU and Sulgás is not relevant to determine if YPF repudiated the Agreement. YPF has not alleged that this over-nomination has constituted a breach of the Gas Supply Agreement. In fact, the Tribunal did not found in the file evidences that clause 4.1.1 of the

717. After the letter dated July 18, 2008, YPF no longer delivered gas (except for the partial compliance mentioned in the following paragraph.) YPF holds that it did not deliver gas because AESU did not nominate gas from May 20, 2008 (due to the beginning of the winter period), and on September 15 of that year (the same date on which the winter period ended) it suspended its obligations permanently. Consequently, YPF argues that its obligation to deliver gas did not occur and, therefore, there is not a possible breach. The Tribunal notes this argument, but it holds in turn that, as a consequence of the force majeure invoked by YPF, in accordance with clause 17.2 of the Gas Supply Agreement, the obligations of both Parties were suspended (except for the dispute regarding whether there is a cause of force majeure that justifies the breaches of YPF.) Therefore, as YPF notified a force majeure event that suspended its obligations (notice that was repeated in letters dated August 25 and October 21, 2008), AESU and Sulgás were not obliged to nominate gas. The Tribunal has not found in the file any indication of YPF that the force majeure event has ceased. ----------

718. Notwithstanding the foregoing, AESU nominated gas during the winter period indeed, but in small quantities. YPF not only complied partially, but also conditioned the deliveries to the AESU and Sulgás acceptance to pay gas royalties, condition which was not specified in the Agreement. In fact: ----------

a. On August 26, 27 and 28, 2008, AESU nominated gas in small quantities to make tests in the Uruguayana Power Station. As hereinbefore mentioned, despite being in the winter period, if AESU nominated in such period, YPF was obliged to deliver, and the failure to deliver would entitle AESU and Sulgás to collect the corresponding DOP, YPF could not mention the regulatory force majeure as an excuse (see *supra* ¶550. Testimony of Teodoro Marcó, ¶¶17-22.) In fact, the Tribunal has already determined that, in accordance with clause 14.1.2.1, as amended by the Complementary Agreements, the right of AESU and Sulgás to collect DOP penalties for failures to deliver in the winter periods of 2005, 2006, 2007, 2008 and 2009, was not accrued in the cases in which the delivery of gas was hindered by a force majeure or act of God, **except** that the alleged force majeure event or act of God were the restrictions on exports imposed by the Government of Argentina (that is to say, regulatory force majeure), in which case the obligation to pay the penalty would be accrued. ----------

---

Gas Supply Agreement was modified that established that the Maximum Daily Quantity that could be nominated by Sulgás between the first and tenth year was 2.8 million m3/day. ----------
However, the topic could be important in the stage of damages----------

b. The evidence included in the file (Annexes Y-151 and Y-152) shows that YPF accepted to make those deliveries, but it conditioned them to the fact that AESU and Sulgás unconditionally pay the export taxes and the royalties corresponding to such deliveries. AESU and Sulgás accepted those conditions for this single occasion, given the need to have the gas for tests. ----------

c. However, YPF only complied partially with the delivery of the amounts in smaller quantities than those requested. Notwithstanding that the failure to deliver would generate the obligation of YPF to pay the corresponding DOP, the Tribunal holds that, in practice, YPF could have been hindered from delivering due to regulatory force majeure. However, in spite of the fact that on August 25, 2008, YPF had notified AESU and Sulgás that the restrictions on exports remained, which in their opinion constituted a force majeure event that suspended their obligations (Annex Y-85), YPF did not excuse from complying with those nominations for tests alleging force majeure. On the contrary, it accepted to perform them if AESU and Sulgás pay the export taxes and gas royalties. The Tribunal has not found in the file any justification for this breach either. Particularly in this case, the nominations were for amounts much inferior than those generally nominated pursuant to the Gas Supply Agreement (for a maximum of 500,000 m3/day compared to the Maximum Daily Quantity of 2,800,000 m3/day specified in section 4.1.1 of the Gas Supply Agreement), and also inferior than the deliveries authorized by the Temporal Energy Agreement between Argentina and Brazil (1,200,000 m3/day), so the restrictions in force up to that date could not have hindered the total delivery of the amounts nominated. YPF has not alleged either that its capacity to comply with such inferior nominations has been hindered by other restrictions on gas exports imposed by the Government of Argentina, such as orders to redirect or instructions for the carriers. ---

719. Besides this partial compliance with its duties to deliver gas, YPF had rejected the payment of the DOP penalties claimed by AESU and Sulgás. In fact, in the aforementioned letter dated July 18, 2008, YPF rejected the payment of the DOP penalty of US$ 28 million claimed by AESU for 2007 and 2008 as per the letter dated June 25, 2008. YPF rejected the payment of this penalty due to force majeure, alleged assessment errors and alleged unidentified breaches of AESU, among others. Then, it declared for the first time that the Gas Supply Agreement was disintegrated, and it was no longer viable. Similarly, as per the letter dated August 1, 2008, YPF rejected the Debit Note No. COM/001/2008 of US$ 2.7 million issued by AESU as DOP penalty for

2006. The Tribunal notes that YPF has argued that the penalties alleged were not accrued (in fact, in Part VII.A.3 *supra*, the Tribunal determined that 90% of the DOP penalty for 2006 was not accrued due to force majeure events caused by labor unions or assessment errors.) However, even if YPF was right in rejecting the payment of penalties, its total and immediate rejection to the admissibility of the penalty claimed for 2007 and 2008, followed by the declaration of the disintegration of the Agreement in the same letter, adds an element that allows to conclude that it was clear that YPF would not comply with the Gas Supply Agreement. ----------

720. In this context, the statements of YPF regarding the unviability and disintegration of the Agreement, and its alleged call to renegotiate, may only be construed as a repudiation of its obligations. In fact, urging the other party to meet in order to negotiate a new agreement, as YPF wanted, confirms the intention to repudiate the existing Agreement. When the party who calls to negotiate also conditions the compliance with the future obligations to the acceptance of the conditions imposed, it is undoubtedly that there exists repudiation.----------

721. Therefore, the Tribunal concludes that it was clear that YPF would breach the Agreement, and so the repudiation of YPF was made pursuant to article 72(1) of the Vienna Convention. The Tribunal also concludes that the statements of YPF about the non-existence and unviability of the Agreement are equal to statements of YPF on that it would not comply with the Agreement, thus the case of article 72(3) of the Vienna Convention occurs. ----------

722. Additionally, the Tribunal agrees with the precedents quoted by AESU and Sulgás in paragraph 647 *supra*, in the sense that, the repudiation of the Agreement constitutes YPF in automatic default of its obligations under said agreement.----------

(iii) Did AESU and Sulgás legally exercise their power of termination pursuant to article 72 of the Vienna Convention? ----------

723. The Tribunal will now deal with the allegations of YPF related to the exercise of the remedy for termination.----------

(a) Did the termination violate a binding practice among the Parties? ----------

724. The Tribunal has already rejected the existence of a binding practice among the parties that prevented AESU and Sulgás from exercising their rights for termination (see paragraph 514 and subsequent *supra*). In fact, the Tribunal has determined that the parties had the rights and duties agreed upon in the Gas Supply Agreement as amended by the Complementary Agreements, and could exercise them freely accordingly. In any case, the Tribunal has also determined that the

statements of YPF do not evidence a real intention to negotiate, and YPF was not entitled to demand such negotiation (see paragraph 691 and subsequent *supra*). ----------

(b) Was the termination opposite to the character of ultima ratio of the remedy for termination?---

725. The Tribunal does not accept the argument of YPF on that the termination of the Agreement by AESU and Sulgás was unreasonable, because termination is *an ultima ratio* remedy. In accordance with its nature of *ultima ratio* remedy, AESU and Sulgás terminated the Agreement after YPF sent 10 letters in which it declared the repudiation of the Agreement. This evidences the intention of AESU and Sulgás to give an opportunity to YPF to compensate its repudiation. In fact, in the letters dated September 15 and 23, 2008, AESU and Sulgás informed YPF that they considered its expressions as repudiation and they kept the actions reserved for them; so YPF was well aware of the fact that AESU and Sulgás could react through the exercise of their rights to terminate. Additionally, as per the letter dated February 5, 2009, AESU expressed that, while the situation that gave rise to the suspension of AESU's obligations remained and YPF did not revert it, AESU would not nominate gas, which implies an intention to resume the contractual relationship if the repudiation was repaired. ----------

(c) Was the termination untimely performed? ----------

726. The Tribunal also dismisses the argument of YPF that the termination was untimely performed. As hereinbefore mentioned, it is clear that the remedy for termination included in article 72 of the Vienna Convention shall be exercised in a reasonable term (see paragraph 683 *supra*.) ----------

727. The Tribunal does not consider that the termination has been exercised in an unreasonable term. It is true that the first letter that the Tribunal has considered as an expression of repudiation was the one dated July 18, 2008, and that AESU and Sulgás terminated the Agreement on March 20, 2009, that is to say, eight months later. However, YPF repeated its statements on disintegration of the Agreement in the following months, keeping its repudiation. The last expression of repudiation of YPF is included in the letter dated January 23, 2009 addressed to TGM sending a copy to AESU and Sulgás, in which YPF repeated the "situation of unbalance and frustration of the agreement that involves us considering the measures adopted by the Government of Argentina, unforeseeable, extraneous and out of YPF's control that have disintegrated the grounds and premises taken into account by the parties when executing the

agreement" (Annex A15/S15.) In other words, between the last expression of repudiation and the termination of the Agreement, two months passed.----------

728. In the context of an agreement as economically important as the Gas Supply Agreement, considering the extreme nature of the remedy, and the circumstances of the case, a term of two months is a reasonable term. In the context of the Gas Supply Agreement, that has already been subject matter of negotiations and adjustments facing the regulatory changes, it was reasonable that AESU and Sulgás carefully expected to determine whether the expressions of YPF were a result of an isolated event, before accepting, based on the reiteration of those expressions, that it was repudiation. On the contrary, it would have been unreasonable that AESU and Sulgás had reacted with a termination of the agreement when the first expression that might be construed as repudiation occurred. Additionally, YPF had invoked force majeure, which suspended the compliance with its obligations, so a period of two months could not have caused any damage. ----

(d) Did AESU and Sulgás meet the requirements of previous communication included in article 72? -

729. The Tribunal does not consider that AESU and Sulgás have violated the terms of article 72(2) of the Vienna Convention, when they did not inform YPF about their intention to terminate the Agreement, within a reasonable term beforehand, for YPF to provide adequate assurances of its performance. The Tribunal has determined that the statements on the non-existence and unviability of the Agreement made by YPF in the abovementioned letters constitute a declaration that it would not comply with its obligations. In such way, it takes place the case specified in article 72(3) of the Vienna Convention which sets forth that there is no need of previous notice to the other party. ----------

730. Anyway, AESU and Sulgás implied their intention to terminate the Agreement when, suspending their obligations on September 15, 2008, they reserved their right to exercise the legal actions that might correspond “against the breaches and repudiation of YPF” (Annex A15/S15). In this way, they gave YPF the opportunity to provide adequate assurances of its performance, if it had the intention to do so. ----------

(e) Were AESU and Sulgás prevented from terminating the Gas Supply Agreement for having incurred in a breach? ----------

731. YPF has argued that it was AESU and Sulgás who repudiated the Gas Supply Agreement when suspending all their obligations on September 15, 2008. YPF poses this argument as part of its complaint, and requests the Tribunal to declare the liability of AESU and Sulgás for the illegal

suspension of the Agreement. Notwithstanding the foregoing, the Tribunal holds that, in determining whether AESU and Sulgás legally terminated the Agreement, it should be firstly determined if the suspension of the Gas Supply Agreement constituted a breach of said agreement. This is due to the application of the *exceptio non adimpleti contractus*, included (at least implicitly) in article 58 of the CISG.[103] ----------

732. Given the complexity of the parties' allegations in this matter, the Tribunal will deal with this question in Part 5 below. ----------

5. The suspension of the Gas Supply Agreement----------

733. Then, the Tribunal will deal with the claim of YPF that AESU and Sulgás repudiated the Gas Supply Agreement when they suspended their obligations on September 15, 2008. The Tribunal deals with this question from its double importance in this arbitration: on the one hand, it is one of the factors to consider when determining if AESU and Sulgás legally terminated the Gas Supply Agreement; on the other hand, it is one of the principal claims of YPF by which it requests that the liability of AESU and Sulgás be declared. ----------

(i) Position of YPF ----------

734. YPF argues that the suspension of the Gas Supply Agreement by AESU and Sulgás on September 15, 2008[104] constituted the total repudiation of their obligations under the Gas Supply Agreement, enabling YPF to consider that the Gas Supply Agreement was terminated for AESU and Sulgás fault and to claim for the damages caused. ----------

---

[103] See Vincent Heuze, *La vente internationale de marchandises* 271-72 (1992). Article 58 of the CISG sets forth that: ----------

"Article 58----------

1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.----------
2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.----------
3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity".----------

[104] Although YPF refers to the "suspension" of the Gas Supply Agreement, the Tribunal holds that the term used by AESU and Sulgás in the letter dated September 15, 2008 was "retention" of their obligations. Since in their filings in this arbitration proceeding, AESU and Sulgás have equally referred to the "retention" of their obligations or to the "suspension" of the Gas Supply Agreement, in order to facilitate the debate, the Tribunal will use the term "suspension". ----------

735. YPF also argues that: ----------

a. The remedy of suspension was not available for AESU and Sulgás, since the Gas Supply Agreement did not foresee such remedy in favor of AESU and Sulgás.----------

b. To the extent that AESU and Sulgás expected to exercise the remedy of suspension available pursuant to the Vienna Convention or the Argentine domestic law, such right was invalid.----------

c. The suspension was illegal, since the breaches invoked as excuses did not occur, because the DOP penalty claimed for 2006 was wrongly assessed or has not been accrued as YPF was under a force majeure event. ----------

d. The suspension was unreasonable, untimely performed and contravened the binding practice among the parties. ----------

(a) The suspension constituted a repudiation of the Gas Supply Agreement by AESU and Sulgás.-----

---

---

736. YPF argues that the suspension and breach of AESU and Sulgás evidence the complete abandonment and repudiation of the Gas Supply Agreement by AESU and Sulgás on September 15, 2008, and not in March 2009, when the agreement was formally terminated. ----------

737. YPF holds that by September 15, 2008, AESU and Sulgás had already lost interest in the continuance of the Gas Supply Agreement. Due to the aforementioned reasons, YPF asserts that it was not economically convenient for AESU and Sulgás to resume their position to be forced to nominate gas when the winter period ended on that September 15. However, AESU, despite that it could dissociate itself from its contractual obligations in Brazil, was still bound by its payment obligations by virtue of the Gas Supply Agreement, payable even when AESU and Sulgás do not nominate natural gas to YPF. The principal of those obligations was to pay the price component named Segment B, which was related to the price that YPF should pay TGM under the Transportation Services Agreement. ----------

738. YPF holds that AESU and Sulgás wanted to be dissociated from the Gas Supply Agreement in order to avoid the accrual of those amounts, and the way to do it without liability was blaming YPF. According to YPF, AESU and Sulgás knew that the suspension of the payment of the price component Segment B of Transportation would affect the continuance of the Transportation Services Agreement. However, on September 15, 2008, based on the failure to pay an alleged debt of US$ 2,711,424 for DOP penalties due to deficiencies in the delivery of YPF in 2006, AESU and Sulgás abandoned the compliance with each and every obligation pursuant to the Gas Supply

Agreement. In YPF's opinion, this constitutes a repudiation of the Gas Supply Agreement by AESU and Sulgás that authorizes YPF to consider the Gas Supply Agreement was terminated by AESU and Sulgás and to claim for the damages caused. ----------

(b) Nonexistence of the remedy of suspension in the Gas Supply Agreement ----------

739. YPF asserts that the remedy of suspension was not available for AESU and Sulgás under the Gas Supply Agreement. This remedy was only available for YPF (that is to say, the seller) under clause 14.1.1 of the Agreement, which enabled YPF to suspend the compliance with its duty to deliver gas if Sulgás had fail to comply for 30 days with its obligation to pay any invoice or debit note. ----------

740. YPF points out that the Gas Supply Agreement did not include any similar provision that authorizes AESU and Sulgás to suspend their obligations. According to YPF, this is not a cause, since its principal obligation under the Agreement was the payment of the price. Such price had a gas component that was destined to pay YPF for the sale of natural gas, but also had a Segment B component which was destined to pay TGM and a Segment A component intended to pay TGN for the transportation services rendered. The transportation component operated as *pass-through*, and YPF did not receive any economic benefit from that. Therefore, if AESU and Sulgás suspended in general all their obligations, including the payment of the price, the retention of the price would not only affect YPF, but also it would necessarily affect the possibility of YPF to pay the transportation services to Carrier companies and would jeopardize the continuance of the Transportation Service Agreements. ----------

741. YPF therefore argues that AESU and Sulgás acted with legitimacy when invoking a nonexistent right of suspension that hindered the continuance of the Uruguayana Project and caused the loss of the Transportation Services Agreement with TGM. ----------

(c) Invalidity of the remedy of suspension under the Vienna Convention ----------

742. YPF argues that AESU and Sulgás cannot invoke article 71 of the Vienna Convention to justify the suspension of the Agreement, since the requirements of this article are not met. ----------

743. Firstly, YPF holds that article 71 of the Vienna Convention only enables one of the parties to suspend the compliance with its obligations when it is clear that the other party will not comply with "a substantial part of its obligations." According to YPF, the failure to pay a DOP penalty cannot justify the suspension, since it is a pecuniary penalty that replaces the principal claim,

which cannot be equal to the "substantial benefit" that AESU and Sulgás were entitled to expect pursuant to the Gas Supply Agreement (that is the delivery of gas.) ----------

744. Secondly, YPF asserts that the amount of the outstanding invoices, in particular the invoice which was eventually invoked by AESU and Sulgás as an excuse to terminate the Gas Supply Agreement, is unsubstantial and derisory compared to the amounts included in the Gas Supply Agreement and the amounts that YPF released AESU from paying in the Complementary Agreements. ----------

745. Thirdly, YPF holds that the breach alleged by AESU and Sulgás (the failure to pay DOP penalties) does not entail a reduction of the YPF's capacity to honor all its obligations. ----------

(d) The suspension may not be founded in the exception of breach included in the Argentine Civil Code. ----------

746. According to YPF, the suspension may not be founded in the exception of breach included in the Argentine Civil Code ("*exceptio non adimpleti contractus*"), specified in sections 510, 1201 and related sections of the Argentine Civil Code invoked by AESU and Sulgás when making the suspension. This is due to the fact that the Vienna Convention constitutes *lex specialis* and it has priority over the Argentine domestic law. ----------

747. YPF holds that by the date AESU and Sulgás demanded YPF the payment of DOP penalties which were apparently accrued (letters dated June 25 and July 16, 2008, Annexes Y-80, Y-81, A15/S15, A17/S17), AESU and Sulgás had breached their own contractual obligations. In fact, according to YPF, from November 2006 up to May 2008, AESU and Sulgás systematically breached the Gas Supply Agreement when they rejected to pay the amounts corresponding to the price of the Segment A of Transportation that they had to bear. ----------

748. According to YPF, AESU acknowledged that it owed part of the price of Segment A of Transportation, and just three days before the suspension was declared, it expressed that it was going to pay. Presumably with the aim of avoiding to incur in default of its own obligations when expecting to exercise the *exceptio*, AESU informed YPF on September 12, 2008 (Annex Y-87) that it had transferred to Sulgás the price of Segment A of Transportation plus interest. However, Sulgás effectively paid such amount to YPF only after the suspension made by AESU and Sulgás. YPF supports its arguments in the transfer receipts of September 17 and 26, 2008 (Annexes Y-90 and Y-92), which evidence that YPF received the funds drawn by Sulgás for Segment A of Transportation on September 16 and 25, respectively. ----------

749. Therefore, AESU and Sulgás could not base their allegations on the doctrine of *exceptio*, since that one of the several reasons by which YPF legally refrained from paying the DOP claimed was precisely the failure of AESU and Sulgás to pay the price for Segment A of Transportation. YPF argues that it informed this to AESU and Sulgás in the letters dated July 18, 2008 (Annex Y-82) and September 5, 2008 (Annex Y-86.) ----------

750. Finally, YPF asserts that the *exceptio* is only applied in the case of breach of essential - not in the case of incidental- obligations, such as the DOP penalty. According to YPF, pursuant to the Gas Supply Agreement, only the delivery of gas and the payment of the price (gas and transportation components) constituted the principal obligations. The payment of contractual penalties, either the DOP or the TOP, were merely incidental. Therefore, AESU and Sulgás could not suspend their principal obligation to pay the price of the Gas Supply Agreement based on that YPF failed to pay an alleged debt generated by the incidental obligation DOP, whose importance was minor compared with the total amounts involved in the Agreement. ----------

(e) Nonexistence of a breach that justifies the suspension ----------

751. Even if the remedy of suspension was available, YPF argues that it was illegal since the breaches invoked by AESU and Sulgás did not occur. ----------

752. YPF holds that AESU and Sulgás based the suspension on the "serious breaches and continuous failures" of YPF, but specifically they only identified one breach, referred to the claim made by AESU to YPF related to the payment of penalties for failures in the delivery incurred in 2006. ----------

753. As hereinbefore mentioned (see Part VII.A.3 *supra*), YPF asserts that the alleged debt for DOP penalties in 2006 has never been accrued, because 78% of the deficiencies in the delivery was attributable to the force majeure of YPF[105] (situation in which the DOP penalty should not be accrued), but the remaining 22% was wrongly assessed. ----------

(f) The suspension was unreasonable, untimely performed and contravened the binding practice among the parties. ----------

754. Even if the remedy of suspension was available, and the breached invoked by AESU and Sulgás had existed, YPF holds that the suspension was unreasonable, untimely performed and that it contravened the binding practice among the Parties. ----------

---

[105] YPF holds that 68% of the penalty is attributable to the failures to deliver hindered by the force majeure caused by labor unions, whereas 10% is attributable to regulatory force majeure. (See Part VII.A.3 *supra*).---

755. YPF argues in the first place that the suspension meant an extremely disproportionate exercise of the remedy specified in the Vienna Convention, since there is a disparity between the breaches claimed (failure to pay a DOP penalty for a negligible amount) and the suspension by AESU and Sulgás of all of their obligations pursuant to the Gas Supply Agreement. Additionally, YPF holds that in any case the suspension would be invalid, since the Convention only authorizes the suspension of certain obligations between the parties and not all of them. The possible failure to pay DOP by YPF would have at the most justified the suspension of the payment of penalties as TOP unpaid by AESU and Sulgás, which may be identified as "related" to the obligation of DOP. YPF adds that AESU and Sulgás did not stipulate a term in which they would suspend such obligations, as inferred from the Vienna Convention provisions. ----------

756. In the second place, YPF holds that the suspension was untimely, since AESU and Sulgás let almost two years passed between the date in which they considered that the DOP penalties were apparently accrued and the date in which they expect their collection. In this sense, YPF holds that the Gas Supply Agreement obliges AESU and Sulgás to issue a debit note in the month immediately after the accrual of a DOP debt (clause 15.2.2 of the Gas Supply Agreement.) Therefore, the DOP corresponding to 2006 was belatedly billed by AESU and Sulgás. ----------

757. In the third place, YPF argues that the suspension contravened the binding practice among the parties when separating the Agreement from the dispute related to the force majeure of YPF (placing it under an "umbrella") and allowing its continuance (see arguments of YPF in Part VII.A.2 *supra*.) According to YPF, this practice obliged the parties to handle the disputes by themselves dealing with the interruptions in the gas supply, and in case of failure of this out-of-court settlement procedure, they are obliged to solve the dispute before exercising any right to suspend based on this dispute. As it has been discussed in Part VII.A.2 *supra,* YPF argues that this practice prevented AESU and Sulgás to terminate the Agreement. This practice also avoided that AESU and Sulgás could expect the collection of penalties for the deliveries that were not made without declaring before that whether such force majeure existed or not.----------

(g) Bad faith in the exercise of the suspension ----------

758. Finally, YPF argues that the suspension of the Agreement exercised by AESU and Sulgás was in bad faith, since the breaches alleged by AESU and Sulgás were mere pretexts to hide the real intention of AESU and Sulgás, which was abandoning the Gas Supply Agreement and blaming YPF.

759. In this sense, YPF asserts that since the first restrictions on gas exports began in April 2004, and for four years and a half, AESU and Sulgás have never billed a penalty for failures in the

delivery. They did not invoke an alleged remedy of suspension based on the failure to pay a DOP penalty by YPF. YPF interprets those facts as the proof that the alleged breach of YPF to pay DOP was a pretext used by AESU and Sulgás to eliminate the Gas Supply Agreement and the Transportation Services Agreement. ----------

(h) Consequences of the suspension illegally exercised ----------

760. Therefore, YPF argues that the suspension made by AESU and Sulgás contravened the Gas Supply Agreement. It was clearly opposite to the principle of preservation or conservation of the agreement, of reasonableness and good faith included in the Vienna Convention, and in turn, in the binding practice existing between the parties to continue the Gas Supply Agreement and to place the force majeure under an "umbrella."----------

761. YPF holds that the suspension declared by AESU and Sulgás on September 15, 2008 constituted an essential breach of their obligations pursuant to the Gas Supply Agreement that might have been invoked by YPF as a cause for termination. The subsequent termination by AESU and Sulgás of the Gas Supply Agreement based on this illegal suspension was therefore unjustified and illegal, and they should be held liable for all the damages caused to the other parties and participants (for example, TGM) for the termination of the Gas Supply Agreement and the Related Agreements. ----------

(ii) Position of AESU and Sulgás ----------

762. AESU and Sulgás argue that: ----------

a. The remedy of suspension was available in the applicable law indeed, and the parties did not waive to said remedy in the Gas Supply Agreement.----------

b. The suspension was valid both under the Vienna Convention and under Argentine domestic law.----------

c. There was not a random suspension of the obligations under the Agreement.----------

d. The suspension was not unreasonable, untimely performed or in contravention of any binding practice.----------

e. The suspension was not an excuse to abandon the Gas Supply Agreement, ----------

(a) The remedy of suspension was indeed available ----------

763. AESU and Sulgás hold that the fact that the Agreement has not expressly foreseen the remedy of suspension does not mean that the Agreement does not include it. ----------

764. AESU and Sulgás assert that the remedy of suspension existed in the applicable law. Article 71 of the Vienna Convention, section 1092 of the Civil Code of Brazil in force at the moment of the execution of the Gas Supply Agreement and sections 510 and 1201 of the Argentine Civil Code allow one of the parties to delay the compliance with its obligations if the other party has not complied with its own obligations yet. ----------

765. Since, being aware of its existence, the parties did not limit the validity of this right in the Agreement, this must be construed as an acceptance of its validity. Moreover, AESU and Sulgás point out that YPF has invoked the doctrine specified in section 1201 of the Argentine Civil Code to justify the suspension of its obligations. ----------

(b) The suspension was valid pursuant to the Vienna Convention----------

766. In this case, AESU and Sulgás assert that the suspension made was valid in the terms of article 71 of the Vienna Convention. Article 71.1(b) of the Vienna Convention authorizes the delay in the compliance with the obligations of one of the parties when the other party does not comply with one of the essential parts of its obligations due to its conduct when intending or complying with the agreement. AESU and Sulgás argue that the conduct of YPF is included in this case. ----------

767. Regarding this argument of YPF that the suspension is inadmissible for having been made in general and without expiration, AESU and Sulgás argue that the content of the letter dated September 15, 2008 cannot be considered generic, and that article 71 of the Vienna Convention does not include a reference to a certain term. ----------

(c) The suspension was valid pursuant to the Argentine Civil Code ----------

768. AESU and Sulgás reject the argument of YPF on that they could not suspend their obligations pursuant to the Gas Supply Agreement for being in default. They argue that the payments that YPF claims as transportation for Segments A and B were not outstanding by virtue of the provisions of sections 16.2.1.2) (ii) and 16.2.2.2) (ii) of the Agreement, that released them from paying transportation in cases of breaches of YPF----------

769. In any case, and subject to a potential reimbursement pursuant to the provisions of section 15.5) of the Agreement, on September 12, 2008 AESU paid amounts for transportation up to September 15, 2008 (Annex Y-87, A15/S15). From that moment on, any payment was reached by the suspension of the obligations. ----------

(d) The suspension was not unreasonable, untimely performed or in contravention of any binding practice. ----------

770. AESU and Sulgás assert that they acted in exercise of the provisions of section 14.1.3) of the Gas Supply Agreement and that they did not indiscriminately suspend the compliance with the obligations arising from the Agreement, but just with those obligations that were reciprocal to the ones breached by YPF. ----------

771. AESU and Sulgás criticize that YPF is focused on one of the breaches invoked by AESU and Sulgás (the failure to pay the DOP penalty), when there were three breaches (the failure to pay DOP, the repudiation of the Agreement and the failure to act as a reasonable and prudent operator). They hold that each of those three breaches were important enough to suspend the compliance with the obligations. ----------

772. AESU and Sulgás assert that they gave YPF the chance to save the Agreement: in order to do so, YPF should have provided adequate guarantees of its contractual performance: (i) firstly, that it would immediately pay the outstanding amounts for DOP, either directly or in escrow, pursuant to section 15.5 of the Gas Supply Agreement; (ii) secondly, that it would immediately, and effectively, resort to the courts so that the rule imposing the restriction on exports be declared inapplicable; and (ii) thirdly, that it would waive to the repudiation, that is to say, that it would comply with the Gas Supply Agreement in its entirety and that it was under good physical conditions (enough reserves and *deliverability*) to do it. ----------

773. AESU and Sulgás point out that, after that AESU and Sulgás suspended their obligations under the Agreement, YPF did not provide any of the aforementioned guarantees. Coherently with its repudiation, after the suspension of AESU and Sulgás, YPF, instead of assuring the compliance with its obligations, rejected the suspension made by AESU and Sulgás, and declared that its obligations were suspended. ----------

774. AESU and Sulgás also reject that the suspension has been untimely performed. ----------

775. Finally, AESU and Sulgás reject the existence of a binding practice among the parties that could have avoided the exercise of the suspension of their obligations (see Part VII.A.2 *supra.*) -----

(e) The suspension was not an excuse to abandon the Gas Supply Agreement ----------

776. As hereinbefore mentioned, AESU and Sulgás reject that the reason by which they suspended the Agreement was the expiration of the winter period of 2008, which obliged them to nominate gas again. They repeat that the reason was that YPF did not deliver gas and it did nothing to overcome the obstacles that prevented YPF from delivering said gas. ----------

(iii) Analysis ----------

777. Similar to the arguments regarding the termination of the Agreement, the Tribunal will firstly analyze whether the remedy of the suspension was available for AESU and Sulgás. In that case, it will analyze whether it was exercised pursuant to the Agreement or the applicable law, that is to say, if the necessary conditions to exercise such remedy were met and if such exercise was made in accordance with the law. Also in this case, the Tribunal will analyze whether the remedy was exercised in good faith in Part 6 below. ----------

(a) Was the remedy of suspension available? ----------

(1) Pursuant to the Vienna Convention ----------

778. The Tribunal agrees with AESU and Sulgás on the fact that although the Gas Supply Agreement had not expressly included the remedy of suspension for AESU and Sulgás, it did not prevent AESU and Sulgás from using the remedies available in the applicable law. Therefore, as the parties did not waive its application, the remedy specified in article 71 of the Vienna Convention was available, as it enables one of the parties to suspend the compliance with its obligations in certain circumstances. ----------

779. Article 71 of the Vienna Convention sets forth: ----------

"Article 71 ----------

1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of: ----------

a) a serious deficiency in his ability to perform or in his creditworthiness; or ----------

b) his conduct in preparing to perform or in performing the contract. ----------

[...] ----------

3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance." ----------

780. The aim of this remedy was to achieve a balance between the rights of the parties.[106] When one of the parties clearly repudiates its obligation to comply, it could not be expected that the other party will be willing to comply.[107] ----------

[106] Schlechtriem and Schwenzer, Commentary on the UN Convention on the International Sale of Goods (CISG), 2010, pp. 954-955. ----------

781. It has also been pointed out by the legal doctrine that the aim of the right of suspension is promoting the dialogue and cooperation between the parties in order to preserve the agreement and promote its performance. This right could be used as a way of protection in cases in which it is possible that one of the parties will breach the agreement, without being this breach essential (in which case the repudiation stipulated in article 72 may be applied). In this way, the "non-breaching" party will be able, when invoking the suspension, to refrain from performing the agreement until the other party provides "adequate assurances of its performance."[108] ----------

782. Regarding the requirement that the breach of the other party "becomes apparent," the legal doctrine has understood that the existence of a real probability is sufficient.[109] ----------

783. Some authors have asserted that the right of suspension is not limited only to reciprocal or interdependent obligations. In the same way, it is noted that article 71 may also be used when the original contractual obligation has been replaced by an obligation to compensate damages.[110]

784. Regarding the limit of time, the creditor shall not necessarily exercise his right to suspend immediately after being aware of the risk of an imminent contractual breach, although pursuant to article 77 he shall mitigate damages.[111] ----------

(2) Pursuant to the Argentine law ----------

785. The remedy of suspension is also available in the Argentine Civil Code that, though not strictly applicable, it was expressly invoked by AESU. In fact, article 1201 of the Argentine Civil Code, related to section 510 of that Code, specifies the exception of the non-fulfilled agreement (*exceptio non adimpleti contractus*.) ----------

786. Section 1201 of the Argentine Civil Code sets forth that: ----------

"In bilateral contracts, one of the parties will not be able to demand its performance if he does not prove to have performed or offered to performed, or that its obligation is to be performed at a future date."----------

787. This provision derives from the general principle on obligations specified in Section 510 of the Civil Code: ----------

---

[107] Lookofsky, The 1980 United Nations Convention on Contracts for the International Sale of Goods, 2000, p. 147. ----------

[108] Kroll/Mistelis/Perales Viscasillas (eds), UN Convention on Contracts for the International Sales of Goods (CISG), 2011, p. 917----------

[109] Bennett, in Bianca-Bonell, Commentary on the International Sales Law, 1987, p. 518.----------

[110] Schlechtriem and Schwenzer, Commentary on the UN Convention on the International Sale of Goods (CISG), 2010, pp. 950-952----------

[111] *Id*., pag. 959.----------

"In reciprocal obligations, one of the parties does not incur in default if the other does not perform or agrees on performing the corresponding obligation." ----------

788. Therefore, the remedy of suspension was indeed available for AESU and Sulgás, provided that the conditions laid down in the relevant rules were met. ----------

(b) Were the conditions for AESU and Sulgás to exercise the remedy of suspension present? ----------

789. AESU {and Sulgás}[112] suspended their obligations as per the letter dated September 15, 2008 (Annex Y-89; Annex A15/S15) which provided: ----------

"This letter replies to the letters sent on August 25, 2008 and September 5, 2008. ----------

We have noted your reference to the fact that the Agreement would have been "disintegrated" and that "the grounds of the Agreement would have disappeared." If with these statements you would like to mean the impossibility of YPF to perform, such alleged impossibility was actually caused by the failure of YPF to comply with its obligations, among these, the execution of a reasonable and prudent operation, as requested in the Agreement and section 1198, paragraph 1st, of the Argentine Civil Code. . ***In any case, we understand such unusual concepts, as well as the content of your aforementioned letters (including your inadmissible request to transfer the costs that do not correspond to AESU pursuant to the Agreement, and the overall revision of this last item), as a guilty repudiation of your obligations under the Agreement and of the Agreement in itself.*** ----------

Therefore, we repeat -and ratify in this letter- ***our position pursuant to the letters sent by AESU dated May 26, 2008 and August 14, 2008, and the claim for the payment of "Deliver or Pay" due by YPF***, in accordance with the provisions of clauses 14.1.2.1, 14.1.2.2 and 14.1.2.2 bis of the Agreement, with the amendments introduced by the Supplementary Agreement dated February 10, 2006 by and between YPF, AESU and Sulgás. ----------

We hereby also reject the alleged breach of AESU related to the payments agreed upon in the contract, of which YPF does not provide information different from that quoted. Therefore, facing

---

[112] The Tribunal holds that the letter dated September 15 was signed only by AESU. Although the letter refers to the Agreement AESU-Sulgás by which Sulgás assigned rights to AESU, AESU does not expressly state that AESU acts on Sulgás behalf. However, for the considerations of this arbitration, the Tribunal holds that the proceeding of AESU also involved Sulgás. For instance, AESU and Sulgás have said that "on September 15, 2008 AESU, exercising its right pursuant to the Agreement AESU-Sulgás, AESU gave notice to YPF of that, facing the serious breaches and continuous default of YPF, and its repudiation to the CEG, the performance of the obligations provided in the CEG were suspended" (A/S-MD, ¶ 27). Therefore, the Tribunal holds that AESU suspended both its own obligations and Sulgás obligations pursuant to the Gas Supply Agreement.----------

the serious breaches and continuous delays of YPF, in accordance with the doctrine that arises from the provisions of sections 510, 1201 and related sections of the Argentine Civil Code, we hereby duly informed you that AESU, to the extent authorized by such doctrine and rules, ***will withhold the performance of the obligations provided in the Agreement and in the Conflict Agreements***. ----------

AESU reserves the right to exercise the legal action that may correspond against the breaches and repudiation of YPF, and any of the provisions herein stipulated may be construed as a limitation or condition to such powers." (Emphasis added) ----------

790. From the content of this letter, we may infer that the grounds invoked by AESU {y Sulgás} to suspend their obligations were three, and not one, as YPF asserts. AESU expressly refers to (i) the failure of YPF to pay DOP penalties; (ii) the repudiation of YPF of the Gas Supply Agreement; and (iii) the failure of YPF to act as a reasonable and prudent operator. Regarding the payment of DOP penalties, AESU refers to the letter dated August 14, 2008, in which it claimed the payment of DOP penalties for 2006, 2007 and 2008 (for an approximate amount of US$ 30.7 million); not only the DOP related to 2006, as YPF declared. ----------

791. For one of the parties to be entitled to suspend or delay the performance of his obligations, it must be "apparent" that the other party will not perform a substantial part of his obligations as a result of (i) a serious deficiency in his ability to perform or in his creditworthiness, or (ii) his conduct in preparing to perform or in performing the agreement. ----------

792. The Tribunal has already determined that, as a consequence of the statements of YPF in the letters quoted by AESU and Sulgás, and of the conduct of YPF in that period, it was "clear" that YPF will not perform its essential obligations under the Agreement. *A fortiori*, it was "apparent" that YPF would not comply with a substantial part of its obligations, as requested in article 71 of the Vienna Convention. In fact, at September 15, 2008, YPF had already sent four letters expressing its repudiation[113], and it has conditioned the gas deliveries for tests requested by AESU in August 2008 to the payment of the gas royalties by AESU. Therefore, the Tribunal holds that AESU and Sulgás had grounds to exercise the remedy provided in article 71(1)(b) of the Vienna Convention. ----------

793. The requirements of the *exceptio non adimpleti contractus* provided in sections 510 and 1201 of the Argentine Civil Code are also met. As of September 15, YPF had already repudiated the Agreement, and therefore, it was under a situation of breach of its essential obligations.

[113] Letters dated July 18, August 1, September 5 and September 12, 2008 (Annexes Y-82, Y-87, A15/S15).----

Therefore, AESU {and Sulgás} could withhold the performance of their own obligations, provided that they were not in default. ----------

794. YPF has alleged that AESU and Sulgás were in a situation of breach of their own obligations indeed, since they incurred in default regarding the payment of Segment A of transportation. However, YPF acknowledges that on September 12 (that is, three days before the suspension) AESU sent a letter pointing out that it had paid Sulgás the price of Segment A of Transportation, plus the corresponding interest. YPF acknowledges that Sulgás paid the outstanding amount of Segment A, although it argues that such payment was only made after AESU suspended its obligations. According to the transfer receipts dated September 17 and 26, 2008 (Annexes Y-90 and Y-92), YPF received from Sulgás US$ 3,683,853.94 and US$ 379,282.27 for Segment A of Transportation on September 16 and 25, 2008, respectively. ----------

795. The Tribunal holds that, although it is true that AESU had suspended its obligations before Sulgás paid the amount of Segment A of Transportation to YPF, at the date of the suspension it had already sent a letter to YPF in which it had mentioned that it had paid the amount to Sulgás. In the Tribunal's opinion, this payment to Sulgás carried the implicit intention that Sulgás would pay YPF. Although AESU does not expressly state that, it is clear that the purpose of this payment was that Sulgás pays YPF the price for Segment A of Transportation, since AESU made the payments "subject to potential reimbursement" under clause 15.5 of the Gas Supply Agreement, so it was clear that the final addressee was YPF. This was confirmed by the facts, since Sulgás effectively paid those amounts to YPF in the following days. This evidences that, as of September 15, 2008, although AESU had not formally performed its obligation to pay Segment A of Transportation, it had accepted to pay it (under the terms of section 510 of the Argentine Civil Code), or it had offered to perform it (under the terms of section 1201 of the Argentine Civil Code.)----------

(c) The exercise of the remedy of suspension: was it unreasonable, untimely performed or in contravention of a binding practice between the parties? ----------

796. Even if the remedy of suspension was available, and the breach invoked by AESU and Sulgás would have existed, YPF holds that the suspension was unreasonable, untimely performed and that it contravened the binding practice among the Parties. ----------

797. The Tribunal has already rejected this argument of YPF that the exercise of remedies for termination of the parties was hindered by a binding practice between them (see paragraph 514

and ss. *supra*.) For the same reasons, there was not a binding practice that prevented the parties from exercising the remedy of suspension either. ----------

798. The Tribunal also rejects the argument of YPF on that the suspension meant an unreasonable disproportionate exercise of the remedy specified in the Vienna Convention. The Tribunal has determined that, as of September 15, 2008, YPF had already repudiated its obligations. Therefore, it was not disproportionate that AESU {and Sulgás} suspended all their obligations pursuant to the Agreement. The provisions of article 71 of the Vienna Convention do not impose that the obligations suspended must be specified, and do not request to indicate a term during which they shall be suspended ----------

799. The suspension was not untimely performed either, since the repudiation of YPF was firstly expressed on July 18, 2008, and YPF repeated its statements on repudiation up to three days before AESU suspended its obligations. ----------

800. AESU and Sulgás also met the requirements specified in the third paragraph of article 71 of the Vienna Convention. AESU immediately informed YPF about its intent to suspend the Agreement. ----------

801. AESU also gave YPF the chance to provide adequate assurances of its performance. Between the date in which the suspension was notified and the date in which the Agreement was terminated, six months passed; however, YPF did no repair its repudiation. As per the letter dated February {5}, 2009, AESU expressly gave YPF this chance when pointing out that, whereas the situation that gave rise to the suspension of the obligations of AESU continued, and YPF did not revert such situation, AESU would not nominate gas. This evidences the intention of AESU and Sulgás to resume the contractual relationship if the repudiation was repaired. ----------

(d) Conclusion----------

802. Therefore, the majority of the Tribunal concludes that AESU {and Sulgás} legally exercised their right to suspend the Agreement under article 71 of the Vienna Convention and the *exceptio non adimpleti contractus* of the Argentine Civil Code, in case that this was applicable.[114] ----------

*** ----------

---

[114] Prof. Roque J. Caivano disagrees with this item. Its dissenting opinion is hereto attached. As a consequence of this dissenting opinion, the determinations and conclusions derived from this decision are adopted by the majority of the Tribunal. ----------

803. As a consequence of the conclusions draw in Parts 4 and 5 above, the majority of the Tribunal concludes that AESU and Sulgás legally exercised the remedy for termination specified in article 72 of the Vienna Convention. ----------

6. Was the termination in bad faith? ----------

804. Having determined that YPF repudiated the Gas Supply Agreement and that, therefore, AESU and Sulgás legally exercised the remedy for termination specified in article 72 of the Vienna Convention, the Tribunal will hereinafter analyze the argument of YPF that this termination contravened the principle of good faith. ----------

a. Position of YPF ----------

805. Besides holding that AESU and Sulgás terminated the Gas Supply Agreement contravening the legal and contractual provisions in force, YPF holds that the conduct of AESU in the unilateral suspension and termination of the Gas Supply Agreement was (i) in bad faith, when trying to transfer to YPF its own liability against YPF and the other parties and participants of the Gas Supply Agreement for the abandonment of the electrical business in Brazil, in light of the economic non-viability caused by Resolution MEyP No. 127/08, and (ii) opportunistic, when adopting a "doublespeak" method in its way out of the PPA in Brazil opposite to its way out of the Gas Supply Agreement in Argentina. ----------

806. Particularly, YPF asserts that the causes invoked by AESU and Sulgás to terminate the Agreement (in particular, the alleged repudiation of YPF) are mere excuses. YPF asserts that between 2004 and the first half of 2007, AESU and Sulgás could subsist without any problem with the restrictions on gas exports, since they could buy the necessary energy to perform its engagements on energy in Brazil in the spot market. The situation of AESU has become more difficult since the second half of 2007; however it was only since March 2008 that the electric business of AESU and Brazil has become non-viable, as a consequence of Resolution MEyP No. 127/08 that increased the Argentine gas export tax to 100%, combined with the price of the energy in the spot market. Only then, AESU wanted to dissolve this business, but for that it also had to dissolve the Gas Supply Agreement. ----------

807. The position of YPF is based on two legal arguments: ----------

a. That, in section 13.1 of the Gas Supply Agreement, Sulgás contractually assumed the costs of a change in the taxation treatment of gas exports, and therefore, it should bear the cost of export taxes. ----------

b. That, by virtue of its incorporation to the Thermoelectricity Priority Program [PPT for its acronym in Spanish] in Brazil in 2004, AESU could not transfer this higher cost to the distribution companies to whom it sold electric energy through the PPAs. ----------

(i) AESU and Sulgás contractually assumed the cost of taxes on gas exports. ----------

808. YPF asserts that section 13.1 of the Gas Supply Agreement provided the transfer to Sulgás of any new tax that affected gas exports, whether as a consequence of a legal amendment or a change in the interpretation. YPF accepts that section 13.1 also provided a system of consultation to the competent authority or an alternative regime of experts to determine whether it corresponded to apply to the Gas Supply Agreement the respective tax, but it also holds that, whatever was the result of the consultation, if YPF was affected by the new tax, AESU and Sulgás would be liable for holding YPF harmless. ----------

809. Additionally, YPF asserts that, from the creation of the Argentine tax on gas exports through Executive Order 645/2004, both parties considered that it was necessary to consult if this tax was applicable to the Gas Supply Agreement. Such application was clear, since the taxable event was precisely the gas export. YPF holds that this must have also been the understanding of AESU, since in 2004, AESU paid this tax without demanding consultation or challenging its payment (Testimony of A. Fernández,¶ 16.) ----------

810. YPF asserts that AESU began to challenge the payment of this tax and to demand consultation only with the issue of Resolution MEP No. 534/2006, that increased the rate of the tax to 45% and the issue of the Ministerial Decision MME No. 188/2006, for the reasons hereinafter explained. However, according to YPF, after exchanging correspondence, AESU accepted that consultation would be useful (Testimony of A. Fernández, ¶¶22-23.) ----------

811. YPF rejects the arguments of AESU and Sulgás regarding the illegality of the export duties, as they are confusing, not founded and opposing to their own position. Particularly, YPF asserts that: ----------

a. It is false that YPF has not challenged the export duties. YPF challenged Resolution MEyP No. 534/06 on October 12, 2006 before the Ministry of Economy and Production (authority who issued the provision) based on, *inter alia*, (i) forfeiture; (ii) contravention of a legal principle; (iii) contravention of the principle of reasonableness; and (iv) contravention of the "Protocol on Intentions between the Argentine Republic and the Republic of Brazil on Energetic Integration" issued on April 9, 1996 (hereinafter referred to as the "Protocol"). ----------

b. AESU and Sulgás, being perfectly entitled to, did not challenge the rules that now claim. According to Mr. Hutchinson, having contractually assumed the cost of export taxes, AESU and Sulgás had a legitimate interest that no tax would be levied on exports, and so, they were entitled to file administrative claims and legal actions to protect their subjective rights (or, at least, their legitimate interests) (Complementary legal opinion of T. Hutchinson,¶¶ 20, 2937.) ----------

c. Similarly, Mr. Boggiano asserts that AESU and Sulgás were entitled to claim before the Argentine courts the contravention of the agreements on energetic integration between Argentina and Brazil (particularly, the Protocol with Brazil and the "Memorandum of Understanding Related to Gas Exchanges and Gas Integration among the States Parties of the MERCOSUR" approved by Decision No. 10/99 issued by the Common Market Council on December 7, 1999 (hereinafter referred to as the "Memorandum")). According to Mr. Boggiano, both international agreements were legally and hierarchically more important than Argentine domestic law, and they were directly operative (not merely programmatic), enabling the parties to claim their violation before the courts (Supplementary Opinion of A. Boggiano.)[115] ----------

d. Additionally, AESU and Sulgás could have claimed through the international channel within the framework of MERCOSUR: according to Mr. Boggiano "in accordance with the mechanism provided in the Protocol of Olivos about the general procedure in case of claims, the affected parties are entitled to file their claims before the National Section of the Common Market of the State party where they have established their real or commercial domicile, proving the violation and the existence or menace of damage" (Supplementary Report of A. Boggiano, ¶104.) ----------

(ii) AESU could not transfer the cost of gas export taxes to the distribution companies in Brazil. -

812. According to YPF, there was a reason by which Sulgás accepted in the agreement the tax risk pursuant to the Gas Supply Agreement: the original PPA executed with the distribution companies in Brazil also included a transfer (pass-through) of such costs to the distribution companies in Brazil. ----------

---

[115] Mr Boggiano is based on the case entitled "Cafes La Viriginia" in which the plaintiff argued that an additional import duty contravened the international agreement between Argentina and Brazil, and the Supreme Court accepted the claim on that international law was hierarchically more important than the Argentine domestic law (Annex 4 of the Supplementary Opinion of Mr. Boggiano.) ----------

813. However, according to the expert of YPF, Mercados Energéticos, when AESU signed the PPT, the prices of the PPAs between AESU and the distribution companies in Brazil became subject to the annual limitation specified by the ANEEL for the transfer of the costs of the distribution companies to consumers (called "Normative Value" or "NV") (First Report of Mercados Energéticos,¶ 183). Mercados Energéticos asserts that this limitation was expressly established for AESU regarding the highest value of Argentine gas through Ministerial Decision MME No. 188/2006.[116] ----------

814. Mercados Energéticos adds that, in view of the impact of the Ministerial Decision MME No. 188/2006 over the relationship between AESU and the distribution companies under the PPA, due to the increasing rises in the Argentine tax on exports and the impossibility of AESU to completely transfer them to the distribution companies under the PPA, on December 6, 2007, it requested before the ANEEL the elimination of the *pass-through* limitation on the price of the PPA; however, the ANEEL rejected the request of AESU.[117] (Third Report of Mercado Energéticos {Replication Report} ¶¶47-48.) ----------

(iii) The electricity business of AESU became unviable as a consequence of the increase in the gas exports tax. ----------

815. According to YPF, the practical impact of those legal situations is that the business of AESU became not viable when both the spot price and the Argentine gas price increased. ----------

816. Particularly, YPF holds that the business of AESU was trading or arbitrating energy that AESU bought in the spot market and then sold through the PPA. According to YPF, the activity of AESU generating energy from the Uruguayana power station could only be considered as an "assurance" to mitigate the risk of prices variation in the spot market (Report of Mercados

---

[116] The Ministerial Decision MME No. 188/2006, issued by the MME, specified that "when applying the permanent rights of the PPT, regarding the readjustment of the price of the gas imported from Argentina, the ANEEL would have to apply the readjustment mechanism in force on the agreement between the UTE, AES Uruguaiana and its natural gas supplier being limited to the final value of application of the referred readjustment to the maximum value of energy produced in the power stations of the PPT." (Annex Y-63,¶ 3) According to Mercados Energéticos, with this rule of the PPT, the ANEEL made even more difficult the transfer of the highest cost of Argentine gas to the price of the PPA between AESU and the distribution companies, since it fixed a maximum amount of it, assessed by the maximum quantity of energy produced by the thermoelectrical power stations of PPT (at that time, the power plant "Juiz de Fora" with 128.0R$/MWh), apart from that, the CVU of the Uruguayana Thermal Plant (also a party to the PPT) was higher than the limit value (First Report of Mercados Energéticos, ¶224.)----------

[117] The ANEEL rejected the request of AESU for the following reasons: "This superintendence does not find arguments in legislation and regulations in favor of the dispute of AES Uruguaiana." (Technical Note No. 398/2007-SEM/ANEEL issued on December 11, 2007, in the Proceeding No. 48500.002637/2008-91 (Interested party: AESU), Annex Y-185.) ----------

Energéticos, Second Part, Chapter 3.1)[118]. Consequently, as long as the energy price in the spot market remained low (up to mid 2007), AESU could perform without any problem its obligations to sell energy under the PPA. Particularly, YPF points out that: ----------

a. In 2004, the winter period favored AESU and Sulgás, since due to the lower price of electric energy in the spot market, AESU generation capacity was reduced (nominating an average of 1,200,000 m3/day pursuant to the Gas Supply Agreement), thus buying in the spot market the energy that was not generated to supply the distribution companies under the PPA.[119] Moreover, the winter period enabled AESU to avoid TOP penalties, which had indeed occurred in previous years. ----------

b. In March 2005, the guaranteed power output of the Uruguayana Power Station was reduced to 217 MW. YPF argues that, instead of trying to reduce the power hired pursuant to the PPA (which in 2005 was around 533.65 MW) to the value of the guaranteed power output (217 MW), to cover such difference, AESU decided to keep its position as trader, now using the energy acquired through the bilateral agreements entered with other sellers of energy to resell it through the PPA. YPF argues that the difference between the average price at which AESU bought energy and the price of the PPA enables AESU to keep the economic benefits of its business, notwithstanding the restrictions on the Argentine gas deliveries. ----------

c. Until June 2007, the spot price in the electric market was still low (average of 31.7 R$/MWh.) YPF argues that, therefore, the Gas Supply Agreement was still viable for AESU, since AESU operated with a reduced generating capacity due to such low price.----------

817. According to YPF, the problems of AESU {and Sulgás} began in the second half of 2007, when the spot price began to rise, exceeding the price of the PPA, and increased the Argentine gas price as a consequence of the increase in the exports tax. This is because, due to the incorporation of the Uruguayana Power Station to the PPT, AESU could not transfer the increase of its costs to the price of the PPA. ----------

---

[118] YPF asserts that only the year 2001 was an exception, since as a consequence of the energy crisis in Brazil and high spot prices, the Uruguayana power station was called by "order of merit" for having its own cost of production lower than the spot price. ----------

[119] YPF points out that in 2004, AESU generally resorted to the spot market to comply with the obligations specified in the PPA, taking advantage of the lower price of the energy available in the spot market (average of 19R$/MWh) in relation to its CVU (average of 45 R$/MWh.) At a daily basis, it bought 255 MW in the spot market, compared to a generation capacity of 259 MW. Meanwhile, AESU sold to the distribution companies under the PPA at an average price of 122.70 R$/MWh (First Report of Mercados Energéticos, ¶186 and table 15). AESU and Sulgás do not question these figures. ----------

818. According to YPF, the incremental cost of the Argentine gas worsened AESU's exposure to the spot purchases, since when increasing the cost of generation of the Uruguayana Power Station without any possibility to transfer the price of the PPA, the risk on having to purchase at higher spot prices to be able to comply with the PPA increased. For this reason, YPF argues that, at a higher price of gas, the "assurance" effect which meant the self-generation capacity as opposed to the spot market tended to disappear (Y-MD,¶ 334). YPF points out that this situation caused that in July 2007, AESU, together with the distribution companies, requested the MME to eliminate the limitation of the transfer. ----------

819. However, YPF acknowledges that the worsening of the interruptions to gas exports imposed by the Government of Argentina from September 2007 was added to the spot prices increases and the Variable Cost per Unit [CVU for its acronym in Spanish] of the Uruguayana Power Station, when the agents of the Secretariat of Domestic Commerce and of the Ministry of Federal Planning, Public Investment and Services started to define the allocation of the natural gas volumes produced in the country and its related transportation capacity on a week bases. ----------

820. According to YPF, as a result of the increases in the spot price and in the CVU of the Uruguayana Power Station, and of the average increase of the Bilateral Agreements, 2007 was the first year of the Uruguayana Project in which AESU suffered operative losses for approximately R$ 80,969,000 according to its financial statement of 2007 (Annex Y-72.) ----------

821. Despite these difficulties, YPF holds that AESU subsisted with the Gas Supply Agreement in January and February 2008. Although in such period the spot price was higher than the price of the PPA, AESU could cover its demand of energy with Argentine gas (through nominations of AESU and deliveries of YPF of approximately 1,300,000 m3/day according to the provisions of the Temporary Energy Agreement with Brazil), and with the gas acquired through purchases to third parties (called Bilateral Agreements.) ----------

822. However, as from February 2008, the tax on gas exports increased again. Upon this situation, AESU requested an administrative mediation before the ANEEL in view of a renegotiation of the agreements signed with the distribution companies AES Sul, RGE, CEEE and Eletropaulo, giving rise to the proceeding of administrative mediation No. 48512.006738/2008-00. YPF asserts that on March 6, 2008, AESU argued before the ANEEL that the PPAs were not sustainable, and suggested, among other measures, to: (i) reduce the power hired under the PPA to the volume specified in the guaranteed power output fixed in 217 MW, due to the impossibility to acquire energy from third parties, at least at prices that enabled AESU to buy it to

supply the PPA without losses, and (ii) acknowledge a price in the PPA that would be added to the Argentine gas price. (Presentation before the ANEEL on March 6, 2008 (Annex Y-76), slides 16-25.) ----------

823. As from March 2008, the tax on gas exports began to increase exponentially. On March 12, 2008, six days after the presentation of AESU before the ANEEL, the Government of Argentina issued Resolution MEyP No. 127/2008, through which (i) the rate of the taxes on gas exports increased from 45% to 100%; and (ii) the base for assessment over which the export tax was assessed was modified, using "the highest price" charged by Argentina when importing gas at every moment. In practice, this meant an increase in the export tax from US$ 3/MMBtu in February 2008 to US$ 17/MMBtu in August of the same year. Particularly, from June to August 2008, the tax fluctuated between 14.5 and 17 US$/MMBtu (this is due to the fact that in winter 2008, Argentina imported LNG for those prices, which constituted the basis on which the tax on exports was assessed.) Consequently, the total cost of gas payable by AESU/Sulgás pursuant to the Gas Supply Agreement (price of gas plus tax on exports) increased approximately from US$ 5/MMBtu in February 2008 to US$ 19/MMBtu in August 2008. YPF adds that the Argentine gas lost competitiveness in relation to the Bolivian gas paid for the rest of the thermoelectrical power stations of the PPT, as from Resolution MEyP No. 127/08 (Y-MD, ¶337.) ----------

824. YPF argues that, with this level of prices, the business of AESU became not viable, which was confirmed by the denial of the distribution companies and the ANEEL to allow the transfer of the Argentine gas price to the price of the PPA. According to YPF, Resolution MEyP No. 127/2008 destroyed the "assurance" that enabled the business of AESU to economically subsist in a context of high spot prices. This is because even if there was gas available to dispatch the Uruguayana power station, AESU would suffer losses if both the spot price and the CVU of the Uruguayana power station (determined by the Argentine gas cost) were higher than the selling price of AESU pursuant to the PPA. ----------

825. According to YPF, it was due to those reasons, and not the restrictions on gas exports imposed by the Government of Argentina, that AESU decided to put an end to its electricity business in Brazil. YPF points out that in June 2008, AESU began the proceeding before the ANEEL to terminate its selling energy obligations in Brazil, and that in March 2009, AESU had achieved the termination of all its PPAs. After May 20, 2008, AESU did no longer nominated gas to YPF (firstly as a consequence of the winter period, and then as a consequence of the suspension of its obligations on September 15, 2008), and it began to make up excuses that afterwards enabled it

to argue a termination by YPF's fault, such as the claims for DOP penalties allegedly accrued two years before, and it came up with other excuses to terminate (the breach of the obligation to act as a prudent and reasonable operator and repudiation.) Finally, in March 2009, after the termination of the last PPA, AESU and Sulgás terminated the Gas Supply Agreement. ----------

(iv) AESU took "doublespeak" to make its way out of the PPAs in Brazil and of the Gas Supply Agreement. **----------**

826. Independently, but related to this, YPF also argues that AESU and Sulgás showed an opportunistic conduct, when taking "doublespeak" in its way out of the PPA in Brazil, in contrast to its way out of the Gas Supply Agreement in Argentina. ----------

827. YPF argues that, in its presentations before the ANEEL to find a way out of the PPA, AESU invoked in the ANEEL an economic and financial unbalance by virtue of the increases in the Argentine taxes on gas exports and its impossibility to transfer to distribution companies. YPF quotes the following statements of AESU, among others: ----------

a. In the presentation before the ANEEL on July 10, 2008, in relation to the early termination of the PPA with AES Sul and AES Eletropaulo, AESU acknowledged that the origin of the problem included “the reduction and frequent interruptions in the gas supply, due to the energy crisis in Argentina, and the increasing restrictions on exports imposed by the Government of Argentina”, “the excessive increases in the export tax introduced by the Government of Argentina”, and “the limitation to transfer the prices of the agreements to the distribution companies tariffs” (Annex Y-103.)----------

b. In another presentation before the ANEEL, on August 6, 2008, AESU acknowledged that since 2004, the Government of Argentina “has imposed restrictions on gas exports, prioritizing the domestic market: such situation was out of AES Uruguaiana control” and “frequently increased the taxes on exports whose rate was 100% of the highest price of the gas imported by Argentina”. AESU finally accepted that the “*Portaría* [Decision] MME 188/2006 limits the transfer of the price of the agreement for the tariffs of the distribution companies to the price of the most expensive thermal of the PPT. -The current difference now accepted by AESU is R$ 67.43/MWh and the future difference accepted by AESU would be R$ 204.16/MWh.” (Annex Y-103) ----------

c. In the letter sent to the ANEEL on July 22, 2008, AESU detailed the increases in the gas exports tax, pointing out that the “unsustainable economic and financial unbalance already existing for AES Uruguaiana has become more unbearable due to the facts completely out its control” (Annex Y-103.) ----------

828. YPF points out that on August 12, 2008, through Dispatches No. 2996 and 2997, the ANEEL accepted the request of AESU and the distribution companies AES Sul and AES Eletropaulo, and acknowledged the involuntary nature of the gradual termination of the energy supply under the PPA and the situation of "extreme supervening onerousness" of AESU under the PPA, as a result of the gas export tax established by the Government of Argentina (Annex Y-103.) ----------

829. YPF also argues that AESU accepted the nature of force majeure of the restrictions on exports and points out that AESU invoked section 18.3 of the PPA which allowed transferring the force majeure declared in the Gas Supply Agreement to the PPAs. YPF asserts that the ANEEL acknowledged the unforeseen nature of the conduct of the Government of Argentina when declaring that "the administrative restrictions imposed by the Government of Argentina on electric energy or fuel exports have been unforeseen by the parties, and that the undertakings in question could not trade the energy hired for reasons out of its control. Actually, it was not reasonable to assume that Argentina would pose obstacles on the sale of gas, as it did, evidencing in such act an absolutely unforeseen event and on which the parties had any interference" (Opinion No. 253 handled on April 22, 2009 in the ANEEL Proceeding No. 48500.004620/2008-79 (Interested parties: AES Sul and AESU), Annex Y-103.) ----------

830. According to YPF, this confirms the doublespeak and bad faith of AESU. Likewise, YPF asserts that distribution companies in Brazil also argued that AESU acted in bad faith, for having alleged just in 2008 this case of supervening onerousness and force majeure, considering that for four years they had coexisted with the situation in Argentina.[120] ----------

831. Additionally, based on a note of the Financial Statements of AESU for 2007,[121] YPF holds that before AESU started its way out of the Gas Supply Agreement in mid-2008, AESU had assumed its own liability if it decided to be dissociated from the electricity business in Brazil and terminate the Gas Supply Agreement, estimating a cost of R$ 1,415,000,000 or US$ 828,658,101 to be excluded from the agreement. According to YPF, the inconsistency of AESU lies on that, when on March 24, 2008 (closing date of the Financial Statement of 2007) AESU estimated a cost

---

[120] YPF quotes the pleading of RGE dated November 10, 2008, under the judicial process No. 1.08.0268955-1, ¶¶7 and 9, Annex Y-95. ----------

[121] The note quoted by YPF specifies: "The Company did not consider the possibility to relocate the plant of production in another area, to sign agreements with other gas suppliers or sell it to another company, because this would not imply the termination of the gas supply and sale of energy agreements. The termination of those agreements would imply a minimum value of R$ 1.415 million. Besides, there would be additional costs related to the dismantling, transportation, mounting of the plant in another place, granting of all the necessary environmental licenses and regulatory authorizations." Financial Statements of AESU of 2007 (Annex Y-72.) ----------

of R$ 1,415,000,000 or US$ 828,658,101, it did it without suggesting or blaming YPF for that. However, a year after (on March 25, 2009, when it terminated the Gas Supply Agreement and filed its arbitration complaint), such decision of AESU to give up on the electricity business in Brazil became the foundation of a multimillion claim against YPF, that AESU estimates to be of US$ 1,052,165,602 in its favor. Therefore, YPF asserts that the "doublespeak" of AESU is clear. -----

b. Position of AESU and Sulgás ----------

832. AESU and Sulgás do not question the facts detailed by YPF, but the legal implications of those facts and their reasons. Particularly, they reject that the termination of the Agreement has been motivated by the increase in the tax on gas exports. They also reject that they have taken "doublespeak" in its way out of the PPA in Brazil in contrast to its way out of the Gas Supply Agreement in Argentina. ----------

(i) The business of AESU was focused on the generation of electricity in the Uruguayana power station----------

833. AESU and Sulgás do not question that AESU made purchases in the spot market after 2004, nor the figures presented by YPF.[122] The Tribunal holds that the expert of AESU and Sulgás, Abdo Ellery y Asociados,[123] based on the data included in the report prepared by Mercados Energéticos in relation to the 108 months of operation of the plant of AESU, to reach certain conclusions (Report of Abdo, Ellery y Asociados, Annex A65/S65, ¶39).[124] Additionally, in the presentation

[122] Except for some exceptions in which there are minor discrepancies. ----------
[123] Annex A65/S65. ----------
[124] The expert of AESU is based on the data included in the report of Mercados Energéticos in relation to the 108 months of operation in the plant of AESU to reach the following conclusions (Report of Abdo Ellery y Asociados, ¶39): ----------
a. During the period prior to failure of YPF to supply natural gas which started in April 2004 (53 months): ----------
i. For 23 months (43.4% of the time of operation of the plant in the period in question) the CVU of the plant was higher than the PLD of the spot market. However, there was an intense generation of energy.
ii. For 4 months (7.5% of the time of operation of the plant in the period in question) the PLD of the spot market registered a value higher than the CVU of the plant. However, there was a purchase of great part of the energy that had been hired. ----------
iii. For 9 months (17% of the time of operation of the plant in the period in question) the CVU of the plant was lower than the spot price. However, in that period there was an intense generation. ----------
-iv. For 17 months (32.1% of the period in question) the PLD of the spot market, which was lower than the CVU of the plant at that moment, was liquidated. ----------
b. During the period after the failure of YPF to supply natural gas (from June 2004 to December 2008) (55 months). ----------
i. For 14 months (25.5%) the CVU of the plant was higher than the PLD of the spot market, and there was an intense generation. ----------

before the ANEEL in March 2008, AESU confirms that up to 2006 the energy price in the market was low but afterwards the energy offer decreased making it impossible for AESU to acquire energy from third parties.[125] ----------

834. Having said that, AESU and Sulgás assert that buying electricity in the spot market and selling it under the PPA has never been the intention or business of AESU. In this sense, they hold that the legal regime to which the plant was subjected in Brazil hindered this idea of business, and that the high volatility of the spot price affected such alternative. They explain that AESU operated under the regime of the Optimized Shipment Benefit, by which if it buys energy in the spot market, which would entail earnings relating that price to the cost of production of such energy, it shall pass this utility to the distribution companies (Report of Leontina Pinto de Engenho, Annex A68/S68,¶ 53). AESU and Sulgás insist on that the business of AESU in Brazil, and that effectively carried out while it supplied gas, were to produce electricity in the Uruguayana Power Station and sell it under the PPA, and for this reason it invested millions of dollars in the power station. It was only because YPF did not deliver the gas needed so the plant could operate, that AESU received electricity through the spot market and the Bilateral Agreements so that, in the emergency, it could comply with the obligations to supply electricity under the PPA. In any case, they assert that AESU generated electricity in many opportunities in which the spot price was cheaper than the cost of producing electricity in the power station (Annex A84/S84). Therefore, the production in the plant was not safe against the variations of the spot price; on the contrary, the spot price was an alternative, although not reliable for its volatility, for the cases in which the plant could not operate. ----------

835. When the guaranteed power output of the Uruguayana power station was reduced in 2005, AESU and Sulgás argue that they did not try to reduce the power of the Power Station because they assumed that the failure of YPF to supply natural gas would be temporary. This was made in order to mitigate the negative effects of the failure to deliver gas that AESU acquired from third parties, through Bilateral Agreements, the quantities of energy needed to avoid the penalties that may be imposed by the Electric Energy Commercialization Chamber –CEEE. However, AESU argues that this led the latter to incur in losses. ----------

---

ii. For 9 months (16.4%) the PLD of the spot market was higher than the CVU; however, there was an important acquisition of energy to perform the agreements.----------

iii. For 11 months (20%) the CVU was lower than the PLD, and there was an intense generation. -------

iv. For 21 months (38.2%) there was liquidation to the PLD of the spot market, which was lower than the CVU of the plant at that moment. ----------

[125] Presentation of AESU before the ANEEL on March 6, 2008, Annex Y-76, slides 12-14.----------

(ii) The increase in the exports tax was not the reason for the termination of the Gas Supply Agreement. ----------

836. AESU and SULGÁS reject that the 100% increase in the exports tax in March 2008 was the reason for the termination of the Gas Supply Agreement. ----------

837. Firstly, AESU and Sulgás repeat that the obligation of YPF to deliver gas was to Sulgás, not to AESU, and that if the operation of AESU became not viable, this should worry Sulgás, and not YPF. If there was no nomination of gas (what AESU did on behalf of Sulgás), Sulgás would incur in TOP debts against YPF. Therefore, the problems would be developed against Sulgás and AESU. ----------

838. Secondly, AESU and Sulgás hold that the incorporation of the export taxes (and its later increases) did not correspond to the price of gas provided in the Gas Supply Agreement without undergoing the previous procedure provided in section 13.1 of the Gas Supply Agreement. AESU and Sulgás assert that, in accordance with section 13.1 of the Gas Supply Agreement, YPF would bear all the taxes levied on natural gas exports and transportation services. YPF could not transfer those costs to Sulgás, unless the relevant legal rules or their interpretation were modified, if that was confirmed by the competent authority or by the expert appointed in accordance with the procedure of consultation established in that section. As the taxes on natural gas exports did not exist when the Gas Supply Agreement was executed,[126] if YPF expected to transfer to Sulgás, and ultimately to AESU, the initial incidence of such rights as well as its successive increases and changes in the manner of gas valuation, YPF should have complied with the procedure provided in section 13.1 of the Agreement, procedure that AESU and Sulgás considered as a previous requirement for the transfer of a new tax. However, despite the insistence of AESU and Sulgás, YPF did not carry out the necessary procedure of consultation. AESU and Sulgás reject that they have accepted the interpretation of YPF on that the procedure of consultation was useless or unnecessary. ----------

839. In AESU and Sulgás' opinion, there were several reasons through which a procedure of consultation could have rejected the transfer of the cost of the taxes to Sulgás under the Gas Supply Agreement. In fact, according to AESU and Sulgás, the export taxes were (and still are) illegal and unconstitutional due to the following reasons:[127] ----------

[126] AESU and Sulgás hold that, at the moment of execution of the Agreement, "YPF mentioned that the law provided the right to that export duties were not imposed" (A/S-MD, ¶744.) ----------

[127] The Tribunal holds that, in the letters dated August 9, 2006 (Annex Y-65) and September 4, 2006 (Annex Y-66), AESU rejected the transfer of the export duties that YPF expected to do, alleging that, inter alia, those may be considered inapplicable to the Gas Supply Agreement as they contravened the Protocol of

a. The creation of the taxes on gas exports contravened the Treaty of Asunción dated March 25, 1991, which is the Master Agreement for the creation of the Southern Common Market [Mercado Común del Sur, MERCOSUR for its acronym in Spanish] integrated by Argentina and Brazil, *inter alia*. Through this treaty, the member States were bound to progressively eliminate the existing restrictions on tariffs (including export duties) in a term that was delayed until December 31, 1999. As confirmed by the Argentine Court of Appeals in the case entitled Sancor CUL, this banned the restrictions on customs duties after executing the treaty.[128] In accordance with section 75 of the Constitution of Argentina, the international treaties are hierarchically more important than legislation, so the creation of taxes on exports was illegal. ----------

b. Executive Order 645/2004 (which imposed export duties applicable to natural gas), and Resolutions 534/2006 and 127/2008 (which increased the rate and base for the assessment of those taxes) contravened the principle of legality of the taxes when substantially regulating export duties. Pursuant to sections 4, 17, 52 and 75 of the Constitution of Argentina, taxes (including export duties) may only be imposed and regulated by law, and such jurisdiction may not be delegated to the Executive, not even in cases of emergency executive orders (section 99(3) of the Constitution.)[129] Although the executive orders and resolutions sought legal support in the delegations made pursuant to Acts 25561 and 26217, the scope of these delegations was unconstitutional. --

---

Intention between Brazil and Argentina on Energy Cooperation and Interconnection on April 9, 1996 and the Temporary Energy Agreement between Brazil and Argentina on December 9, 2005, approved by Resolution SE No. 161/2006. In this letter, AESU pointed out that in the Protocol of 1996 the Government of Argentine was engaged with the Government of Brazil to grant in the regulation a symmetrical treatment, not differentiating the companies of both countries. According to AESU, this protocol would have been one of the premises of the procedure for bidding of the Uruguayana power station. However, in this arbitration, AESU and Sulgás have asserted that the Protocol is about a rule that is no longer in force in Argentina, because it was not duly added to the Argentine law and, even if it were, it only specifies merely pragmatic obligations (A/S-Replication, ¶¶159-177; A/S-Rejoinder, ¶¶1129-1130.) AESU and Sulgás have not invoked the Temporary Energy Agreement again either. Consequently, the Tribunal holds that AESU and Sulgás have abandoned the argument on that export duties contravened the aforementioned international treaties.----------

[128] "*Sancor Cul v. Estado Nacional*", *C. Nac. Cont. Adm. Fed.*[National Court in Administrative Matters], *sala* [Division] 5°, September 14, 2006, *JA 2007-II-30* (Annex AL9/SL9). Case quoted in A/S-MD¶¶ 805-806.--------

[129] AESU and Sulgás also quoted the decision rendered by the Supreme Court in the case entitled "*Video Club Dreams v. Instituto Nacional de Cinematografía*", National Court of Justice, June 6, 1995, Decisions 318:1154 (Annex AL9/SL9.) ----------

c. The provisions on the valuation of the natural gas exported included in Resolutions 534/2006 and 127/2008 are null, as they contravene the rules of the Customs Code for the determination of the taxable value. Particularly: ----------

i. The Ministry of Economy and Production lacks jurisdiction to reject the sale price of the natural gas as a valuation basis for the assessment of export duties as well as to define a base for assessment in abstract terms. ----------

ii. It was illegal that through Resolution MEP 534/2006, the Ministry of Economy and Production instructs the Customs of Argentina to apply the price fixed in the Master Agreement between Argentina and Bolivia for the import of natural gas from Bolivia as a basis for the assessment of natural gas exports. ----------

iii. It was also illegal that Resolution MEP 127/2008 allowed that the valuation was made over the basis of a product different from that exported, such as the liquidated natural gas (LNG.) ----------

d. The export duties are unconstitutional and confiscatory in accordance with the criterion developed by the Argentine Supreme Court, by which a tax is confiscatory when its impact is superior to 33% over the goods or incomes (Cases "*Carlos V. Ocampo,* Decisions 234:129; *Vizzoti, Carlos v. AMSA S.A*." September 14, 2004, Decisions 327:3677.) ----------

e. The regulation of export duties was contrary to the principle of reasonableness set forth in section 28 of the Constitution. ----------

840. Therefore, AESU and Sulgás assert that the export duties were not valid. They add that YPF knew that, and therefore, it could not request AESU and Sulgás to bear the cost of these taxes. According to AESU and Sulgás, as YPF was the taxpayer of such tax, it was also bound to challenge taxes that were not valid, unconstitutional or by any other reason inapplicable, and to request precautionary measures to hinder the application of those taxes during their challenge. However, YPF did not challenge those resolutions; it just filed a wrong claim against Resolution MEP 534/2006 (without even filing such against Resolution MEP 127/2008) that, due to being addressed to the same authority that issued the resolution, was equal to doing nothing. According to AESU and Sulgás, this evidences the doublespeak and bad faith of YPF, since, on the one hand, it recognized the invalidity of export duties, whereas, on the other hand, it tried to transfer them to AESU and Sulgás as if they were legal. ----------

841. On the other hand, AESU and Sulgás reject that they have been entitled to challenge the taxes on exports. According to Mr. Barreira, this is because they lacked a direct and legal customs

relation with the Government of Argentina, and due to the negative effects which meant that the transfer of the tax cost had a strictly contractual nature. ----------

842. Additionally, AESU and Sulgás argue that the increase in the export taxes was a consequence of the conduct of YPF, who caused the shortage due to the lack of investments and adequate exploration. Without such shortage, it would not have been necessary to import gas from Bolivia to comply with the supply in the domestic market, or to set export duties on gas. In fact, according to AESU and Sulgás the purpose of the export duties was to finance the subsidy which was granted, through ENARSA, to the Argentine natural gas producers (the most important of them was YPF) aiming at preventing them from transferring the higher cost of natural gas imported from Bolivia to the sale price of natural gas in the domestic market. In other words, YPF not only caused the creation of the taxes but also received benefits from them. ----------

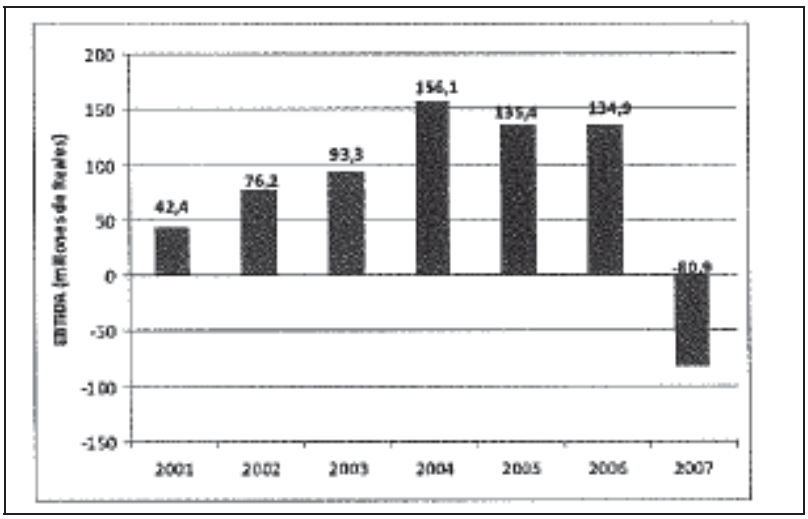
843. Even if such tax would have been transferable to the price of gas that Sulgás had to pay under the Gas Supply Agreement, AESU and Sulgás reject that the regime of the PPT hindered the transfer of this higher cost to distribution companies with whom they executed PPAs in Brazil. Based on the opinion of the expert Isabel Lustosa, AESU and Sulgás assert that the transfer of the highest costs of distribution companies to the consumers was hampered, but not the transfer of such higher costs of AESU to the distribution companies in the price of the PPAs (Report of Isabel Lustosa on "Price cap".) In fact, Mrs. Lustosa quoted the PPAs which included provisions that allowed the transfer of the highest cost {of Argentine gas} to distribution companies and confirmed that, in this case, such distribution companies paid those highest costs. ----------

844. Finally, AESU and Sulgás point out that AESU requested the renegotiation of the PPAs before the issuance of Resolution MEyP 127/2008, and they assert that the PPAs were viable up to that moment. It was suggested the reduction of the PPAs to the volume of the guaranteed power output so as to avoid penalties when YPF could not supply gas. ----------

845. In any case, AESU and Sulgás insist on that the failure to deliver gas by YPF in 2007, and not the increase in the tax in 2008, was the reason that turned the operation of AESU unviable. AESU could operate even adding the tax on gas exports, but without gas it could not operate. AESU and Sulgás point out that in 2007, when the taxes on export were not significant, their EBITDA became negative. AESU and Sulgás quote the financial statements of AESU filed by YPF and a chart of the report prepared by Mercados Energéticos corresponding to 2007 (presumably, the chart 36, A/S-MD, ¶190, herein copied.) AESU and Sulgás insist on that these losses were produced by the negative effects which derived from the failure to deliver gas by YPF, since it

exposed AESU to serious risks for the breaches of the PPAs for the penalties that it had to pay under such agreements and since it was bound to make alternative purchases of electricity. --------

Chart 36 EBITDA- Year 2007 ----------



Source: Financial Statements of AESU [Fiscal year 2007]----------

---

846. In keeping with the foregoing, AESU and Sulgás assert that the reduction of the guaranteed power output of the Uruguayana Power Station to 0 MW in November 2008, which completely removed the plant from the regime of electric production, was caused by the failures to deliver natural gas by YPF (A/S-MD ¶1010.)----------

(iii) There was not doublespeak in the way out of the PPA and of the Gas Supply Agreement. -----

847. Finally, AESU and Sulgás reject that they have taken a "doublespeak" in its way out of the PPA in Brazil in contrast to its way out of the Gas Supply Agreement in Argentina. ----------

848. AESU and Sulgás explain that in their presentations before the ANEEL they simplified the reasons of their way out of the PPAs, making a reference to the restrictions on exports and the imposition of taxes on exports as actions that justify the termination of the PPAs, without discussing whether they were caused or not by the breaches of YPF. They argue that this would have only meant to introduce a strange element into the proceeding before the regulatory agency of Brazil, since it must have been decided in an arbitration proceeding governed by the Argentine law. The fact that they have not pleaded the breaches of YPF before the ANEEL does not mean giving up in this arbitration. ----------

849. AESU only extended the purposes of the force majeure invoked by YPF to the PPA, as allowed by section 18.3 of the PPA. The effect of the force majeure invoked by YPF was the shortage of gas for AESU. This shortage was an inevitable situation, extraneous to AESU under the PPA. In other words, whereas for YPF the force majeure was represented by the provision issued by the Government of Argentina from 2004, for AESU, the force majeure was the shortage of gas for which YPF was liable. The acknowledgment of the ANEEL of the latter situation did not imply the recognition of the former. ----------

850. AESU explains that it only invoked the force majeure in relation to the distribution companies in 2008, since in order to consider its force majeure under the PPA there should have existed an obstacle to deliver electricity, and up to 2008 AESU could replace the failure in the delivery of gas pursuant to the Gas Supply Agreement through the Bilateral Agreements and other purchases of electricity, thus mitigating the damages caused by YPF. However, in 2008, it was impossible for AESU to sign those agreements, due to the lack of offer of energy and lower hydrology, so that it did not have any other chance than, because of the breach of YPF, invoking the force majeure, extending the effects of the force majeure invoked by YPF, that is to say, the shortage of gas. This does not mean that AESU and Sulgás have accepted the force majeure invoked by YPF under the Gas Supply Agreement.----------

851. AESU and Sulgás also reject that the ANEEL have recognized the force majeure mentioned by YPF in this proceeding. Firstly, the determination of the existence of a force majeure event related to the supply of gas was not over the jurisdiction of the ANEEL, and the ANEEL itself expressly said that (Annex A39/S39). They add that the "ANEEL limited itself to analyze the question under the strict perspective of AESU and not of YPF. The ANEEL only decided that AESU was neither responsible for nor involved in the crisis derived from the failure to supply Argentine natural gas. [...] At no time did the ANEEL assert that YPF was facing a force majeure event, but only that the agents from Brazil are not responsible for the energy crisis derived from the interruption in the supply of Argentine natural gas. The ANEEL did not analyze whether YPF was legally responsible for the breach of the CEG. It did not analyze either whether YPF was facing a force majeure event, or the foreseeability or an alleged impossibility. It only analyzed and decided over the situation that was facing AESU" (A/S-MD, ¶¶957-958). ----------

852. In any case, AESU and Sulgás hold that "the position adopted by AESU in relation to the PPAs was aimed at limiting the damages suffered by AESU, and therefore, mitigating the damages for which YPF was liable" (A/S-MD, ¶228.) ----------

853. Finally, AESU and Sulgás repeat that the proceedings before the ANEEL involved AESU, and not Sulgás.----------

c. Analysis ----------

854. The Tribunal states firstly that, the reasons of AESU and Sulgás were not relevant to determine whether the exercise of the remedy for termination by AESU and Sulgás was pursuant to the Agreement and the law, unless the Tribunal considers that the termination was abusive or in bad faith. ----------

855. Having said that, considering that this was one of the main arguments of YPF, both in its submissions and during the hearing, the Tribunal will deal with this topic. ----------

(i) The electric business of AESU- Importance of the purchases in the spot market ----------

856. YPF has described the electric business of AESU as trader or arbitrator of energy, in which it bought energy in the spot market and then sold it to the distribution companies with whom it had PPAs. According to YPF, the generating activity of the Uruguayana Power Station acted only as an assurance against the volatility of the spot price. The Tribunal has difficulties to accept this reasoning. It does not seem logical that AESU invested millions of dollars to build a thermoelectrical plant in Uruguayana, or that Sulgás executed a long term agreement for the sale of gas with YPF to provide said gas to this plant, if the intention of AESU was to use the plant simply as an assurance against the risk that the price of energy in the spot market was higher than the CVU of the plant. This seems less logical when the Gas Supply Agreement specified TOP penalties for the case in which Sulgás nominated less than a minimum quantity of gas. Both the Master Agreement of 1996 (executed by YPF, Petrobras, the CEEE and TGN), and the bidding process called by the CEEE for the building of the Uruguayana power station, the PPAs between AESU and the distribution companies, and the Gas Supply Agreement[130] had as a premise the supply of natural gas from Argentina to Brazil to provide it to the Uruguayana power station and generate energy. The Tribunal concludes that the main business of AESU (as thought from the beginning) was meeting its energy purchase obligations under the PPAs especially with energy generated in the Uruguayana Power Station. ----------

857. In any case, if due to the existing market conditions it was more convenient for AESU to buy energy in the spot market, or it was obliged to do that when the Uruguayana power station was

[130] See the recitals of the Gas Supply Agreement. Particularly, recital 5 provides that "with the purpose of supplying natural gas to SULGÁS [...] PETROBRAS would import to Brazil, from the Argentine Republic, the natural gas needed to supply the POWER STATION [...]."----------

not dispatched for being its CVU higher than the spot price,[131] this was not completely relevant for this arbitration. On the contrary, if AESU bought energy in the spot market when YPF failed to deliver gas, the Tribunal considers that AESU acted legally to mitigate its damages, in accordance with section 77 of the Vienna Convention.[132] The fact that AESU and Sulgás could subsist for almost four years of deficiencies in the delivery of gas, without terminating the Gas Supply Agreement, and even they agreed to suspend their right to terminate the agreement for such grounds up to January 1, 2010, only confirms its good faith and their intention to maintain the validity of the Agreement as much as possible. ----------

(ii) Impact of the taxes on natural gas exports ----------

858. It is clear for the Tribunal that the increase in the taxes on gas exports (also called "withholdings" or "export duties") impacted both on Sulgás and on AESU. This is because (i) those taxes were transferable to Sulgás pursuant to the Gas Supply Agreement, (ii) the Tribunal holds that AESU bought this gas from Sulgás, and (iii) AESU could not in practice transfer those costs to the distribution companies under the PPAs. ----------

859. The Tribunal has reached these conclusions after analyzing two questions: (a) who should bear the cost of the taxes on gas exports, and (b) if AESU could transfer those costs to the distribution companies in Brazil. ----------

(a) Who should bear the cost of the taxes on gas exports? ----------

860. Firstly, the Tribunal agrees with YPF that, by virtue of section 13.1 of the Gas Supply Agreement, YPF could transfer to Sulgás both the taxes on gas exports imposed in 2004 and its subsequent increases. Section 13.1 of the Gas Supply Agreement sets forth: ----------

"The taxes that are now levied on the natural gas exports and the transportation services will be paid by YPF, and YPF will not be able to transfer them in any way to PETROBRAS {Sulgás}, either directly, as reimbursement of expenses, or indirectly, as additional cost. ----------

In the case that in the future YPF considers that the legal provisions now in force were modified in relation to the Added Value Tax and/or other taxes affecting the gas exports, and/or the said

---

[131] The expert of YPF, Mercados Energéticos, explains that in Brazil the physical dispatch of the units of generation is made prioritizing the lowest cost of production for each available unit ("order of merit"), thus meeting the electric demand with the power stations with the lowest cost of production available (First Report of Mercado Energéticos, ¶¶110-112.) ----------

[132] Article 77 of the Vienna Convention: "A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated."----------

transportation services, or if the current interpretation and/or application of the referred legal provisions were modified (which shall be proven through the corresponding documents), YPF will make a consultation before the competent authority on tax collection of the pertinent tax (COMPETENT AUTHORITY.) ----------

YPF and PETROBRAS {Sulgás} will prepare the consultation by mutual agreement. If the COMPETENT AUTHORITY, in its reply to the consultation, considers that the modifications or amendments effectively occurred, YPF will be able to transfer the respective component of the AGREEMENT PRICE with the purposes of the new taxable situation. ----------

If the COMPETENT AUTHORITY did not answer to the consultation in a term of 60 (sixty) uninterrupted days as from its submission, PETROBRAS {Sulgás} and YPF, by mutual consent, would appoint, pursuant to the provisions of section 20.3, an EXPERT that would decide over this question. ----------

If the EXPERT considers that the modifications or amendments effectively occurred, YPF will be able to transfer the respective component of the AGREEMENT PRICE with the purposes of the new taxable situation. ----------

If YPF and PETROBRAS {Sulgás}, by mutual consent, understand that the question in relation to the modification or amendment cannot be properly solved by the COMPETENT AUTHORITY (such as for example, the implementation of reimbursements of the Added Value Tax resulting from the export), they will appoint, by mutual consent, an EXPERT who shall decide over this question.

If the EXPERT considers that the modifications or amendments effectively occurred, YPF will be able to transfer the respective component of the AGREEMENT PRICE with the purposes of the new taxable situation. ----------

If, even contradicting the answer of the COMPETENT AUTHORITY to the consultation posed, or if challenging the decision of the EXPERT, the COMPETENT AUTHORITY orders the imposition of a tax to YPF, PETROBRAS {Sulgás} and YPF will decide over the acceptance or the appeal of the tax criterion. PETROBRAS {Sulgás} will compensate and/or hold YPF harmless against any administrative or judicial decision which contradicts the answer of the COMPETENT AUTHORITY of the consultation or decision of the EXPERT including taxes, fees, fines, charges and costs of the procedure." ----------

861. In the Tribunal's opinion, the content of section 13.1 clearly provides that the risk of a modification of the applicable taxes would be borne by Sulgás. According to this section, YPF could not transfer "the taxes that are now levied on natural gas exports and the transportation

services", that is to say, those in force at the moment of executing the Agreement. However, it could "transfer to the respective component of the AGREEMENT PRICE the effects of the new tax situation", if the competent authority, or otherwise, the expert appointed pursuant to that section determined that the modifications or amendments to the tax situation "effectively occurred." In other words, whereas a consultation procedure previous to the transfer was established, this procedure was limited to determining whether the modifications or amendments to the tax situation effectively occurred; its purpose was not determining who should bear the cost of these modifications or amendments. It was clear that, if they were confirmed, it would be Sulgás who would bear the cost of this new tax situation. ----------

862. The last paragraph of section 13.1 confirms that Sulgás took the risk of a modification in the tax situation. Then, Sulgás was engaged in holding YPF harmless against a final administrative and judicial decision against YPF that contradicted the answer of the competent authority or expert. That is to say, if the competent authority decided that the new tax should be imposed, Sulgás would have to pay it, and if the competent authority or expert decided that the new tax should not be applied, but such decision was later challenged by an administrative or judicial decision, Sulgás would have to compensate YPF. Such compensation would include the payment of taxes, fees, fines, charges and procedural costs (Testimony of A. Fernández, ¶8.) This confirms that it was Sulgás who took the risk of a modification of the taxes. ----------

863. This was confirmed by Alejandro Fernández (witness of YPF, whose testimony was not repealed by other testimony of AESU/Sulgás; and, he was not summoned to the hearing), who declared that "during the period of negotiation of the Gas Supply Agreement, it was clear among the parties that the risk on imposing new taxes affecting the natural gas exports and/or the transportation services of exports would be borne by the buyer. In fact, this allocation of the risk had already been included in the "Term Sheet" signed in 1996 between YPF, Petrobras, TGN and CEEE and which was added to the Bidding Terms and Conditions of the Bidding Process of the Power Purchase Agreement ("PPA") called by CEEE in Brazil. In that way, the Gas Supply Agreement expressly placed such risk upon the gas buyer" (Testimony of A. Fernández, ¶6). The Term Sheet (Annex Y-23), whose paragraph 2.11 includes a text similar to that of section 13.1, confirms the foregoing. ----------

864. The taxes on exports did not exist when the Gas Supply Agreement was executed. The taxes on hydrocarbons were imposed by the Emergency Law (Act No. 25561) in 2002, and they were applied for the first time to natural gas in May 2004 as a result of the Executive Order No.

645/2004. At the date of execution of the Agreement, the parties envisaged the possibility to apply the Added Value Tax (VAT) to the gas transportation services, but they did not consider the possibility of special duties levied on gas exports (which were expressly banned by the Argentine legislation from 1989[133]). However, the clear text of section 13.1, as negotiated by Petrobras and then taken by Sulgás, allowed the transfer of a tax on exports. ----------

865. The conduct of AESU and Sulgás confirms that this was also their understanding, since at the beginning they accepted to pay those taxes on exports. ----------

a. In fact, according to Alejandro Fernández, when as a consequence of the issue of the Executive Order No. 645/2004, YPF added the value of the taxes on exports (20% then) to the price of gas, AESU paid such additional value to YPF without requesting a consultation or challenging the payment. (Testimony of A. Fernández,¶ 16.) ----------

b. According to the file, AESU and Sulgás challenged the payment of taxes on exports in 2005, when the Customs of Argentina started to request gas exporters, with the purposes of assessing the taxable value of the export duties, to include the transportation costs up to the borderline.[134] According to the witness Alejandro Fernández, during 2005, AESU challenged the payment of this component in the invoice, which amounted to US$ 1,656,254.28. The disagreement between the parties was expressed in the Payment Agreement dated February 20, 2006.[135] ----------

c. In accordance with the file, AESU and Sulgás only requested YPF to follow the procedure of consultation provided in section 13.1 of the Gas Supply Agreement after the issuance of Resolution ME 534/2006 in July 2006,[136] which increased 45% the tax and modified the valuation basis. At that moment, YPF informed them that it would add the amount derived from the export duties to the monthly invoices.[137] However, even in such occasion, AESU and Sulgás did not

---

[133] Section 3 of the Executive Order 1589/1989. ----------

[134] This as a consequence of the External Note No. 997/2005 issued by the Customs General Administration, and General Resolution AFIP No. 1896/2005 issued on June 7, 2005 (Annex YL-162.) ----------

[135] Recital 9 of the Payment Agreement specifies that "YPF states that up to the date of execution of this Payment Agreement, Sulgás and AESU also owe the sum of US$ 1.656.254,28 for export duties related to the natural gas supply, according to the liquidation attached hereto as Annex B (the "Sum for Export Duties") due and payable. In turn, Sulgás and AESU hold that they will analyze such argument in view of the provisions of the Agreement and that, once the analysis ended, they will pay the sum if this was considered effectively owed by Sulgás and/or AESU pursuant to the Agreement and its amendments" (Annex Y-60.) Section 3 (Future Waivers) of the Payment Agreement provides that YPF did not waive to its power to claim in the future the payment of the Sum for Export Duties.----------

[136] Resolution 534/2006 dated July 25, 2006 increased the rate of the tax to 45% and replaced the base of assessment (that up to that date was the sum of the real prices of commodities and transportation) with the new price of the natural gas exported from Bolivia to Argentina.----------

[137] YPF letter dated July 27, 2006 (Annex Y-64, A15/S15.) In this letter, YPF also stated that, among others, "the final and unconditioned payment of the export duties [...] are a necessary condition for the

question that the transfer of such tax was specified in the Agreement, but they requested YPF to follow the procedure of consultation before making the transfer, alleging that there were grounds for such consultation. Particularly: ----------

i. As per the letter dated August 9, 2006 (Annexes Y-65, A15/S15), AESU (in its capacity as assignee of Sulgás rights) informed YPF that, according to the friendly terms of the commercial relationship kept with YPF, it would "timely comply with the provisions of the Agreement provided that the contractual procedure set forth for such purposes was considered." In this sense, AESU pointed out that "pursuant to section 13.1 of the Agreement [...] we hereby request that you please suspend the transfer of the tax to the price of the Agreement until the competent authority decides upon the aforementioned consultation." AESU added that there were grounds for said consultation, and AESU requested YPF to send a draft of the consultation to the competent authority for its consideration. ----------

ii. In previous letters,[138] AESU rejected again the interpretation of YPF that Resolution ME 534/2006 was applicable to the Gas Supply Agreement, for different reasons, including the fact that this was a provision hierarchically less important than the Treaty between Argentina and Brazil on Energy Cooperation and Interconnection. AESU repeated its request that a consultation was filed before the competent authority, pursuant to section 13.1 of the Agreement. ----------

d. Finally, AESU acknowledged before the authorities of Brazil the impact that the taxes on Argentine gas exports have caused to its business since 2004. Particularly, in the letter sent to the MME on April 13, 2007 (Annex 6.M of the Report of Isabel Lustosa), AESU invoked the rise in the tax as one of the reasons to request the elimination of the limit of the pass-through to consumers {and, due to its rejection, it terminated the PPAs}. This confirms that AESU understood that the taxes on exports were transferable to Sulgás under the Gas Supply Agreement. ----------

866. Therefore, the conduct of AESU and Sulgás confirms that they understood that the tax was transferable, notwithstanding its position regarding the previous requirement of the consultation procedure. ----------

867. The Tribunal considers that AESU and Sulgás argue that YPF contravenes the contractual procedure set forth to make the transfer when the procedure of consultation was not commenced according to the provisions of section 13.1 of the Gas Supply Agreement. For the

---

continuance of the deliveries pursuant to the Agreement. Otherwise, it would neither be possible nor reasonable that YPF S.A. continued exporting natural gas under the Agreement. ----------

[138] Letter of AESU dated September 4, 2006 (Annex Y-66), apparently in reply of a letter sent by YPF on September 1, 2006, seems to be not included in the file. ----------

purposes of this analysis, the Tribunal does not consider that the argument of AESU and Sulgás modify its conclusion that, pursuant to section 13.1 of the Agreement, they were bound to bear the costs of the taxes on exports. The only case in which Sulgás would not have to pay taxes on exports would be if there had not been any modification of the tax situation. However, in this case, it was very unlikely to happen, since, as expressed by the witness Alejandro Fernández, the taxable event of the tax was precisely the gas export (Testimony of A. Fernández, ¶¶15, 22.) Therefore, it was clear that a modification of the "legal rules now in force in relation to [...] other taxes affecting gas exports" had "effectively been made". In fact, AESU and Sulgás acknowledge that "export duties are still fully applicable nowadays" (A/S-MD, ¶776.) ----------

868. The Tribunal notes that AESU and Sulgás also argue that: ----------

a. The taxes on gas exports were illegal and unconstitutional, and YPF did not challenge them as it should have done it. ----------

b. YPF was the responsible for the increase in those taxes. ----------

869. In relation to item (a), AESU and Sulgás argue that the taxes on exports contravened rules and principles of the Argentine domestic law and applicable international treaties (particularly, the Treaty of Asunción, which is the master agreement of the MERCOSUR.) (As mentioned, the Tribunal holds that AESU and Sulgás have abandoned the argument on that the taxes on exports would have violated the Protocol with Brazil or the Temporary Energy Agreement, as originally mentioned in the letters, see footnote 127 *supra*). ----------

870. The Tribunal holds that YPF agrees with AESU and Sulgás that the export duties lacked legality, since YPF acknowledges that it has filed a claim against Resolution MEyP No. 534/06, which increased the rate of the tax to 45%. The Tribunal considers this was sufficient to commence the procedure of consultation provided in section 13.1 of the Gas Supply Agreement, especially if AESU had requested it. Therefore, the Tribunal concludes that YPF contravened the agreement between the parties to resort to this procedure. ----------

871. However, this does not modify the conclusion of the Tribunal on that, until the taxes on exports were declared inapplicable to the Gas Supply Agreement, AESU and Sulgás were bound to pay them. AESU and Sulgás could file legal actions against YPF for its liability for the breach, as done here, but, having a modification of the tax treatment of natural gas exports "effectively occurred", YPF was authorized to transfer the cost to Sulgás. ----------

872. This does not necessarily turn AESU and Sulgás totally defenseless. The Tribunal considers that YPF has duly proven that AESU and Sulgás were legitimated enough to file the administrative

or judicial claims that may correspond. Particularly, the Tribunal considers specially convincing the case "Cafes La Virginia" quoted by Mr. Boggiano.[139] According to the expert: ----------

"66. In the aforementioned case, Cafes La Virginia claimed the reimbursement of some import duties and the sums paid for special taxes. For such purposes, it invoked the provisions of the Agreement of Partial Scope executed in 1983 between Argentina and Brazil in the framework of the Latin-American Integration Association [Asociación Latinoamericana de Integración, "ALADI" for its acronym in Spanish] by virtue of which the member States were bound to keep in force, for the reciprocal commerce, several licenses pursuant to the provisions of the Treaty of Montevideo of 1980. Cafes La Virginia argued that the resolutions issued by the Ministry of Economy by which an additional duty on imports was imposed and a tax on imports for consumption destined to the National Fund on Exports Promotion violated the provisions of the Agreement of Partial Scope; and therefore, there was a contravention of section 27 of the Vienna Convention on the Law of Treaties that points out that a domestic rule cannot be opposite to an international treaty. ----------

67. The Supreme Court of Justice of Argentina, without specifically analyzing the direct plea of the provisions of the treaty by individuals, granted the claim of the plaintiff when understanding that the provisions of the Agreement of Partial Scope prevailed over the provisions of the Argentine domestic law. That is to say that, although the Agreement of Partial Scope in question established as engagements taken between the signing States, given the organization into hierarchy of the international law in the Argentine domestic law, and over the basis of the supremacy of the former over the latter, the Supreme Court of Justice of the Nation accepted the claim of the plaintiff giving way to it." ----------

(Supplementary Report of Mr. Boggiano, ¶¶66/67.) ----------

873. This precedent confirms that AESU and Sulgás could have at least tried to appear before the Argentine courts to claim the alleged contravention of the Treaty of Asunción to avoid the application of the tax to the Gas Supply Agreement. ----------

874. In relation to item (b), the Tribunal cannot accept the argument of AESU and Sulgás that YPF was liable for the creation and increase of the taxes on exports. Even if the Tribunal determined that YPF caused the shortage of gas (question analyzed in Part VII.B.1 below), the cause alleged

---

[139] *Cafes La Virginia SA s/apelación por denegación de repetición* Supreme Court of Justice of the Nation, October 13, 1994, Decisions 317:1282, Annex 4 of the Supplementary Opinion of Mr. Boggiano. The Tribunal holds that Mr. Boggiano issued a concurring vote in this decision in his capacity as justice of the Supreme Court, in which he recognized the power of a citizen to judicially claim the performance of the obligations engaged by his State through an international treaty. ----------

among the facts or omissions of YPF and the decision of the Government of Argentina of imposing a tax on gas exports is too indirect. ----------

(b) Could AESU transfer the cost of the tax to the distribution companies in Brazil? ----------

875. After analyzing the evidence given by the parties, the Tribunal could not reach a final conclusion on whether AESU could legally transfer the highest cost of the tax on Argentine gas export to the distribution companies in Brazil. ----------

876. On the one hand, the expert of YPF, Carlos Skerk of Mercados Energéticos, holds that, when AESU was added to the PPT, the prices of the PPAs between AESU and distribution companies in Brazil became subjected to the annual limit (or Normative Value) set by the ANEEL for the transfer of the costs (pass-through) of the distribution companies to consumers (called "Normative Value" or "NV".) Mr. Skerk adds that this limitation was expressly set for AESU in relation to the highest value of Argentine gas through Ministerial Decision MME No. 188/2006 of the MME. However, Mr. Skerk is neither a lawyer nor a Brazilian lawyer. In fact, Mr. Skerk clearly stated during the hearing that he did not make a legal analysis, but that his analysis was focused on the real impact of the regulation in the business (Tr. Day 2, pp. 511-512.) ----------

877. On the other hand, Mrs. Isabel Lustosa, who is a Brazilian lawyer, asserted that the conclusions of Mr. Skerk were not legally grounded.[140] Particularly: ----------

a. Mrs. Lustosa rejected that when AESU was added to the PPT in 2004, the prices of the PPAs between AESU and distribution companies in Brazil became subject to the annual limit set by the ANEEL for the transfer of the costs of the distribution companies to consumers (called "Normative Value" or "VN") [VN for its acronym in Spanish]. According to Mrs. Lustosa, two legal relations must be differentiated: the relation of the generating companies with distribution companies, where there is freedom to contract, and the relation of the distribution companies with consumers, which are subject to the limit of the transfer to the Normative Value (Report of Isabel Lustosa ¶5.5.) The incorporation of AESU to the PPT did not change the contractual freedom to transfer its costs to distribution companies. The purpose of the Fourth Amendment of the PPAs, that subject AESU to the regime of the Normative Value, did not affect the vested right of AESU to the price agreed upon in the PPA or to the criterion of adjustment between AESU and the

[140] The Tribunal notes that YPF has questioned the independence of Mrs. Lustosa, but it does not consider that this question has been founded. The statement of Mrs. Lustosa seemed believable and reasonable. ----

distribution companies (Idem ¶¶5.13-5.15.) Mrs. Lustosa concludes that "in this scenario, as (i) neither ANEEL nor the MME had the authority to determine the prices under the freely negotiated PPAs in any manner and (Ii) [AESU] and the Distribution Companies under the Fourth Amendments have not agreed to limit the price under the PPA to the VN, the energy prices under the Power Purchase Agreements, after Uruguaiana joined the PPT, were not limited to the cap amount set by ANEEL under the normative value (VN) framework. Therefore, all statements made by Mercados Energéticos Consultores under the ME Report assuming Uruguaiana's legal inability to pass through yearly cost increases to the Distribution Companies lack the necessary legal basis" (Idem, ¶5.17). ------

b. Mrs. Lustosa also rejected the argument of Mercados Energéticos that the Ministerial Decision {*Portaría}* 188/2006 of the MME would have limited the transfer of the price applicable to the PPAs of AESU to the price of the most expensive thermal plant under the PPT. Mrs. Lustosa repeats that neither the ANEEL nor the MME were empowered to change or limit the energy price under the PPAs. Therefore, when Decision 188/2006 says that "when applying the rights of the PPT, regarding the readjustment of the price of the gas imported from Argentina, ANEEL will have to apply the mechanism of the readjustments in force in the agreement between the UTE, AES Uruguaiana and its provider of natural gas, limiting the final value of the application of said readjustment to the maximum value of energy derived from the power stations of the PPT", the MME could only be making reference to the application of the right of the PPA included in the authority of the ANEEL, that is to say, the limitation of the transfer of the costs of the distribution companies to consumers (Report of Isabel Lustosa, ¶¶5.19-5.25). Mrs. Lustosa quotes the Technical Note No. 398/2007-SEM/ANEEL, which in her opinion confirms this criterion. Mrs. Lustosa concludes that "[t]herefore, since the restriction to the pass through of costs did not apply to the price paid by the Distribution Companies under the Power Purchase Agreements (as proved in items 5.20 to 5.25 above), any contention that the Ordinance MME no. 188/2006 affected the Power Purchase Agreements have no legal grounds under Brazilian law and therefore all statements made by Mercados Energéticos Consultores under the ME report assuming that Uruguaiana was negatively affected by Ordinance MME no. 188/2006 also lack the necessary legal basis." (Report of Isabel Lustosa, ¶5.26.) ----------

878. The evidence analyzed by the Tribunal does not help to clarify this point. On the one hand, the submissions of AESU and Sulgás seemed to point out that AESU was trying to obtain the elimination of the limit to the transfer between the distribution companies and the final consumers. For instance: ----------

a. In the presentation before the ANEEL on March 6, 2008, AESU explained that "the distribution companies had the transfer ***to the tariff*** of the price of the energy of AESU limited by the specific regulation of the PPT." It added that "AESU assesses its sale price pursuant to the agreement" and that "the limitation to the transfer is applied to the price of energy that the distribution companies may transfer to the tariffs and not to the sale price of AESU" (Annex Y-76, slide 18, emphasis added.) The reference to the "tariff" of the distribution companies seemed to confirm that AESU and Sulgás referred to the elimination of the limit to transfer the price of gas to the tariffs of supply between the distribution companies and consumers, and not the sale price of electricity between AESU and the distribution companies under the PPAs. ----------

b. In the presentation before the ANEEL on July 10, 2008, AESU and the distribution companies AES Sul and AES Eletropaulo pointed out among their reasons to request the termination of their PPAs the "limitation to transfer the prices of the agreement ***for the tariffs of the distribution companies***" (Annex Y-103(iv) slide 3). This assertion confirms the previous conclusion. ----------

c. The intent of AESU is clear when, in the letter sent to the MME on April 10, 2007 (Annex 6(m) of the Report of Isabel Lustosa on Price Cap), it requested the MME "a complementary provision issued by such Ministry of Mines and Energy of Brazil, determining that the ANEEL establishes the criteria to allow the ***full transfer to the consumers*** corresponding to the areas of license of the Distribution companies CEEE, RGE and AES Sul, on the variation of the natural gas price acquired by AES Uruguaiana." ---------

879. However, these statements may simply reflect the argument of AESU against the Brazilian regulator. A clear statement of the Brazilian regulator would be more useful for the Tribunal, but the resolutions and notes issued by the Brazilian authorities contain ambiguous and/or inconsistent statements. For example: ----------

a. Technical note issued by the ANEEL on August 11, 2008 in Proceeding No. 48500.004620/2008-79 between AES Sul and AESU (Annex Y-103), established in item 25 that the Superintendence of Market Research [SEM, for its acronym in Spanish], in its Technical Note No. 398/2007-

SEM/ANEEL, had concluded that "{t}here is no legal support for the removal of the transfer limit of the energy cost of UTE Uruguaiana ***to the supply rates*** [..]." This suggests that the Brazilian authority understands that the matter submitted for the ANEEL decision is related to the transfer of the highest costs between the suppliers and the consumers. ----------

b. However, this technical note establishes—making reference to a previous proceeding- in item 24 that "In the year 2007, AES Uruguaiana litigated {requested} before the MME to remove the maximum value of the energy {from the} PPT Power Stations through {the} amendment of the § 3rd Section 1° of the MME Resolution No. 52/2004, with its drafting granted by the MME Resolution No. 188/2006. Thus, ***the price of the energy corresponding*** **to the agreement of** ***UTE Uruguaiana with the Distributors AES Sul, CEEE and RGE*** would reflect the price variations of the gas imported from Argentina, without being limited by the values used by other central power stations forming the PPT". In contrast with the above mentioned quote, this indicates that the authority understands that the matter submitted for decision is the transfer between AESU and the distributors. ----------

880. Despite of this legal uncertainty, it is obvious for the Tribunal that the transfer limit of the pass-through between the distributors and the final consumers (whose existence is not discussed) had created a serious practical problem for AESU with the distributors, because these seemed to be making objections to the price at which AESU was selling the energy under the PPA.

a. The Tribunal has noted, particularly, that in its submission before the ANEEL on March 6, 2008, AESU has recognized that "In the current situation, the CCVEEs [PPAs] are not sustainable", partly because of a "partial objection of the sales price by the distributors" (Annex Y-76, slide 21). The Tribunal understands from this statement that the distributors were making objections to the sales price at which AESU was selling the energy under the PPA, so, the PPA would not be sustainable for AESU or for the distributors. Furthermore, AESU added that the total objections of the distributors RGE, AES Sul and Electropaulo up to January 31, 2008 reached R$ 79.6 million. The Tribunal understands from this statement that this would be the price amount of the PPAs contested between AESU and the distributors. ----------

b. This decision is confirmed by the allegations submitted by AESU to achieve the termination of its PPAs. For example, in the letter to the ANEEL on July 22, 2008 in the ANNEL Proceeding No. 48500.004620/2008-79 (Annex Y-103 (i)), AESU stated, as regards the MEyP Resolution No. 127/2008, that the tax from the import of Argentinean gas increased a 100%: ----------

"The application of the above mentioned tax increase will raise the sales price of energy to the distributors by almost R$ 325,00/MWh, in the corresponding readjustment dates of the sales agreement of electric power (CCVEE) [PPA] with any of the distributors (RGE, CEEE and AES Sul).--- In addition, the distributors continue cancelling energy invoices that we submitted and ***paying AES Uruguaiana only the value approved by ANEEL for its rates***, that is, R$ 134.94/MWh (AES Sul and RGE) and R$ 134.20/MWh (CEEE). This difference that was almost of R$ 67.00/MWh will reach to R$ 191.00/MWh by virtue of the most recent gas tax increase by the Note DNEH No. 60 of the Energy Secretariat of Argentina. Thus, ***the economic and financial unbalance already existing for AES Uruguaiana is even more unbearable for the facts totally out of its control.*** ------ The nonsensical gas tax increase from Argentina represents an even higher emergency in the ordered reduction process and termination of the CCVEEs {PPAs} with the electric power distributors [...]" ----------

(Emphasis added) ----------

881. Thus, the conduct of AESU demonstrates that the practical impact of the *pass-through* limit (independently of whether or not it affected the legal relationship between AESU and the distributors or the distributors and the consumers) on AESU business in Brazil caused the decision of AESU to finish its PPAs, partly because the impact on the increase of the Argentine gas export.--

(c) Did AESU keep a doublespeak in Brazil and Argentina as regards the termination of the PPA and the Gas Supply Agreement?----------

882. The Court does not consider that AESU has maintained a doublespeak to implement its dismissal from the PPA in Brazil and from the Gas Supply Agreement in Argentina.----------

883. In the proceedings before the ANEEL, AESU invoked its own force majeure under the PPA (that is, the lack of gas to generate power and sell it under the PPAs) in turn, caused by the force majeure invoked by YPF under the Gas Supply Agreement (that is, the restrictions upon the gas export which YPF alleges prevented it from supplying gas). This does not imply that AESU has accepted that the restrictions upon the gas export have caused force majeure for YPF and it does not demonstrate a contradiction in AESU's position. This only means that the force majeure invoked by YPF, whether justified or not, prevented AESU from complying with its duties under the PPA, entitling AESU to invoke force majeure under the PPA. ----------

884. The Tribunal does not consider contradictory that AESU has declared before the ANEEL that the increase in the gas export tax was causing a financial unbalance or an excessive resulting onerous burden. As indicated above, the submitted evidence suggests that the position of AESU

before the ANEEL was that this tax could be transferred to the distributors, but these objected this transfer due to the *pass-through* limit to the consumer rates. In other words, AESU recognized the practical impact of this tax on its business before the ANEEL. This does not contradict what has been said by AESU at the time of its exit from the Gas Supply Agreement, because, from 2007, they formally objected the transfer of this tax. ----------

885. Regarding the ANEEL determinations, first, these are not biding for this Tribunal although they may serve as an additional element for its consideration. Having said that, the Tribunal agrees with AESU and Sulgás that the ANEEL did not decide on YPF force majeure. The ANEEL was limited to determine if the facts invoked by the parties to the PPA to terminate such PAA were involuntary for the parties to such PPA. For example, when the ANEEL declares, in the context of the termination of the PPA, between AESU and AES Sul that "the administrative restrictions imposed by the Government of Argentina to the electric power or the fuel were unforeseeable by the parties" and that "we could not assume that Argentina would create obstacles for the gas sale, as it has done indeed, predicting an absolutely unforeseeable event on which the parties did not have any interference" (Note No. 253 of April 22, 2009 in the ANEEL Proceeding No. 48500.004620/2008-79 (Interested parties: AES Sul and AESU), Annex Y-103, emphasis added), the ANEEL is stating that the limits to the gas export were unforeseeable for the parties to the respective PPA, that is, AESU and AES Sul and not for YPF. Likewise, when the Ratification Resolution No. 768/2009 dated March 3, 2009 finished the dispute between AESU and RGE (Annex Y-110(xvi)), the ANEEL recognized the "involuntary nature of the failure of {RGE} in the short-term market based on the reduction of the {PPA} signed with {AESU}, caused by extraordinary and unforeseeable facts not related to the parties' will" (emphasis added). In the context of this resolution, the reference to "parties" may only be understood when made to AESU and RGE. ----------

886. However, the Tribunal agrees with YPF that the ANEEL confirmed the supervening onerousness alleged by AESU. By Ratification Resolutions No. 2996 and 2996, the ANEEL recognized the "extreme supervening onerousness" situation of AESU under the PPA, resulting from the gas export tax established by the Government of Argentina (Annex Y-103). This confirms the decision reached by the Tribunal stating the import tax increase had a practical impact on AESU business in Brazil. ----------

(d) Relevance of the above-mentioned findings for this dispute ----------

887. By virtue of the above-mentioned, the Tribunal agrees with YPF on that AESU was seriously affected by the export tax increase and that, consequently, it was advisable for it to finish its electrical business in Brazil. Furthermore, in its judicial pleading dated on October 7, 2008, in the proceedings with RGE for the termination of its PPA (Annex Y-95), AESU recognized that the increase in the Argentinean gas export tax made the Gas Supply Agreement non-viable. Specifically, AESU established: ----------

"26. Not satisfied with the restriction upon the gas export to Brazil pursuant to the above-mentioned terms, ***the Government of Argentina went further and increased in a ridiculous way the tax for that export.*** At the beginning of the term of the Consolidated Agreement, there were not tax incidences on the gas exported by YPF to AESU. In the year 2004, this tax was established by Executive Order number 645/2004, with the proportional rate of U$S 0.34/MMBTU (per millions of BTU), currently, to the very high level of USD 15.12/MMBTU. ----------

27. At the beginning of the Contract, the gas import price was USD 2.36/MMBTU, while currently it is USD 18.83/MMBTU. (...) ----------

28. It is, undoubtedly, ***another impediment, now an economical impediment to make the Gas Supply Contract non-viable.*** ----------

(Annex Y-95, emphasis added). ----------

888. However, as the Tribunal already advanced in the introduction to this item, the incentives of AESU are not necessarily relevant for the items submitted before this Tribunal. The Tribunal has already determined that AESU and Sulgás used their legitimate right to terminate the Agreement under Section 72 of the Vienna Convention. Consequently, the incentives of AESU and Sulgás may only be relevant to determine if this practice was abusive or in bad faith, or if the conduct of AESU and/or Sulgás constitutes a failure to comply with the Gas Supply Agreement, in that case, their right to terminate would be precluded by the *exceptio non adimpleti contractus*. ----------

889. The Tribunal does not consider that the incentives of AESU and Sulgás demonstrated bad faith or an abusive exercise of their right to terminate the Agreement. Regulatory changes in Argentina (not only in the gas restrictions but also in the increase in the gas export tax) created an unsustainable situation for AESU in Brazil. The will of AESU to mitigate its damages is not a violation of the law; on the contrary, it was entitled to it under Article 77 of the Vienna Convention. This unbalance would also entitle AESU {and Sulgás} to renegotiate the Gas Supply Agreement with YPF pursuant to Section 23(c) of such Agreement, the theory of unforeseen contingencies and other similar theories. AESU did not exercise these rights, but, before the

repudiation of YPF, it terminated the Agreement. Due to the failure of YPF, this decision was legitimate. ----------

890. The Tribunal has determined that AESU {and Sulgás} has legally exercised their right to suspend their obligations in accordance with Article 71 of the Vienna Convention and Sections 510 and 1201 of the Argentinean Civil Code. If AESU and Sulgás were entitled to suspend their obligations, such suspension cannot, at the same time, constitute a failure of AESU and Sulgás to comply with their duties under the Gas Supply Agreement. Therefore, it cannot be considered as a repudiation of the Agreement, as alleged by YPF. ----------

891. The Tribunal has also determined that AESU's efforts to terminate its electrical business in Brazil were not in bad faith. AESU was in an unsustainable situation and was trying to mitigate its damages. ----------

892. When there is a legitimate exercise of a right and upon the non-compliance, the Tribunal decides that the incentives of AESU and Sulgás in the suspension and termination of the Gas Supply Agreement are irrelevant. ----------

893. In view of the foregoing, the Tribunal determines that AESU and Sulgás terminated, legally and in good faith, the Gas Supply Agreement based on the repudiation of YPF, and, therefore, the responsibility for the termination of the Gas Supply Agreement was YPF's. ----------

B. YPF LIABILITY FOR THE NON-COMPLIANCE OF THE GAS SUPPLY AGREEMENT----------

894. Below, the Tribunal will address the claims of AESU and Sulgás related to the non-compliance of YPF duties under the Gas Supply Agreement. Specifically, the Tribunal will address the alleged non-compliance of YPF of its duty to deliver gas and the duties "related to" this duty (Part 1); the alleged non-compliance of YPF of the duty to act as a Reasonable and Prudent Operator (Part 2); the alleged non-compliance of YPF of its duties to pay the DOP penalties claimed by AESU and Sulgás (Part 3) and the alleged non-compliance of YPF of its duties as regards the transfer of the new gas export taxes (Part 4). ----------

1. Non-compliance of YPF of its duty to deliver gas ----------

a. Position of AESU and Sulgás ----------

895. AESU and Sulgás allege that, since 2004 and to the date of termination of the Agreement, YPF has repeatedly failed to comply with its duty to deliver gas to Sulgás at the Point of Delivery, and since 2007, it stopped delivering permanently. AESU and Sulgás also allege that YPF incurred

in acts and political development that breached duties related to its obligation to deliver gas, which helped to the lack of capacity to comply with its obligation to deliver gas, to the lack of gas in Argentina and to the increase in the domestic demand. AESU and Sulgás sustain that YPF is liable for these non-compliances and they deny that the responsibility of YPF was excused by force majeure (A/S-MD, ¶¶305-365; 458-568, 743-878; A/S-Replication, ¶¶610-671; A/S Rejoinder, ¶¶334-510). ----------

896. Then, the Tribunal will set out the position of AESU and Sulgás as regards the scope of the obligation of YPF to deliver gas (part (i) *infra*); the non-compliance of YPF of its duty to deliver gas (part (ii) *infra*); the force majeure alleged by YPF to excuse the failure to deliver gas (part (iii) *infra*); and the failure of YPF to deliver gas (part (iv) *infra*). ----------

(i) Obligation of YPF to deliver gas ----------

897. AESU and Sulgás affirm that the main duty of YPF under the Gas Supply Agreement was to deliver gas to Sulgás at the Point of Delivery, located in Paso de los Libres in the boundaries of Argentina and Brazil, under the terms of quality, pressure and other characteristics required by the Gas Supply Agreement. The gas transported by the pipes of TGN and TGM was property of YPF up to the Point of Delivery, and the risk of its loss was borne by YPF.----------

898. According to AESU and Sulgás, for the gas to reach the Point of Delivery, YPF had to extract it in Neuquén Basin; deliver it to TGN to be transported to Aldea Brasileira (Segment A), where it was delivered to TGM. Finally, the latter transported it to the Point of Delivery where it was received by Sulgás (Segment B). For that purpose, YPF needed the authorizations legally established allowing it to extract gas and transport it to Sulgás.----------

899. According to AESU and Sulgás, the scope of the duty of YPF to deliver the gas is affected by the following factors. ----------

900. Firstly, AESU and Sulgás affirm that YPF is a gas expert in Argentina, because it is the most experienced company in the hydrocarbons extraction and selling industry of the country. Neuquén Basin (and particularly, the oilfield Loma la Lata) was discovered and developed by YPF for more than 35 years, so, YPF cannot show unawareness or surprise regarding the situation in this basin, including, without limitation, its existence, the technical and economic possibility to extract gas, the gas extraction costs and the higher costs whatsoever. Besides, YPF cannot be surprised by the variations of the legal procedures affecting its activity, particularly, the one governing the gas export and the tax regime; nor invoked unawareness of the existing legal ways to assert the rights that could have been affected.----------

901. For this reason, AESU and Sulgás allege that there was asymmetry between YPF, on the one hand, and AESU and Sulgás, on the other hand, regarding the knowledge of extraction and trade of gas in Argentina. They affirm that YPF was presented as an expert on gas, and AESU and Sulgás relied on YPF. Given such trust, the responsibility of YPF must be considered in stricter terms, pursuant to Section 909 of the Argentinean Civil Code. They also allege that, according to Section 902 of the Civil Code, the debtor's responsibility is higher if it acts being fully aware of the facts. --

902. Secondly, AESU and Sulgás sustain that YPF did not undertake only to deliver the gas, but also it guaranteed its delivery, which turns the duty into an obligation of result. AESU and Sulgás highlight that Part 3.4 of the Gas Supply Agreement refers to the duty of YPF under the title of "Guarantee of supply", and establishes: ----------

"3.4) Guarantee of supply ----------

YPF guarantees PETROBRAS {today Sulgás} the supply of NATURAL GAS under the terms set forth in this AGREEMENT for all the TERM established in Section 3.1, for which purpose YPF undertakes to: ----------

i) Make its best efforts to maintain its license of exploitation of hydrocarbons and everything needed to comply with the provisions of Section 2 of this AGREEMENT, including the obtaining of term extensions of the above mentioned licenses; ----------

ii) Maintain, to the extent dependable of YPF, the export authorization needed to make the gas export possible under the terms established in this AGREEMENT". ----------

903. AESU and Sulgás add that Section 3.4 of the Gas Supply Agreement must be construed together with Section 2 of this agreement which establishes the subject matter of the Gas Supply Agreement under the following terms: ----------

"Section 2 – SUBJECT MATTER ----------

YPF is committed to put at the disposal of Petrobras and to sell Petrobras {today Sulgás} NATURAL GAS corresponding to UNDERLYING GAS, ADDITIONAL GAS AND PEAK GAS, as appropriate, in the quantities, conditions and during the terms established in this AGREEMENT; and Petrobras {today Sulgás} is committed to receive, purchase and pay YPF the above-mentioned GAS in accordance with the terms, conditions and during the term established in this AGREEMENT". ----------

904. AESU and Sulgás affirm that, based on these provisions, YPF did not "undertake" only to deliver gas, but also "guaranteed" such delivery. According to AESU and Sulgás, it is not a mere semantic matter: to guarantee implies a higher compromise and an undertaking of the risks

arising out of prior or supervening circumstances to the execution of the Agreement, that, in case of non-guaranteed duties, they may excuse its non-compliance. In other words, AESU and Sulgás allege that YPF assumed an obligation of result and all the risks that its expert's capacity in the gas industry allows it to anticipate. ----------

905. AESU and Sulgás reject the construction of Section 3.4 of the Gas Supply Agreement proposed by YPF, whereby, the duty of YPF would be limited to paragraphs (i) and (ii) of such Section. According to AESU and Sulgás, the first paragraph of section 3.4 establishes a general proposal (the guarantee of supply) that is not moved by paragraphs (i) and (ii), which indicate certain specific practices that YPF additionally undertakes. AESU and Sulgás observe that, after the indication in the first paragraph that YPF guarantees the supply of natural gas, such paragraph adds that "to that purpose, YPF is committed" to the practices mentioned in paragraphs (i) and (ii) below but it does not state that the guarantee of supply was limited to these practices. ----------

906. Having said that, AESU and Sulgás highlight in paragraphs (i) and (ii) of Section 3.4 of the Gas Supply Agreement that YPF is committed to make certain specific practices affecting the scope of YPF guarantee of supply. Particularly: ----------

a. YPF "undertakes […] to make its best efforts in the sense of maintaining its hydrocarbons exploitation license […] including the acquisition of term extensions of the above-mentioned licenses" (Section 34(i), first part and final part). According to AESU and Sulgás, this means that YPF undertook to do more than what it would have committed to do if such phrase had not been included. This transforms again the duty of YPF into an obligation of result, on which YPF duties to forecast are those required to a hydrocarbon exploitation and trade expert. It also implies that YPF had to keep its exploitation license and to obtain the term extensions needed. ----------

b. YPF is also "committed to […] everything needed to comply with the provisions of Section 2 of this AGREEMENT (Section 34(1), second part). According to AESU and Sulgás, this implies that YPF had to make everything necessary to extract the gas from Neuquén Basin and, so that such gas was at the disposal of Sulgás in the Point of Delivery. This included not only the technical aspects to discover and develop oilfields and extract and transport gas, but also every economic effort needed. The highest resulting cost for YPF is not a valid excuse for this guarantee, nor, generally, to excuse the non-compliance with its duties under the Gas Supply Agreement. ----------

c. Finally, YPF "is committed to […] keep, to the extent dependable on YPF, the export authorization needed to make the gas export under the terms of this AGREEMENT" (Section 3.4

(ii)). According to AESU and Sulgás, with this, YPF was committed to maintain the circumstances so that this authorization was legally valid not only as an administrative act, but also to produce effects, that is, so that YPF may carry out the gas export subject matter of the above-mentioned authorization. ----------

907. According to AESU and Sulgás, this means that YPF undertook and guaranteed that it would take all actions and make all reasonable efforts to deliver the gas to Sulgás at the Point of Delivery. ----------

908. Thirdly, AESU and Sulgás point out that the duty of YPF to deliver gas was a duty to deliver certain things. Consequently, it had to be complied with if the gas existed and its extraction was possible, whatever the cost. If YPF had to extract more gas to satisfy first the domestic demand, this would not alter its obligation. ----------

909. Since this kind of duties is based on the inexhaustibility of the type, YPF could only discharge itself from this duty proving that in Neuquén Basin there was not more gas for reasons beyond the control of YPF. But YPF never invoked such circumstance. AESU and Sulgás affirm that such gas exists even today, only having to extract it. ----------

910. Even in the assumption that there is physically no gas in Neuquén Basin; or if, there is gas in Neuquén Basin but the extraction is impossible, AESU and Sulgás allege that YPF could not excuse itself from the fulfillment of its duty. Being YPF the main gas production company of Argentina, the execution of a gas supply agreement for twenty years would be proof of gross negligence or willful misconduct by YPF if it knew that the basin lacked gas. This would also prove that YPF provided false information to the Energy Secretariat of Argentina in the management of the Export Authorization. ----------

911. Finally, AESU and Sulgás argue that the fulfillment of the duty of YPF to deliver the gas is affected by other duties of YPF under the Agreement, and particularly, the following: (A/S-MD ¶¶ 350 and ss.) ----------

a. The duty of YPF to transport gas. AESU and Sulgás argue that the duty of YPF to deliver gas was fulfilled delivering the gas at the Point of Delivery. This required that the gas was transported to this location. For that purpose, YPF entered into the gas transportation services agreements with TGN (for Segment A) and TGM (for Segment B). Pursuant to Section 16.1.1 of the Gas Supply Agreement, YPF was responsible for the transport of gas and it had to keep the Transportation

Service Agreements in effect[141]. This is ratified by Sections 4.2, 7 and 11 of the Gas Supply Agreement which state that the gas is owned by YPF and all risks on the gas is borne by YPF up to its delivery at the Point of Delivery. As a consequence of these provisions, AESU and Sulgás allege that, if YPF does not comply with such agreements and thus, it does not comply with the duty to deliver gas at the Point of Delivery, YPF is responsible before AESU and Sulgás under the Gas Supply Agreement for such failure. ----------

b. The duty of YPF to carry out a reasonable and prudent operation, according to Sections 1.1 and 17.4(d) of the Gas Supply Agreement. According to AESU and Sulgás, this duty required that YPF challenges, by the means stated in Act No. 19.549 and related rules, the resolutions of the Government of Argentina that YPF considered as an assumption of force majeure and that prevented if from delivering the gas according to the provisions of the Gas Supply Agreement. Particularly, this required that YPF challenges the resolutions by a judicial way, not only by an administrative way, and that YPF requests preventive measures that would allow it to export gas (Legal opinions of Rafael Bielsa (A4/S4) and García Lema (A8/S8)). ----------

912. Based on the above-mentioned reasons, AESU and Sulgás allege that the main duty of YPF was not only to deliver the gas at the Point of Delivery. According to AESU and Sulgás, for the fulfillment of this main duty, YPF had to perform many actions and had to make sure about certain circumstances well before the first delivery of gas. Particularly, AESU and Sulgás allege that when undertaking the duty to deliver natural gas to AESU and Sulgás- that is, undertaking the duty to export natural gas- YPF inevitably knew that it had to perform the acts (investments, explorations, exploitations, etc.) that guarantee that such export would not affect the supply of domestic natural gas in Argentina, which requires a constant policy of exploration and exploitation. ----------

913. Particularly, the duty of YPF to deliver the gas included the following duties, or required that YPF implemented the following actions: ----------

a. YPF must have the gas and extract it. For that purpose, it should have made the corresponding exploration and exploitation, even before the execution of the Gas Supply Agreement, considering the term that elapses since it is decided to carry out an investment in such activity until this investment pays off. ----------

[141] Section 16.1.1 of the Gas Supply Agreement states that "YPF will be liable before Petrobras [Sulgás] for the transport of the GAS subject matter of this AGREEMENT from NEUQUÉN BASIN to the POINT OF DELIVERY, having to enter into and/or to keep in force since the DATE OF THE FIRST NOMINATION and up to the termination of the AGREEMENT, the FIRM TRANSPORTATION SERVICE AGREEMENTS." ----------

b. YPF had to comply with the requirements imposed by the Argentine law, particularly, the one stating that in order to export gas, the domestic demand should not be affected (according to Act 17,319 and Act 24,076, among others). Consequently, YPF had to extract all the gas necessary to comply not only with the domestic demand, but also with its duty under the Gas Supply Agreement. ----------

c. YPF had to maintain an exploitation policy of the oilfields that did not create its exhaustion, securing that it may comply with its duties under the Gas Supply Agreement and with the requirements to meet the domestic demand imposed by the Argentinean Law. ----------

d. YPF had to refrain from undertaking new compromises of gas supply that may affect its capacity to comply with its contractual duty to Sulgás. ----------

e. YPF had to perform a financial policy that allows the company to have the resources to exploit, extract, produce and deliver the gas. In a scenario of declining reserves, this required a prudent dividend payment policy. ----------

f. Since 2004, YPF had to accept, at its cost, the energy substitution schedules created by the Government of Argentina as a condition to proceed with the gas export. ----------

g. In addition, since 2004, YPF had to exercise all rights and actions allowing it to carry out the gas export. Particularly, YPF had to object the regulations which breached its right to export or subject it to invalid or unconstitutional taxes. ----------

h. YPF had to comply with the Transportation Service Agreements and kept them in force. ---

(ii) YPF did not comply with the duty to deliver the gas ----------

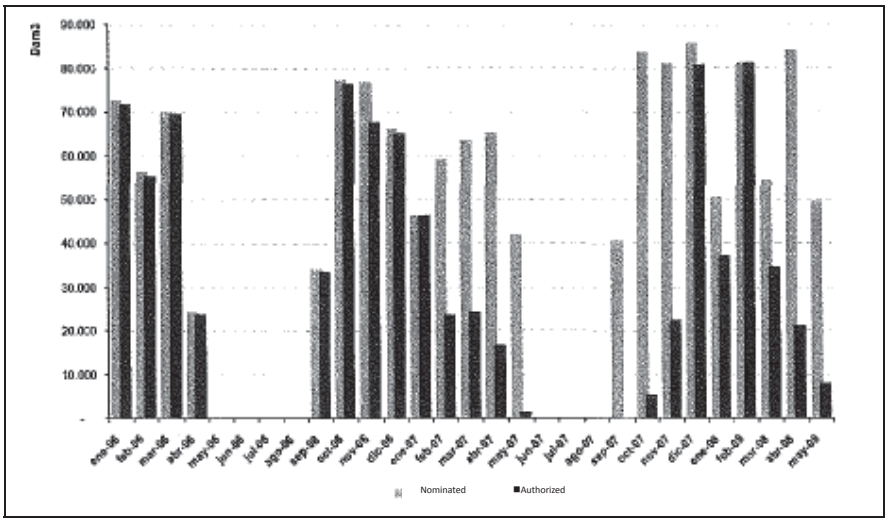
914. According to AESU and Sulgás, the Gas Supply Agreement was normally fulfilled up to April 2004 when YPF started to infringe its duties to supply natural gas. They note that, for example, between April 24 and July 16 2004, YPF did not deliver the volumes of natural gas designated by AESU. YPF alleged that the failure to provide gas resulted from the instructions of the Energy Secretariat and the Fuel Under-secretariat which, in their opinion, were force majeure grounds, which is denied by AESU and Sulgás. From that moment, YPF started to consistently discontinue the supply of natural gas to AESU. As from June 2008, YPF did not deliver gas anymore. ----------

915. AESU and Sulgás have not reflected the details of all YPF breaches regarding its duty to deliver gas in their briefs filed in this arbitration, but they state that "[a] detail of all the nominations and actual deliveries of gas by YPF are included in the documents attached to this complaint“ (A/S-MD, ¶ 465). The Tribunal understands that the evidence of these breaches may

be found in the following annexes: A37/S37 (gas nominations from 2001 to 2007), A83/S83 (gas nomination of the year 2008) and A84/S84 (AESU generation chart). ----------

916. AESU and Sulgás have submitted a chart reflecting the amounts nominated by AESU and the extent to which these nominations were infringed by YPF in the period from the year 2006 when the last Conflict Resolution Agreement was entered into, to the year 2008 when they allege that YPF definitely stopped supplying gas (A/S-MD, page 198). They note that this chart has been created based on the information contained in Annex A84/S84 (A/S-AF, footnote 43, page 46). ----

Gas provision – Nominated vs. Authorized ----------



917. AESU and Sulgás allege that YPF incurred in default with every failure to provide gas upon the expiration of each term when it had to be delivered pursuant to the Gas Supply Agreement according to Section 509 of the Argentine Civil Code (A/S-MD, ¶929). ----------

(iii) There was no force majeure to excuse the defaults of YPF ----------

918. AESU and Sulgás deny that the defaults of YPF of its duty to deliver the gas are excused by force majeure. Particularly, they deny that the restrictions on the gas export imposed by the Government of Argentina create a force majeure event under the Gas Supply Agreement (AS-MD, ¶¶40-59; 468-472; 930-969; A/S-MC, ¶¶250-266; A/S-AF, ¶¶863-1013). ----------

919. According to the legal experts of AESU and Sulgás, attorneys Garcia Lema and Bougain, books of authority of Argentina require that two of the main requirements be met to consider force majeure that holds the debtor harmless; that is: (i) an unforeseeable event and beyond the debtor's control and (ii) the non attribution of liability to the debtor. Additionally, it is required that the event is extraordinary, public and well-known, supervening (that is, after the creation of

the duty) and it has to turn the fulfillment of the obligation impossible (Garcia Lema/Bougain, A8/S8, ¶¶206-209). However, they highlight that the debtor may only be exempted from the fulfillment of its obligations if there is an event complying with all these requirements (external, unforeseeable, inevitable, extraordinary and well-known, which turns the fulfillment of the obligations permanently or temporarily impossible), that there was no debtor's fault, which is understood taking into account the requirements required by the nature of the duty and the debtor's circumstances and the diligence duty corresponding to him. They affirm that the releasing excuse must be rejected if the one intending to oppose it failed to adopt the precautions requested by the circumstances of persons, time and place (Garcia Lema/Bougain, A8/S8, ¶¶209-212). ----------

920. Another AESU and Sulgás's expert, Alberto Bueres, attorney, highlights that we have to distinguish between the fact that must not be attributable to the debtor and the default in payment or the default derived from the services that must be objective and absolute (effective) (Bueres, ¶ 1.3). Mr. Bueres also makes reference to the requirements of unpredictability, inevitability/inseparability and non-involvement/strangerhood. ----------

921. According to AESU and Sulgás, in this case none of the requirements of force majeure are present. Particularly, they allege that the restrictions to the gas export. ----------

a. Were not *unpredictable*, since, to the date of the execution of the Gas Supply Agreement: -------

i. The export authorizations were subject to the fact that the domestic needs of gas consumption were previously satisfied, so, the reaction and intervention of the Government before a lack of gas was predictable. YPF could not ignore the rules governing its actions. According to AESU and Sulgás, the predictability would not change if it were sustained that the Export Authorization was irrevocable because there are not administrative acts absolutely irrevocable. ----------

ii. The lack of gas in Argentina was predictable. YPF, being the most important operator in the natural gas industry in Argentina (with a market share of 44%) could predict that it was the main responsible for the shortage crisis. ----------

b. They did *not turn the fulfillment of the duty impossible.* According to AESU and Sulgás, the impossibility in the force majeure must be absolute and objective and not simply a greater or lesser degree of difficulty or onerosity. But in this case: (i) there was not a total prohibition to export natural gas; (ii) the regimes invoked by YPF included flexibility rules allowing the export, if, for example, they supply alternative fuels or any other source of energy to the domestic market

in contrast to the natural gas exported; and (iii) YPF has never had an Export Authorization that may not be interrupted. ----------

c. They were not *inevitable,* since YPF could have exercised the administrative and judicial actions available to it and it had to act as a reasonable and prudent operator. ----------

d. They were not *external* to YPF, since "the crisis was produced by YPF, the rules established were caused by YPF behavior and all of this, [...] was predictable for YPF (A/S-AF, ¶928). Furthermore, AESU and Sulgás allege that YPF is not only the addressee of the regulations, but also the one who knows and produces the facts that the regulators take into account for the issuance of the regulations. Likewise, they allege that YPF gave priority to their shareholder's interests, with total indifference towards the consequences of its actions for AESU, Sulgás and the Argentine market. ----------

922. Some of AESU and Sulgás's allegations on force majeure are developed in their allegations about YPF failures to comply with its duties "related to" the duty to deliver the gas, so, the Tribunal will address them in the following part. The Tribunal will address the other detailed AESU and Sulgás's allegations regarding the force majeure when analyzes them. ----------

(iv) YPF did not comply with duties related to its duty to deliver the gas ----------

923. In addition to the failure to comply with its main duty to deliver the gas nominated by AESU, AESU and Sulgás allege that YPF did not comply with the duties considered as "related" to such main duty. Furthermore, AESU and Sulgás allege that "the duties in which YPF has incurred under the {Gas Supply Agreement} are not only those specifically described in the text of the {Agreement}. Its duty is extended to perform any and all duties related to the fulfillment of the duties described in the text of the {Agreement} and to refrain from performing all actions that would complot against its fulfillment […]" (A/S-MD, ¶ 484). AESU and Sulgás add that these defaults have an "immediate relationship" with the duty of YPF to deliver the gas, and that its importance would lie on the permission to duly comply with the duty to deliver the gas (A/S-MD, ¶483). ----------

924. Among the main practices, AESU and Sulgás describe the following conducts as the ones qualifying as breaches of the Gas Supply Agreement: ----------

a. YPF provided inaccurate information about the real condition of the reserves in Neuquén Basin. As a result, YPF obtained a null and void Export Authorization.----------

b. When executing the Gas Supply Agreement, YPF did not have the necessary reserves to comply with its legal duties (under the Acts of Gas and Hydrocarbons) as well as contractual duties.----------

c. YPF did nothing to repair the shortage of gas. Particularly, it did not make the necessary investments to explore and exploit the gas oilfields in Neuquén Basin nor took the necessary measures to comply with its duties to supply gas in the domestic and foreign market in accordance with its legal and contractual obligations, knowing that its failure to act will result in the shortage of gas in Argentina. ----------

d. YPF abusively exploited Neuquén Basin, thus, exhausting some oilfields. ----------

e. YPF engaged in commitments with other companies, many of them related, knowing that the gas would not be enough to supply the domestic demand (now, increased by these new commitments) and the foreign commitments. ----------

f. YPF gave priority to short-term objectives, like the payment of dividends to its shareholders (particularly, its major shareholder, Repsol) instead of devoting resources to the exploration and exploitation of reserves. If YPF had used these funds to explore and exploit the reserves or to cover the costs of the fulfillment of the demands of the flexibilization regimes provided for in the government resolutions, it would have been able to comply with its duties before AESU and Sulgás. Besides, YPF could have found an external financing for its exploration activities.----------

g. YPF conditioned the fulfillment of its duties under the Agreement to the fulfillment of the services not contractually agreed by AESU and Sulgás and took advantage of its dominant position in the gas market. ----------

h. YPF did not comply with its duty to act as a Reasonable and Prudent Operator when it did not adopt the appropriate practices to revert the effects of the rules invoked as constitutive of a force majeure event. Particularly, YPF did not seriously challenge the restrictions to exports imposed by the Government of Argentina. ----------

i. YPF did not comply with the Transportation Service Agreements.----------

925. AESU and Sulgás detailed allegations about these practices are explained as follows, except for the allegations related to items (h) (failure to comply with the duty to act as a Reasonable and Prudent Operator) and (i) (failure to comply with the Transportation Service Agreements) addressed in Parts VII.B.2 and X.B *infra*, respectively. ----------

(a) YPF has provided inaccurate information about the condition of its reserves and had a null and void Export Authorization.----------

[A/S-MD, ¶¶ 265-304, 549-556; AS-MC, ¶¶ 533; A/S-Rejoinder, ¶¶ 402-435; A/S- Arguments, ¶¶69-71)]----------

926. AESU and Sulgás allege that YPF Export Authorization granted under Resolution SE 465/98 (Annex A18/S18) has serious irregularities that would permit to consider it as null and void. They affirm that, if said Authorization is ever invoked before the administrative or judicial authorities, "who invokes it runs the risk that this nullity may be claimed" (A/S-Complaint ¶ 285). ----------

927. Particularly, AESU and Sulgás sustain that the proceedings carried out before the Energy Secretariat to obtain the Export Authorization is deficient in the following irregularities: (1) YPF did not provide the information requested by the Resolution SE 299/98 (Annex AL3/SL3), and (2) the regime set forth in this Resolution, including, but not limited to, the one by which the interested parties may submit their offers, has not been fulfilled. AESU and Sulgás allege that they only realized of these irregularities in the context of the arbitration, because they affirm that they have not participated in the processing of the Export Authorization.----------

928. In relation to item (1), based on Mr. Moore's reports, AESU and Sulgás allege that YPF provided misleading information to the Energy Secretariat to support the granting of the Export Authorization and allowed the Energy Secretariat to grant such Authorization based on wrong considerations (A/S-AF, ¶¶457-470).----------

929. Particularly, Mr. Moore highlights that YPF only informed the authorities about its existing contractual compromises, not naming its future domestic contractual compromises with the distributors in Argentina. Although, at that time, YPF was not contractually required to deliver the future volumes, in Mr. Moore's opinion, the omission of these volumes was deceptive because the renewal of the agreements with YPF was inevitable and because, to test the impact of the gas exports, the authorities had to take into account the requirements of the existing customers as part of the domestic demand (First Moore's Report ¶¶118-119).[142] In this context, Mr. Moore determines that the information provided by YPF as regards the contractual commitments is "extraordinarily deceptive, from a technical point of view […] The compromised volume is similar

[142] Mr. Moore highlights that the authorities recognized the above mentioned and tried to make a similar analysis for all the commitments and reached the following conclusion: "Given that the company YPF S.A. does not mention the expiration dates of the commitments with the domestic market, many calculations has been made so as to consider that the above mentioned will continue during the term of the export, giving as a result a remaining gas reserve value of 94,418.9 millions of m3, which indicated that it is possible to grant the requested authorization" (First Moore´s Report, ¶119). ----------

to hardly two years of production of YPF for the year 1998. Clearly, this is not a reasonable description of the situation of supply and demand". (First Moore's Report, ¶113) [143] Mr. Moore adds that "the fact that YPF had not recognized the potential future volumes needed to extend its existing distribution agreements is not only a problem but also a deception. In the context of general domestic requirement, who did YPF think would replace it as supplier? (First Moore's report, ¶116) [144] ----------

930. Additionally, AESU and Sulgás note that during the processing of the Export Authorization, YPF did not inform about the following facts: (i) the reassessment downward of its reserves that YPF made and finished to externalize in January, 2006 by the *write-off* notice to the control units in such month[145] (ii) YPF increase of its commitments of domestic supply, particularly, to related, affiliated or controlled companies and (iii) its ineffective, insufficient or nonexistent exploratory task to generate new oilfields that cover the exhausted ones. ----------

931. In relation to item (2), AESU and Sulgás reject the YPF allegation about the fact that it was not considered as reasonable to implement the proceeding provided in Resolution SE 299/98 since the authorization proceedings has been stated prior to the effective date. AESU and Sulgás explain that, when the Resolution SE 299/98 was published on July 20, 1998 the Export Authorization had not been granted and the administrative proceeding was still pending. Thus, the new regime submitted by Resolution SE 299/98 was applicable to it and had to be totally complied with. ----------

932. In view of this lack of information, AESU and Sulgás allege that the Export Authorization does not have any cause and it contains defects that turn it null and void, since the competent body to grant it considered the legal parameter as proved without complying with the proceeding in force and received false and incomplete information by YPF. According to AESU and Sulgás, this explains the reason why YPF did not carry out with a minimum of seriousness the challenge procedure that according to YPF prevented it from exporting gas; YPF could not appear before a

---

[143] Translation of the Tribunal. The original documents states: *"The figures for contractual sales commitments are, I believe, extraordinarily misleading, from a technical perspective.* [...]. *The committed volume is equivalent to just over two years of YPF' s production for 1998. Clearly this is not a sensible picture of the supply and demand situation"* (First Moore´s Report, ¶113).----------

[144] Translation of the Tribunal. The original document states: *"YPF' s failure to acknowledge potential future volumes required to extend existing contracts with distributors is problematical as well as misleading. In the context of overall domestic requirements, who did YPF think would replace it as supplier?"* (First Moore´s report, ¶116) ----------

[145] The Tribunal notes that the *write-off* was not performed until the year 2005, and was informed in January, 2006. Consequently, the reasoning may be that YPF already knew about this *write-off* in the year 1998.----------

court invoking an Export Authorization that a court may consider as null and void at its own initiative. ----------

933. AESU and Sulgás sustain that said nullity is absolute and known, since it is not necessary to make any kind of investigation because it arises from the records of the administrative file. However, this does not mean that the Export Authorization may not produce effects. The export under the Gas Supply Agreement may be carried out so long as its nullity is not declared. But the truth was that the above-mentioned Authorization was rudimentary and, thus, the effectiveness and validity of the Gas Supply Agreement, was highly challenged. This Authorization would be declared null and void at the tribunal's initiative when it had to be invoked. ----------

934. According to AESU and Sulgás, such irregularities constitute a breach of the Gas Supply Agreement. Given the manner in which YPF processed the Export Authorization, it could not be ignored that it was manifestly illegal, so, it establishes a new default by YPF under the Gas Supply Agreement. ----------

(b) YPF did not have the necessary reserves to comply with all its legal and contractual duties -------

935. AESU and Sulgás sustain that YPF did not have the necessary reserves to comply with its legal[146] and contractual duties and that it had a gradient production capacity. ----------

936. Based on the opinions of the experts Francisco Mezzadri, Alieto Guadagni and Chris Moore, AESU and Sulgás allege that after the execution of the Gas Supply Agreement, there was a manifest decrease in the reserves of YPF (A/S-MD, ¶¶ 397¬408). ----------

a. In the year 1998, YPF controlled the 57% of the reserves of Neuquén and the 37.5% of the total reserves of natural gas of Argentina and injected almost the 60% of the gas entering to the national transport system. This capacity of YPF was expressed in other market aspects: (i) seven of the eight distributors operating in the country depended on more than a 50% of the deliveries of gas of YPF; (ii) YPF supplied to 48.6% of the wholesale market of direct buyers of gas, and (iii) 40% of the gas marketed by YPF had as destination the urban area of Buenos Aires (Mezzadri's First Report, ¶¶4-5). ----------

b. The reserves of YPF in Neuquén Basin constituted an essential core of the natural gas business of YPF [147] and what would happen with them was relevant for the Gas Supply Agreement because

[146] In this sense, AESU and Sulgás assert that, as a consequence of the principle of domestic supply established in Hydrocarbons and Gas Acts, YPF had to have sufficient reserves to supply the domestic market if necessary.----------

[147] AESU and Sulgás observe that according to the Institute of Oil and Gas of Argentina (IAPG, in Spanish), as of December 31, 1997 the 48,1% (329.158 million of m3) of the proven reserves of natural gas were in

the supply for the Gas Supply Agreement contractually provided from them. In this context, AESU and Sulgás highlight two facts that had an impact on the reserves of Neuquén Basin a few years after the execution of the Gas Supply Agreement: ----------

i. In the year 2000, YPF reached the highest registered level (peak level) of its reserves in Neuquén Basin, and, since then its tendency has been declining, noting a strong acceleration of its declining since the year 2003. ----------

ii. In January 2006, YPF announced the *"write-off"* of a 25% of its proved reserves of hydrocarbons in the world, and that, in Argentina they were concentrated mostly in Neuquén Basin, and by an equivalent of 28% of its reserves adjustment worldwide (59.2 billion of m3) equivalent to more than 3 years of production of YPF in this basin to the level of the year 2005 (Annexes IV.1 and IV.2 of the First Report of Mezzadri). This adjustment of estimations affected mainly the reserves for the year 2003. Although YPF and Repsol attributed the review to problems related to technical behavior and to a geological structure of some oilfields; the independent advisor of YPF, King & Spalding, qualified the calculation of proved reserves from 1999 to 2004 as "imperfect" and identified problems of insufficient knowledge of the personnel in charge of the estimation and calculation of the gas reserves, and serious organizational lacks[148] (First Report of Mezzadri, ¶¶51-54). ----------

c. The drop of the proven reserves of YPF between 1995 and 2008 was of 58.2% in the whole country and of 60.6% in Neuquén Basin, which indicated that the performance of this basin is the essential explanation of the aggregated results of the company in the whole country in the natural gas business. ----------

d. Of all the oilfields of YPF in Argentina, the one which showed the highest reductions of reserves was the oilfield of Loma la Lata, in Neuquén Basin. This oilfield provided the 78% of the YPF reserves in the basin in the year 1997, 73% in the year 2004 and by the end of the year 2007 it reduced to 65%. ----------

e. AESU and Sulgás affirm that YPF is still the main producer of natural gas in Argentina. In the year 1998, it had a market share of 44% (17 billion of m3) and currently, it represents the 38% (19 billion of m3) of the market. The production of YPF in Neuquén Basin grew regularly between

---

Neuquén Basin. Also, Neuquén Basin held the 28,4% (63.736 million of m3) of the potential reserves of natural gas in Argentina (A/S-MD, ¶397).----------

[148] YPF informed this review to the National Securities Commission (CNV, in Spanish) of the Argentine Republic and to the U.S. Securities and Exchange Commission by letters dated January 26, 2006 (Annexes IV.I and IV.2. of the First Report of Mezzadri). The findings of the review were sent to the CNV on June 16, 2006 (Annexes IV.3 of the First Report of Mezzadri). The report of King & Spalding is attached as Annex IV.4 of the First Report of Mezzadri.----------

1995 and 2001 and, in the context of reserves drop; the company increased its production between 2002 and 2004 at a pace superior to the historical one but also suffered from a sustained drop in the following years. Thus, in the year 2008, the company was supplying 17.2% of natural gas less per day to the market from Neuquén Basin than in the year 2004. ----------

937. AESU and Sulgás sustain that YPF knew about this lack of reserves and, therefore, negotiated the Gas Supply Agreement based on the non-existing gas reserves. As detailed in the following Part (b), they affirm that YPF provided incomplete and misleading information to the Energy Secretariat, resulting in the fact that the Export Authorization was invalidated and declared null and void at any authority's initiative. They add that, in the context of the review of its reserves in the year 2006, YPF has admitted that it acted wrongfully in the recording of such reserves, and they suggest that YPF should have known of this review long before its release. According to AESU and Sulgás, it is unconceivable- except in cases of fraud or gross negligence- that the company with more than thirty years of experience in Neuquén Basin did not know about the real condition of its reserves. ----------

938. More specifically, based on the expert reports of Moore, AESU and Sulgás contest the assertion of YPF about the fact that it always had enough reserves or *deliverability* to comply with its contractual commitments (A/S-Rejoinder, ¶¶ 330-349). Particularly, Mr. Moore concluded that as of the year 2000, the projections of production of YPF in relation to its reserves suggest that YPF was liquidating the business and made a lack of supply predictable. ----------

939. Specifically, in his first report, Mr. Moore reached the following conclusions regarding the situation until 2004: ----------

a. "Analysis of YPF's production profile and committed sales volumes from Neuquén/San Jorge provides a picture of a business unit that is liquidating. YPF had neither the reserves nor the production capacity (deliverability) to continue to supply its existing customers (ignoring those customers' forecast demand growth)" (First Report of Moore, ¶23). ----------

b. "Any reasonable forecast of YPF's future deliverability made in 1998 or 1999 would have indicated YPF's peak production from its operated properties sometime around 2004-2006, perhaps earlier, and decline thereafter. Taking into account the renewed distributors' contracts and YPF's other anticipated sales to power plants, industrial consumers and exports entered into around the same time, for continuing customer demand at the same level (ignoring demand growth), a shortfall in YPF's ability to deliver would have been predicted to occur at about the same time, in 2004-2006" (First Report of Moore, ¶24). ----------

940. In his second report, Mr. Moore indicated that the First Report of Mr. Guzzetti provided additional information confirming the above-mentioned conclusions. Particularly, this information confirms that (i) the contradiction between the commercial strategy of YPF and the demands of the domestic market, and (ii) that a *supply shortfall* was predictable based on the projections of production of YPF for 2000. ----------

941. As regards the commercial strategy of YPF (item (i) of the above-mentioned paragraph), Mr. Moore overlaps two figures provided by Mr. Guzzetti in his first Report in Figure 2 of the second Report; Figure 2.a.1 shows the existing commitments of YPF prior to the year 2004 by sales agreements and its own consumption for the period between 2000-2020 and Figure 2.b.1 shows a production forecast of YPF as of 2000: ----------

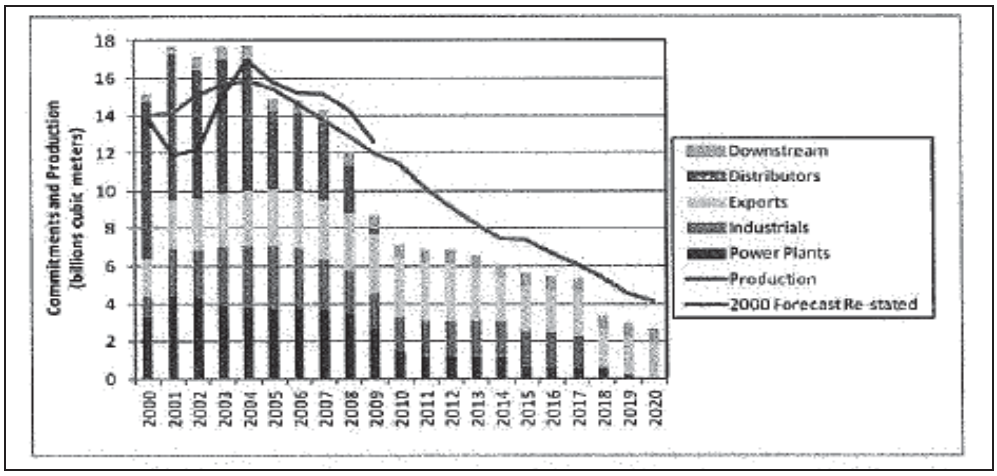


Figure 2: YPF Commitments, by sector, based on Original CDC, compared to the YPF's 2000 Production Forecast, with Actual Production through 2009 for completeness ----------

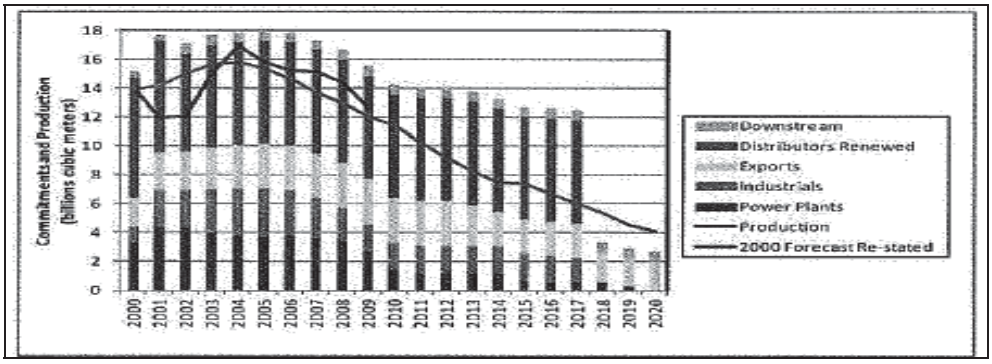
942. Based on this figure, Mr. Moore reaches the following conclusions: ----------

a. "Figure 2 confirms and extends in time the conclusion of my first Report in which YPF was liquidating its gas business in Neuquén. The peak of its production in 2004 with a continuous decrease from that point is remarkable. Guzzetti states that the investments and the development plans are made to produce the necessary gas to meet sales commitments. However, it can be assumed that YPF would have increased its production and involved more sales if YPF had had the capacity of productions and potential reserves to make it in a profitable way (before the price reduction in 2002). It did not do it because the process is generally the other way around- a profitable development plan and production profile is produced and sales agreements (commitments) are made consistent with this plan. YPF's plan was restricted by the

inevitable peak and drop of production of its portfolio, controlled by the mature oilfields en Loma La Lata -Sierra Barrosa, for not having added reserves through exploration activities" (Second Report of Moore, ¶ 39). [149]----------

b. "As can be deduced from Figure 2, YPF had planned to manage its declining production capacity mainly by the failure to renew its agreements with the distributors. Figure 3 shows the impact on the renewal of the agreements with volumes prevailing in the year 2003 to the end of the year 2017. The capacity of production of YPF does not reach the levels required to continue to supply distributors even before considering any increase in the demand of the area". (Second Report of Moore, ¶ 40). [150]----------

943. Figure 3 of the Second Report of Mr. Moore is included below (the Tribunal notices that the inscription states Figure 2 but it is a mistake in the original document): ----------



---

[149] Translation of the Tribunal. The original documents states: "Figure 2 confirms and extends in time the conclusion in my first report that YPF was liquidating its Neuquén gas business, Notable is the peak production in 2004 with continuous decline thereafter. Guzzetti argues that investments and development plans are made in order to produce the gas necessary to meet sales commitments. However, we may assume YPF would have increased production and committed to more sales if YPF had the potential deliverability and reserves to do so profitably (this is before the price reduction in 2002). It did not do so, because the process is usually the other way round -a profitable development plan and production profile is generated, and sales contracts (commitments) are made consistent with that plan. YPF's plan was constrained by the inevitable peak and decline of production from its portfolio, dominated by the mature fields in Loma La Lata -Sierra Barrosa, given its failure to add reserves through exploration" (Second Moore´s report, ¶ 39). ----------

[150] Translation of the Tribunal. The original documents states: *"As is also apparent from Figure 2, YPF planned to manage its declining deliverability primarily by failing to renew its contracts with the distributors. Figure 3 shows the impact of renewing these contracts, at the volumes prevailing in 2003, through year end 2017. YPF's deliverability falls considerably short of that required to continue to supply distributors, even before taking account of any demand growth in the sector"* (Second Moore´s report, ¶ 40).----------

Figure 2: YPF Commitments, by sector, based on Original CDCs, plus additional commitments had Distributors' Contracts been renewed at the 2003 rate, compared to the YPF's 2000 Production Forecast, with Actual Production through 2009 for completeness. ----------

---

944. Mr. Moore concludes that "YPF production forecast and plans not to renew its sales agreements with the distributors highlight the 'disconnection' between, on the one hand the participation of YPF in the *lobby* for exports and on the other hand, its own commercial strategy. Since the year 1999 to June 2004, YPF continued stating that the deliverable gas offer in Argentina would considerably exceed the domestic demand for the foreseeable future. However, its commercial strategy reflected the knowledge that its production would have a peak in the year 2004 and, therefore, it planned to reduce its sales agreements through the failure to supply gas to the distributors. It is not clear how YPF thought that this contradiction would be solved" (Second Report of Moore, ¶ 9). [151] Mr. Moore repeats the question asked in his first report (who did YPF think would replace it as supplier for the distributors?) and notes that, according to Mr. Guzzetti, YPF controls the reserves and productions in Neuquén; the reserves of the other producers are also decreasing and its production profile is essentially flat (Second Report of Moore ¶ 41). ----------

945. Mr. Moore adds that it is not clear that YPF may comply with its duties even not renewing its existing agreements with the distributors, since its commitments (excluding the above mentioned) for the year 2004 increased to 53.8 MMm3/day, while the expert Guzzetti affirms that YPF capacity of production for this year only reached 52 MMm3/day (Second Report of Moore, ¶10). ----------

946. As regards the deficit of supply (item (ii) of paragraph 940), Mr. Moore concludes that "YPF production forecast for the year 2000 recently provided by the [First] Report of Guzzetti shows the peak of production in the year 2004 which confirms my argument that, for the year 2000, YPF should have realized that, given its historical position as main producer in Neuquén, there would

---

[151] Translation of the Tribunal. The original documents states: *"The production forecasts and YPF's plans not to renew sales contracts with the distributors highlights the 'disconnect' between, on the one hand, YPF's participation in lobbying for exports and on the other its own business strategy From 1999 to June 2004, YPF continued to state that the deliverable supply of gas in Argentina will significantly exceed domestic demand for the foreseeable future. Its business strategy, however, reflected the knowledge that its production would peak in 2004 and therefore planned to reduce its sales contracts by ceasing to supply distributors. It is unclear how YPF thought this contradiction would be resolved"* (Second Moore´s report, ¶ 9).----------

probably be a deficit of domestic supply once the production of YPF started its inevitable decrease" (Second Report of Moore, ¶ 8). [152] ----------

---

947. According to Mr. Moore, these conclusions are not affected by the additional information provided by Mr. Guzzetti (Third Report of Moore, ¶ 6). The Tribunal also notes that the additional comments provided by Mr. Moore in the hearing during his examination did not address these items. ----------

948. Regarding the situation after the year 2004, Mr. Moore notes that the expert "Guzzetti argues that despite the government intervention in 2004, YPF continued to have sufficient reserves and deliverability to meet both its existing commitments and its additional domestic obligations under two agreements between the government and the producers. This astonishing conclusion can be reached only by arguing that YPF renegotiated its export commitment to minimal levels, and then arguing that this was retroactively the case in 2004 (despite the fact that, for example, the AESU contract would not be terminated until 2009). Further, the YPF data provided to GCA assumes the domestic obligations cease completely by 2011" (Second Moore´s Report, ¶ 11)[153] ----------

949. Mr. Moore rates the analysis made by Mr. Guzzetti as "seriously flawed, partly in the way that it is presented, but principally because the data supplied by YPF misrepresents the true situation" (Second Moore´s Report, ¶ 49)[154] In fact, according to Mr. Moore, the adjustment formula used by Mr. Guzzetti is inappropriate for the following reasons: ----------

---

[152] Translation of the Tribunal. The original documents states: *"YPF's 2000 production forecast, newly provided in the Guzzetti Report, shows peak production occurring in 2004, confirming my argument that YPF by 2000 should have realized that, given its legacy position as principal producer in Neuquén, a domestic supply shortfall was likely to occur once YPF's production started its inevitable decline"* (Second Moore´s report, ¶ 8).----------

[153] Translation of the Tribunal. The original document states *"Guzzetti argues that despite the government intervention in 2004, YPF continued to have sufficient reserves and deliverability to meet both its existing commitments and its additional domestic obligations under two agreements between the government and the producers. This astonishing conclusion can be reached only by arguing that YPF renegotiated its export commitment to minimal levels, and then arguing that this was retroactively the case in 2004 (despite the fact that, for example, the AESU contract would not be terminated until 2009). Further, the YPF data provided to GCA assumes the domestic obligations cease completely by 2011"* (Second Moore´s Report, ¶ 11).----------

[154] Translation of the Tribunal. The original documents states: *"Guzzetti also analyses the situation after government intervention in 2004. However, I believe this analysis is seriously flawed, partly in the way that it is presented, but principally because the data supplied by YPF misrepresents the true situation"* (Second Moore´s Report, ¶ 49).----------

a. "Accepting, for the moment, that it is appropriate to show {the purported reductions in export commitments} (under the guise, presumably, of "renegotiated" commitments, with which I disagree, discussed next), it is obviously inappropriate to credit these back to the periods shown (2000 onwards in the Guzzetti Report). To illustrate the absurdity of this approach, the obligations remaining in say, 2005, assume that the AESU contract is cancelled with effect from March 20, 2009. YPF could not possibly have known the contract would be cancelled from that date (unless, perhaps, YPF intended to cancel the contract), and removing its commitment with hindsight is obviously inappropriate" (Second Moore´s Report, ¶ 52).[155] ----------

b. "Furthermore, reducing the export commitments by saying they were "renegotiated" seems to pre-suppose the outcome of the present dispute, in which, as I understand it, YPF argues that the government intervention effectively relieved it of its contractual obligations to export buyers, alleging Force Majeure. In the case of AESU [...] the initial reductions (I call it the "Winter Holiday') and eventual cancellation of the export commitments were inevitable consequences of the domestic supply crisis, not re-negotiations. The buyer had no choice. In particular, the agreement to suspend winter deliveries signed on August 31, 2004 was based on YPF's representation that it would not be allowed to supply gas in those periods, and its claim it would be excused through Force Majeure. If YPF had thought YPF could meet the gas deliveries, there would be no incentive to sign the agreement creating the Winter Holiday. Similarly, the reduction in exports commitments attributed to its other contracts seems equally inappropriate" (Second Moore´s Report, ¶¶ 53-55)[156.] ----------

---

[155] Translation of the Tribunal. The original documents states: *"Accepting, for the moment, that it is appropriate to show [the purported reductions in export commitments] (under the guise, presumably, of "renegotiated" commitments, with which I disagree, discussed next), it is obviously inappropriate to credit these back to the periods shown (2000 onwards in the Guzzetti Report). To illustrate the absurdity of this approach, the obligations remaining in say, 2005, assume that the AESU contract is cancelled with effect from March 20, 2009. YPF could not possibly have known the contract would be cancelled from that date (unless, perhaps, YPF intended to cancel the contract), and removing its commitment with hindsight is obviously inappropriate"* (Second Moore´s Report, ¶ 52).----------

[156] Translation of the Tribunal. The original documents states: *"Furthermore, reducing the export commitments by saying they were "renegotiated" seems to pre-suppose the outcome of the present dispute, in which, as I understand it, YPF argues that the government intervention effectively relieved it of its contractual obligations to export buyers, alleging Force Majeure. In the case of AESU [...] the initial reductions (I call it the "Winter Holiday') and eventual cancellation of the export commitments were inevitable consequences of the domestic supply crisis, not re-negotiations. The buyer had no choice. In particular, the agreement to suspend winter deliveries signed on August 31, 2004 was based on YPF's representation that it would not be allowed to supply gas in those periods, and its claim it would be excused through Force Majeure. If YPF had thought YPF could meet the gas deliveries, there would be no incentive to sign the agreement creating the Winter Holiday. Similarly, the reduction in exports commitments attributed to its other contracts seems equally inappropriate"* (Second Moore´s Report, ¶¶ 53-55).----------

950. According to Mr. Moore, *"A more appropriate analysis shows that if one either re instates the export commitments, or adjusts for ongoing domestic obligations, YPF had insufficient proved reserves to meet its commitments following its reserves write-down in 2005, and for domestic obligations, after these were increased by the second agreement {between the government and the producers}"* (Second Moore's Report, ¶ 12)[157] ----------

951. Regarding the capacity of production *(deliverability)*, Mr. Moore concludes that "without re-instating the export commitments, and based on a production forecast for the year 2009, for the year 2013, YPF will not have enough production to comply with its domestic duties, assuming that the above mentioned are maintained but they do not increase. If its export commitments are also reinstated, it is likely that YPF will not have enough production to comply with its commitments in the year 2011". (Second Report of Moore, ¶ 13) [158] Mr. Moore adds that "[i]t seems likely that, at the time the AESU agreement was terminated in March 2009, YPF would similarly be projected to be unable to deliver all its remaining export commitments" (Second Moore´s report, ¶ 14) [159] ----------

952. During his direct examination in the hearing, Mr. Moore updated his conclusions regarding the relationship between the reserves of YPF and its adjusted CDC based on the information provided in the Complementary Second Report of Guzzeti about the amendments to the existing agreements of YPF. Using Mr. Guzzeti's information about proven reserves of YPF (red bar) and the adjusted CDC, (including domestic commitments, export commitments and downstream consumption of YPF), Mr. Moore created the following figure (Slide 4 of the Mr. Moore´s presentation during the hearing): ----------

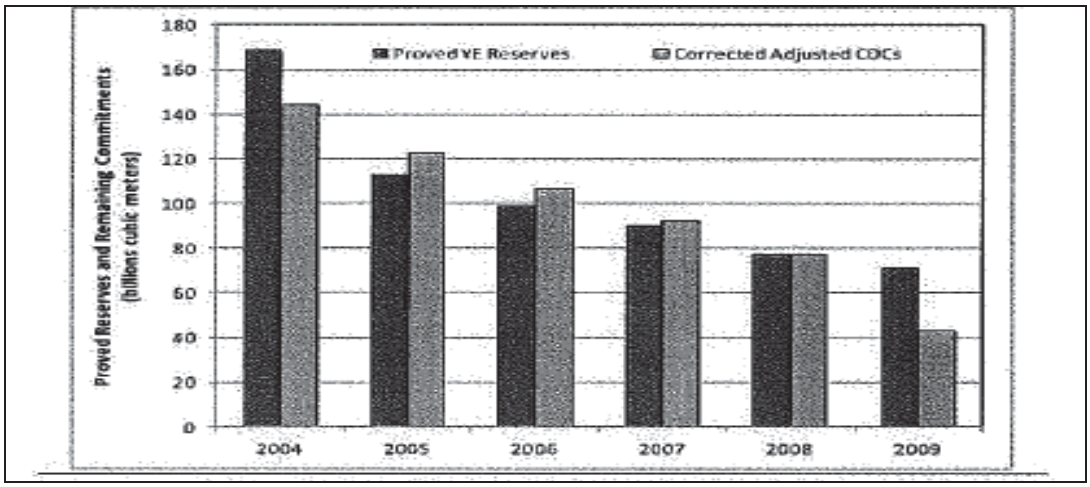
Year End Proved Reserves compared to corrected Adjusted CDC plus Downstream Consumption**--**

----

[157] Translation of the Tribunal. The original document states: *"A more appropriate analysis shows that if one either re instates the export commitments, or adjusts for ongoing domestic obligations, YPF had insufficient proved reserves to meet its commitments following its reserves write-down in 2005, and for domestic obligations, after these were increased by the second agreement"* (Second Moore´s Report, ¶ 12).----------

[158] Translation of the Tribunal. The original documents states: *"From a deliverability perspective, without re-instating the export commitments, YPF will have insufficient production, based on its 2009 production forecast, to meet a continuing (but not increasing) domestic obligation by 2013. If its export commitments are also re-instated, YPF would be forecast to have insufficient production to meet its commitments in 2011 [..]"* (Second Moore´s report, ¶ 13)----------

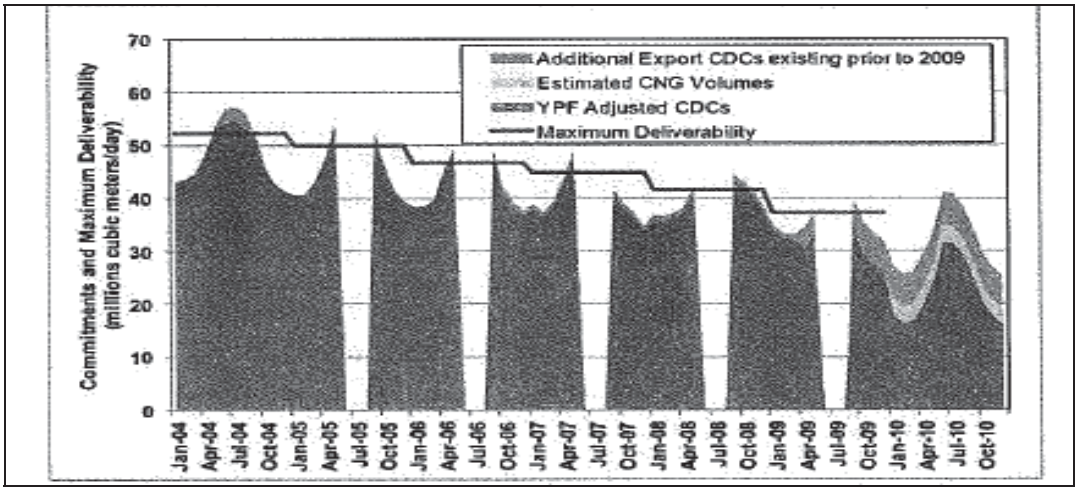
[159] Translation of the Tribunal. The original documents states: *"It seems likely that, at the time the AESU agreement was terminated in March 2009, YPF would similarly be projected to be unable to deliver all of its remaining export commitments"* (Second Moore´s Report, ¶ 14).----------



953. According to Mr. Moore, this figure shows that "it is not correct to assert, as Dr. Guzzeti does, that YPF had proven reserves at all times sufficient to cover its commitments because this chart suggests that this was not as stated by the end of the year 2005, [200]6 y [200]7; not in [200]8. The shortage is of 10 billion of cubic meters in the year 2005, 8 in the year 2006 and 2 in the year 2007" (Tr. Day 3, page 595 (Moore)).----------

954. Mr. Moore asserts that these conclusions also have an impact on the *deliverability* of YPF that Mr. Moore reflects in the following figure (Slide 5 from the presentation of Mr. Moore during the hearing):----------

Maximum Annual Deliverability compared to Commitments prior to 2009/10 Amendments -------



955. Mr. Moore explains: ----------

"This is the slide 2.E.1 from Dr. Guzetti and it was extended to the year 2010. The red line is Dr. Guzzeti's representation about the maximum *deliverability* of YPF of its own trends since 2004-2009. Blue color represents the adjusted CDC of YPF and this information is taken directly from

the sheets of Dr. Guzzeti. However, the peaks in April and September of each year seem to be higher in my chart because I believe that Doctor Guzzetti was using average commitments for May and September in the original document instead of recognizing the complete commitment for the half month in which the *deliverability* increases. Notwithstanding the above-mentioned, the blue line is the same as the original report. ----------

The difference here is regarding this new information about the precise time and nature of the amendments of the gas supply agreements that it is possible to restore the CDC to include these export commitments. And this particular representation is the situation prior to the amendments of 2009 and 2010. Green zones are these CDC existing before 2009 that are omitted in the presentation of this information. And you can see that, for it to be complete, I added the 2004 winter, since, according to the agreement with AESU to discontinue the deliveries during winter, it was not signed until the end of the winter. ----------

Therefore, the effect is to emphasize the evidence already submitted based on the information in blue color that, immediately before and after the suspension of the winter deliveries; according to Dr. Guzzeti, the *deliverability* of YPF was not enough to provide its maximum commitments for such months or half-months". ----------

(Tr. Day 3, pages 596-597). ----------

956. Additionally, Mr. Moore asserts that this figure allowed forecasting a *deliverability* problem in the year 2010, when, according to the Complementary Agreements, the winter period would finish. This lack of *deliverability* was never expressly stated, since the two main agreements of YPF were terminated in the year 2009 (Tr. Day 3, pages 597-598 (Moore)). ----------

957. Based on these conclusions, AESU and Sulgás allege that YPF negotiated the Complementary Agreements. According to AESU and Sulgás, when the parties signed the First Conflict Resolution Agreement on August 31, 2004, they did it on the premise that YPF had enough *deliverability* to comply with all its commitments, but it was prevented by governmental orders (particularly, redirectioning orders). However, Mr. Moore's conclusions show that YPF did not have the *deliverability* to comply with its commitments on that date. Redirectioning orders only serve as an excuse so that YPF invoked a higher groundless force (A/S-AF, ¶¶ 531-540). ----------

958. Additionally, AESU and Sulgás reject, from a legal point of view, the adjustments to the CDC made by Mr. Guzzetti and that allow asserting that certain compromises would have disappeared. Particularly: ----------

a. They deny that the amendment to the YPF agreement with Gas Valpo meant that YPF has not a sound compromise anymore. They assert that the only amendment was to include a new cause for force majeure, consistently with the export restrictions imposed by the Government of Argentina not deleting the sound feature of the duty to YPF nor its duty to pay DOP in cases of lack of delivery. They would not allow concluding that YPF would be hindered from delivering gas to Gas Valpo up to the year 2018 (A/S-AF, ¶¶ 545-553).----------

b. They state that Guzzetti incorrectly calculated that the duties to inject of YPF regarding the GNC segments, thermal generation and industry ended in the year 2009 when, according to the agreement approved by Resolution SE 599/07, such duties were in force until 2011 *(A/S*-AF, ¶¶545-553).----------

(c) YPF did not make enough exploration and development activities ----------

959. AESU and Sulgás assert that YPF did not explore enough to comply with its legal and contractual duties, and that this lack of exploration of YPF establishes a breach of its duties under the Gas Supply Agreement. (A/S-MD ¶¶ 410-428). AESU and Sulgás rely on the reports of experts called Chris Moore, Francisco Mezzadri, Carlos Lisi, Alieto Guadagni and AGM Finanzas.----------

960. In particular, AESU and Sulgás claim that before the year 2002, YPF had a particularly poor performance on exploration in new available areas and even in advanced drilling areas (or in areas of oilfield extensions). The expert Mezzadri explains: ----------

a. Between 1995 and 2001, "YPF finished 16 out of 89 completed wells in the country and 10 out of 47 wells completed in Neuquén Basin. In both cases its participation in exploration was about 20% of the market. But, generally, its exploration task seemed to have been almost finished in the year 1997, from then until 2001 it only completed 2 wells and, of these, 1 was in Neuquén Basin. [...] This low investment effort of YPF, in particular, took place in a full period of stimulus to the regional development of the natural gas market, a contradictory project with very weak investment will to sustain or increase its proven reserves. Hence, the signed export agreements have a strong potential for unbalance, to the extent that the commitments of YPF accounted for about 55% of the commitments assumed by the market from Neuquén Basin (First Report of Mezzadri, page 49). ----------

b."[T]he continuous decline in the reserves observed in Loma la Lata since the year 1999, was a clear indication that the gas not produced to meet export commitments was the result of a structural problem prior to the years 2002 and 2003, a problem of failure in the replacing of

reserves for low intensity of exploration and a resulting lack of new oilfield with developable proven reserves"(First Report of Mezzadri, page 48). ----------

961. AESU and Sulgás added that regular presentations (Form 20F) of YPF before the *U.S. Securities and Exchange Commission* show that after 2001, the exploration activity of natural gas was particularly weak, registering, instead, an increased interest of YPF to drill development wells. For example, in the year 2008, in spite of the gas prices (YPF attributed its lack of investment to their inflexibility) have increased a 39% and thus they were 69% higher than those prevailing in the year 2000 (prior to the crisis to which YPF attributes the deterioration of products and reserves), YPF declares to have drilled only one exploration well. ----------

962. The expert called Guadagni provides the following figures regarding YPF's exploration activity: ----------

"c) Consider now the reduction in the gas exploration by YPF ----------

- In the four year period among 1995-1998 YPF drilled 9 wells. ----------
- In the period among the years 1999-2004, YPF (Company now controlled by Repsol) drilled only 3 wells in those six years. ----------
- In the last 5 years (2006-2010) YPF drilled just 1 gas exploration well, while the rest of the companies drilled 37 wells. ----------

[...] ----------

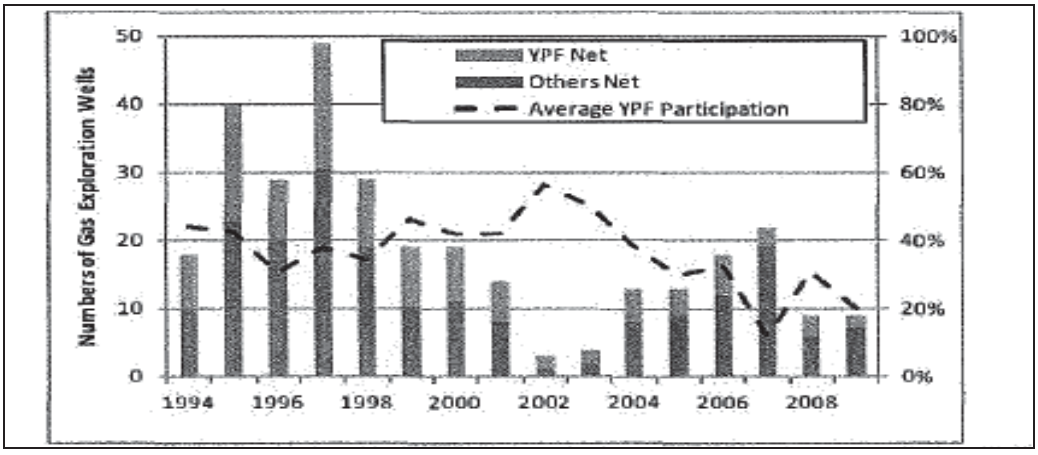
- In the last 6 years (2005-2010) YPF continued drilling moderately (3 wells), as in the period between the years 1999-2004. During this same period, the rest of the companies increased a 73 percent their exploratory activity. ----------
- Since the year 1999 (year in which Repsol entered in YPF) 77 gas exploration wells were made in the country; YPF drilled 6, that is, only 8%, although at the beginning of the decade, its gas reserves were of 26% of the total ones. ----------
- In the six-year period between the years 2005-2010, YPF drilled in exploration barely the third part than in the four-years period between the years 1995-1998; the rest of the companies have reduced their exploration activity in only an 8 percent (45 wells versus 49 wells)". ----------

(First Report of Guadagni, ¶ 29) ----------

963. On the other hand, Mr. Moore criticizes the description of the exploration activity of YPF made by the expert called Guzzetti, and concludes that YPF lack of gas is due to an inadequate exploration since the 90s: ----------

a. "The argument of the expert called Guzzetti about YPF's record of its gas exploration drillings, both nationwide and in Neuquén, uses information that I cannot validate (for wells in which YPF did not participate). However, the information is generally consistent with the argument I made in my first report, which was the period of reduced exploration activity since 1998 (along with an inability to adequately increase the production of existing oilfields) that led to the deficit and not the reduction of prices in the year 2002". (Second Report of Moore, ¶¶ 15-16) [160] ----------

b. "The expert called Guzzetti asserts that the YPF dominant level of participation in countyrwide gas exploration has been exaggerated based on distorted data. YPF average participation in all wells over the period 1994-2009 was 36%, with a trend of declining participation from 44% in the year 1994 to 20% in the year 2009, although this trend is not statistically significant. (Second Report of Moore, ¶ 17) [161] Mr. Moore further explains: "[In] spite of the concerns about the quality of the data, I have in Figure 9 redisplayed Figure 3.c.2 [of the First Report of Guzzetti] to allow comparison with the data for countrywide oil and gas exploration shown on Figure 7 of mi my first report" (Second Report of Moore, ¶ 82).[162] ----------



[160] Translation of the Tribunal. The original documents states: *"Guzzetti's discussion of YPF's record of exploration drilling for gas, both in the country as a whole and Neuquén in particular, uses data that I am unable to validate (for wells in which YPF did not participate). The data is nevertheless broadly consistent with the argument made in my first report; that the period of reduced exploration activity from 1998 (together with an inability to adequately increase production from existing fields) led to the shortfall, and not the price reduction in 2002"* (Second Moore´s report, ¶¶ 15-16). ----------

[161] Translation of the Tribunal. The original states *"Guzzetti's claims about YPF's dominant level of participation in countrywide gas exploration are exaggerated based on distorted data. YPF average participation in all wells over the period 1994-2009 was 36%, with a trend of declining participation from 44% in 1994 to 20% in 2009, although this trend is not statistically significant"* (Second Moore´s report, ¶ 17).----------

[162] Translation of the Tribunal. The original documents states: *"Despite concerns about the data quality, I have in Figure 9 redisplayed Figure 3.c.2 [of Guzzetti's First Report] to allow comparison with the data for countrywide oil and gas exploration shown on Figure 7 of my first report"* (Second Moore´s Report, ¶ 82).---

Figure 9: Gas Exploration Wells drilled in Argentina by year by participation, Net Wells, together with average YPF participation (ownership interest) from Guzzetti Data. ----------

c. Mr. Moore explains: ----------

i. Activity is shown declining from 1997 onwards. Although there is a second substantial drop in 2002 (when wellhead prices were reduced), the initiated decline is several years earlier" (Second Moore´s Report, ¶ 83) [163] ----------

ii. "The assertion that "[it] is clearly observed that over the period 1994-2009, YPF drilled more wells than the other operators together "{the reference made to the First Report of Guzzetti, ¶ 165} is totally incorrect because of the data distortion. YPF average participation in all wells over that period of time was 36%. If the spike in 2002-2003 is disregarded, when very few wells were drilled, there is a trend of declining participation from 44% in 1994 to 20% in 2009, although this trend is not statistically significant (Second Moore´s Report, ¶ 84). [164] ----------

d. "Guzzetti's similar claims about YPF's level of participation in gas exploration in Neuquén are also flawed. YPF's average participation in all wells over the period 1994-2009 was 42%, compared to its reserves ownership of 58% in the year 1998 and 61% in the year 2004. As measured by ownership interest, YPF might have been expected to have participated in approximately 25% more net wells given its reserves in Neuquén Basin". (Second Report of Moore, ¶ 18) [165] Mr. Moore shows his observations in the following chart: ----------

---

---

[163] Translation of the Tribunal. The original documents states: *"Activity is shown declining from 1997 onwards. Although there is a second substantial drop in 2002 (when wellhead prices were reduced), the initiated decline is several years earlier"*(Second Moore´s Report, ¶ 83)----------

[164] Translation of the Tribunal. The original documents states: *"The statement that "[c]laramente se observa que en el periodo 1994 -2009 YPF perlor6 mas pozos que el resto de los operadores juntos"* [First Guzzetti´s Report, ¶ 165] *is totally incorrect because of the data distortion. YPF average participation in all wells over that period of time was 36%. If the spike in 2002-2003 is disregarded, when very few wells were drilled, there is a trend of declining participation from 44% in 1994 to 20% in 2009, although this trend is not statistically significant* (Second Moore´s Report, ¶ 84). ----------

[165] Translation of the Tribunal. The original documents states: *"Guzzetti's similar claims about YPF's level of participation in gas exploration in Neuquén are also flawed. YPF's average participation in all wells over the period 1994-2009 was 42%, compared to its reserves ownership of 58% in 1998 and 61% in 2004. Measured by ownership interest, YPF might have been expected to have participated in about 25% more net wells given its reserves position in the Neuquén Basin"* (Second Moore´s Report, ¶ 18).----------

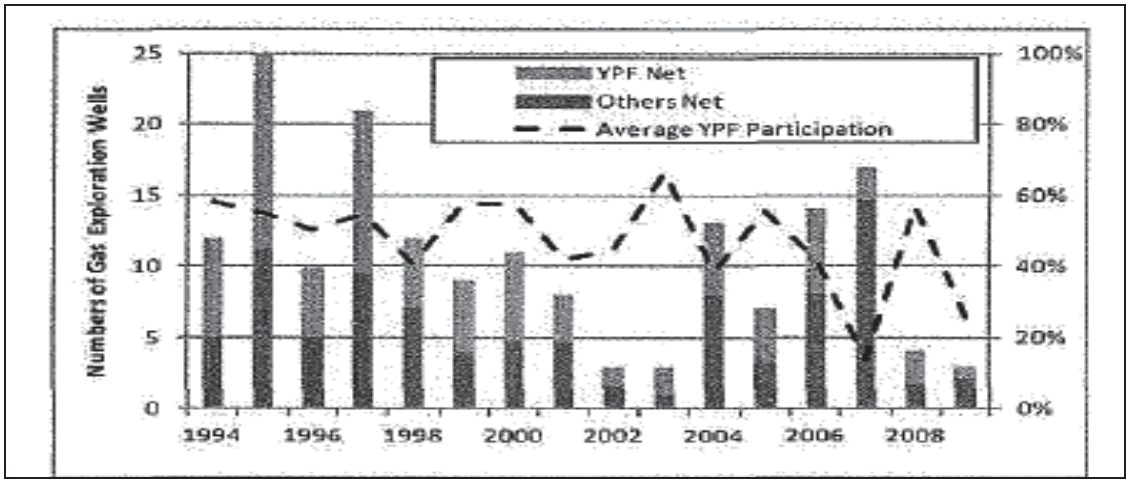


Figure 10: Gas Exploration Wells drilled in Neuquén Basin by year by participation. Net Wells, together with average YPF participation (ownership interest) from Guzzeti Data.

e. As regards this chart, Mr. Moore explains:

i."Again, the correctly displayed data refutes Mr. Guzzetti's statements that "[o]ver the period 1994-2009 there were only two years (2004 and 2007) in which the rest of the owners drilled more exploration wells than YPF. [...] The information shows that in the period among the years 2000-2009 YPF drilled more exploration wells than the other operators together". (First Report of Guzzetti, ¶ 159). In fact, YPF's participation of YPF was, on average, 42% for the period 1994-2009 and only in four of those years did it have an average participation interest exceeding 50%". (Second Report of Moore, ¶¶ 86-87).[166]

ii. YPF 58% average participation in wells in 1994 is the same as its share of reserves in the year 1998 and close to its share of reserves in 2004 (61%). Therefore, measured by ownership interest, YPF might have been expected to have participated in about 25% more net wells given its reserves position in Neuquén Basin" (Second Report of Moore, ¶ 88).[167]

[166] Translation of the Tribunal. The original documents states: *"Again, the correctly displayed data refutes Guzzetti's statements that* "[i]n the period among the years 1994-2009 there were only two years (2004 and 2007) in which the rest of the owners drilled more exploration wells than YPF. [...] The information shows that in the period among the years 2000-2009 YPF drilled more exploration wells than the other operators together (First Guzzetti Report, ¶ 159). *In fact, YPF's participation was, on average, 42% for the period 1994-2009, and only in four of those years did it have an average participation interest exceeding 50%" (Moore, Second Report, ¶¶ 86-87).*

[167] Translation of the Tribunal. The original documents states: *"YPF's 58% average participation in wells in 1994 is the same as its share of reserves in 1998, and close to its share of reserves in 2004 (61%). Thus, measured by ownership interest, YPF might have been expected to have participated in about 25% more net wells given its reserves position in the Neuquén Basin"* (Moore, Second Report, ¶88).

---

iii. "The data provided is consistent with the argument made in my first report; that the period of reduced exploration activity from 1998 (together with an inability to adequately increase the production from existing oilfields) led to the shortfall. (Second Report of Moore, ¶ 89) [168] ----------

f. Mr. Moore concludes that Mr. Guzzetti's discussion of YPF's expenditures over the period 2000-2009 does not affect any of the conclusions of his first report. However, he adds that Mr. Guzzetti's conclusions may be reconsidered, from a different perspective, as follows: ----------

i."After increasing their investments compared with its plans, partly in response to the problems of reserves and capacity of production in Loma La Lata, in spite of that, YPF only contributed the 50% of the investments in Neuquén, although it owned the 60% of the reserves; and ----------

ii. If YPF had invested what it has planned, supposing that the effective investments of other companies would had been in keeping with its plans, the investment of YPF should have been only the 35% of the total investment compared with the 60% of its reservations ownership" (Second Report of Moore, ¶ 19). [169] ----------

964. AESU and Sulgás claim that YPF low exploration investment in Neuquén Basin was included in the planning putting a particular emphasis in its main oilfield (which is also the largest in the country) Loma la Lata - Sierra Barrosa. After reaching its peak of production in August 2003, this began to intensely decline. According to the Proved Reserves Audit of Loma la Lata, this oilfield has reduced its production by a 55%, from 40 million of m3/day in the year 2003 to 18 million of m3/day in just 6 years, and for the next 5 years a production loss of 72% was planned; thus, it could produce 5.000 million of m3/day at the end of the year 2014. (See the Report of the Universidad Nacional del Nordeste, Annex A9/S9, page 76, chart 106). Meanwhile, the increase in the production of the rest of the oilfields of YPF in Neuquén Basin was not enough to offset the losses of Loma la Lata. In the meantime, there was neither significant exploration activity nor

---

[168] Translation of the Tribunal. The original documents states: *"The data provided is consistent with the argument made in my first report; that the period of reduced exploration activity from 1998 (together with an inability to adequately increase production from existing fields) led to the shortfall'* (Moore, Second Report, ¶89).----------

[169] Translation of the Tribunal. The original documents states: *"Guzzetti's discussion of YPF's expenditures over the period 2000-2009 does not affect any of the conclusions of my first report. However, one may restate Guzzetti's from a somewhat different as follows:* ----------

a. *After increasing its investments compared to its plans, in part in response to the reserves and deliverability issues at Loma La Lata, YPF nevertheless only supplies 50% of the investments in Neuquén, although it owned 60% of the reserves; and*----------

b. *Had YPF only invested that It planned to invest, assuming other companies' actual investments were in line with their plans, YPF's investment would have been only 35% of the total, compared to its ownership of 60% of the reserves (Second Report of Moore, ¶ 19)*----------

discoveries that modify the trend. YPF did not increase its exploration surface in Neuquén Basin to try to increase its reserves. On the contrary, the exploratory surface of YPF went down and particularly in Neuquén Basin. ----------

965. Additionally, AESU and Sulgás assert that YPF annual financial statements show a cost and exploration expenditures reduction since the year 1999, when the Spanish company called Repsol acquired the shareholding control of YPF. Within the low exploratory activity of YPF, the investments were mainly assigned to the search of resources in areas of oil exploration. ----------

966. AESU and Sulgás assert that the critical consequence of the sustained policy of non-investment of YPF was the standstill in production and finally the breach of its agreements. While the production of natural gas in Argentina grew by 30.3% between the years 1998 and 2008, the overall production of YPF and Astra SA (a company that was merged with YPF) only increased during that period by 3.7%. The drop in the production of YPF in Neuquén Basin between the years 2004 and 2008 was of 3.617 million of m3 which is equal to 19% of the level reached in the year 2004, while between the years 2004 and 2008 the national production was reduced to 1.876 million of m3 which is equal to 3.58% of the level registered in the year 2004. In this sense, the expert called Lisi says that "[t]he sharp and uninterrupted drop in the Gas Production by YPF, since exactly the year 2005, is a direct consequence of the lack of investments sufficient for the proper maintenance of all levels of Gas Reserves needed to comply in due time and proper form with all duly signed Agreements" (Report of Lisi, ¶ 66.3). ----------

967. According to AESU and Sulgás, it is particularly serious for YPF as it is the main natural gas producer in Argentina not to perform the tasks of exploration of natural gas oilfield in the quantity and quality needed to replace and increase its natural gas reserves. AESU and Sulgás allege that, if YPF had made the necessary investments, it could have expanded its capacity of production so as to be able to comply with its commitments to supply natural gas to foreign countries and to the market of Argentina. AESU and Sulgás argue that YPF always knew that this failure would have a direct impact on the possibility to comply with its duties under the Gas Supply Agreement, even when such impacts were not immediate ones. As a result of the contractual relationship, AESU, being YPF fully aware of it, made high investments in a power generating plant and signed electrical supply agreements that also committed it in a long-term.----

968. As explained in part (g) *infra*, AESU and Sulgás dismiss YPF allegation that, since the year 2002, the failure to explore was due to a lack of incentives to invest as a result of the intervention policies of the Government of Argentina. However, they argue that this excuse is not applied to

prior periods when the natural gas market had a good performance in an environment of unquestioned market freedom. In this sense, AESU and Sulgás observe that the hydrocarbon exploitation is a long term activity: Maturation times of any exploration project may fluctuate between 4 and 7 years depending on the geological difficulties and the available technologies, and this number of years must be added to those years of production of deposits, when the revenues projections are usually higher than 10 years. Therefore, YPF should have made the necessary investments before the year 2002. ----------

969. AESU and Sulgás also dismiss the YPF allegation that the government confirmed fulfillment of its investment duties when it renewed its compromises. According to AESU and Sulgás, the approvals of the government regarding its exploitation commitments are not connected to the exploration investments, since the authorities review the total invested amount, not the amount invested specifically to explore. In this sense, AESU and Sulgás highlight that the figures provided by YPF expert called Mr. Guzzetti, confirm that the total YPF's investment expenditures over the period 2000-2009, rising to US$ 7,496 million, less than the 5% (365 million) is related to exploration investments (Guzzetti's Supplementary Report, ¶ 18). This was also confirmed by the expert called Guadagni at the hearing (Tr., Day 5, page 1072).----------

(d) YPF exploited its oilfield irregularly ----------

970. AESU and Sulgás allege that YPF exploited its oilfields in an irregular and abusive way, threatening its ability to comply with the Gas Supply Agreement. ----------

971. On the one hand, they assert that given the lack of reserves and not having oilfields due to the failure of exploring, YPF tried to comply with its commitments by an intensive exploitation of some oilfields in Neuquén Basin that led them to exhaustion. Thus, YPF was incapable of complying with a long-term agreement like the Gas Supply Agreement. ----------

972. Particularly, the expert called Mezzadri asserts that YPF affected the gas production of Loma La Lata area by the implementation of an "*infill drilling*" program aimed at improving the production, but it ended up affecting the oilfield pressure (First Report of Mezzadri, ¶ 33 and page 65). Mr. Mezzadri adds that the drop in the gas production of the area of Loma La Lata - Sierra Barrosa was caused by a deficit of the reserves that led YPF to overproduce the oilfield (First Report of Mezzadri, Part IV-6). ----------

973. On the other hand, they argue that YPF stopped exploiting productive oilfields in Neuquén Basin. According to AESU and Sulgás, YPF sub-exploited gas oilfields that, because of its location and the experience of other neighbor companies, they could produce much more. As YPF could

not make a disposal of some oilfields under full production it wanted to sell, YPF discontinued its production.----------

(e) YPF maintained an aggressive dividends policy which left the company without any financing ---

974. AESU and Sulgás assert that since the year 2001, YPF chose to carry out an extremely aggressive payment of dividends policy. This policy allowed the controlling shareholder of YPF at that moment (Repsol) to use such funds for other activities in other parts of the world, knowing that with such funds it could have carried out the exploration activity that YPF had to perform. ----

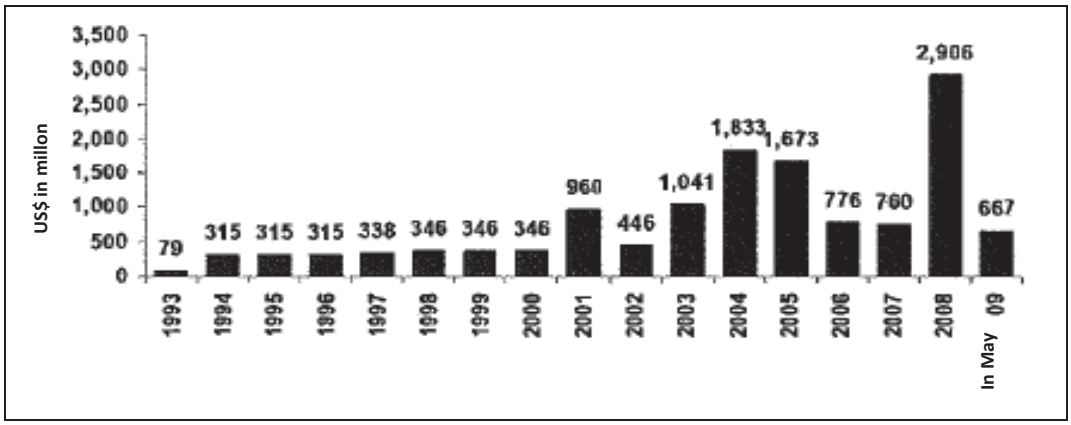
975. Particularly, the expert called Guadagni asserted: ----------

"[U]ntil the year 1999 YPF distributed cash dividends in 35-36 percent of the profits. After Repsol entered, it has distributed 103-104 percent on average year to date. [...] ----------

When Repsol bought YPF in the year 1999, it had a debt of 3,500 million Euros. In the year 2000, its debt rose to 22 billion, Repsol purchases YPF in 15 billion in the year 1999 with debt. How did the financial market react? Standard & Poor's reduced the rating from A to triple B. It is clear that from the years 1999-2000 Repsol had a main objective that was to reduce its debt. The reduction was from 22 billion of Euros in the years 2000-2001 to 5 million in the year 2004. And how did it reduce said debt?, basically, with the remittance of dividends. If it is not the case, how do you explain that the dividends go from 300 million to 1,400 million from the year 1999 to the year 2001? [...] In the last three years, it distributed 142 percent of the profits, a single case to this planetary scale in this industry". (Tr. Day 5, pages 1068-1069 (Guadagni)). ----------

976. AESU and Sulgás show in this chart the dividends paid by YPF to its shareholders since the year 1993 to the year 2009: (the source is not clear): ----------

DIVIDENDS PAID BY YPF----------



977. AESU and Sulgás allege that even with this dividend policy, YPF had the ability to obtain financing for its exploration activities but chose not to resort to the financial market. ----------

978. AESU and Sulgás rely on the Report of AGM Finanzas, the report of the Former Secretaries of Energy dated May 4, 2011 (A6/S6), CEPAL Publishing (United Nations) (Annex A5/S5), the letter of Shell Compañía Argentina de Petróleo S.A. (Annex A22/S22) and newspaper articles (Annex A23/S23). ----------

(f) YPF entered into agreements that compromised their reserves and increased the domestic gas demand ----------

979. AESU and Sulgás allege that YPF made commitments with other companies, many of them related companies, compromising its reserves and increasing the domestic gas demand. According to AESU and Sulgás, this constitutes a breach of its duties under the Gas Supply Agreement. ----------

980. Particularly, AESU and Sulgás allege that YPF competed with other natural gas producers for the supply of the new electrical power plants in long-term agreements and in the new industrial plants, in some of these acting as principal shareholder and natural gas supplier. Additionally, it entered in the neighboring markets to comply with the demands for similar destinations, also in the long-term. Based on the financial statements of YPF and on the Report of AGM Finanzas they allege that, after the execution of the Gas Supply Agreement (in the year 1998) or the moment when such undertaking stated to be negotiated and contemplated (in the year 1996), YPF assumed supply commitments with companies such as: ----------

a. Compañía Mega, from which YPF holds 38% [shares] and sells to it approximately 5,200,000 and 5,600,000 of m3/day since the year 2001. YPF exclusively carries out its sales of natural gas at prices adjusted to the prices of the exported products which made YPF earn the highest prices from its agreements, preferring to ensure this supply over other ones that are not so convenient;

b.Compañía Profertil, in which YPF holds 50%, which consumes a volume of 2,500,000 m3/day and that YPF provided 50% since the year 2001, (iii) other own projects, as a plant of Methanol in Neuquén since 2002, which consumes about 1,000,000 of m3/day and that exports more than 70% of its production; ----------

c. It increased the supply of natural gas for the usage at oilfields and refineries of La Plata, the largest in the country, Lujan de Cuyo and Plaza Huincul, besides its several petrochemical plants in La Plata and its surroundings, consuming almost 1,000,000 of m3/day as a whole; ----------

d. It participates directly in the thermoelectric power station called Plaza Huincul that consumes approximately 240,000 of m3/day in Neuquén since mid-1998; ----------

e. Also in Neuquén, it has the thermoelectric power station of an open cycle Chihuidos of 40 MW which consumes around 400,000 of m3/day; ----------

f. It holds 40%, directly and indirectly, in the thermoelectric power station of Dock Sud of 775 MW in a combined cycle and 67 MW in an open cycle which consumes about 3,400,000 of m3/day since mid-2001; ----------

g.It owns 45% of Pluspetrol Energy, a company that owns 60% of the oilfield called Ramos, which strongly reduced its reserves, and in two thermoelectric power stations located in Tucumán (Thermal Power Station called San Miguel de Tucumán of 370 MW and Thermal Power Station of 410 MW); ----------

h.It participates with a 100% in the thermoelectric power station of open cycle called Los Perales, in Santa Cruz, of 74 MW, which consumes approximately 600,000 of m3/d in the year 1997 and ---

i. Thermoelectrical power stations called Mendoza SA and La Plata Congeneración SA, providers of vapor to the distilleries of Lujan de Cuyo and La Plata, respectively. They consume approximately 1,500,000 of m3/day. ----------

981. AESU and Sulgás allege that YPF did all of the above-mentioned with diminished reserves, inferior to the stated ones and for which it did not conduct any activity to renew or recompose them. ----------

982. AESU and Sulgás also assert that the set of natural gas supplies required by the industrial plants or power generating plants related to YPF, either as a shareholder or as a buyer of their services, accounts for nearly 30% of the total production of natural gas of YPF in Argentina, or 35% of its production of natural gas in Neuquén Basin. ----------

983. Furthermore, AESU and Sulgás highlight the future sales commitments of natural gas reported annually by YPF to the SEC. In the year 2006, after the strong negative adjustment of its previous reserves estimates, such commitments increased by 63% in a context of price variation of around 20% in that year. Likewise, in its last submission before the SEC, it showed a growth of 85% in its total nominal commitments of future sales between the year 2007 and the year 2008, but, given the gas prices variations in the year 2008 (39%), that represents a substantial growth of 33% in the committed physical volumes, although the production of YPF fell 3.3% that year and that, basically, its proven reserves declared before the SEC decreased by 16.4% in the seventh consecutive year of the drop of reserves. ----------

984. AESU and Sulgás assert that when YPF entered into agreements involving their low reserves, knowing that it had no gas reserves and that the law of Argentina governed the compliance with the gas exports not to affect the domestic demand, it was aware of the fact that it was affecting its possibility to comply with the Gas Supply Agreement. AESU and Sulgás add that, due to the fact that most of these agreements were entered into with companies or enterprises in which YPF hold a share interest, YPF made a conscious choice to give priority to its business rather than to its commitments. Furthermore, they indicate that those agreements or supplies were held or traded once the Gas Supply Agreement was entered into or when at least the Master Agreement was entered into in the year 1996, by which YPF knew that it would have to export considerable amounts of gas to the power station that would be built in Uruguaiana. ----------

985. AESU and Sulgás assert that in the cases when YPF became a shareholder in the projects using large amounts of natural gas, the company generated a sustained increase in the domestic natural gas demand by itself, diminishing its potential capacity to meet its duties abroad, among others with AESU and Sulgás. ----------

986. AESU and Sulgás reject YPF allegation that its commercial extension involves punishing a successful company that has acquired new customers or has sold more quantities of natural gas. They allege that this is not a successful company, but a company that failed to meet what had been contractually agreed upon during 20 years, in a negligent position, if it is not knowingly and willfully breaching party. They also indicate that if new commitments are taken, the measures to comply with these new commitments and with those past commitments still in force, must be taken; which YPF failed to take.----------

(g) YPF caused the shortage of gas----------

987. For all the above-mentioned allegations, AESU and Sulgás state that YPF contributed to cause the shortage of gas and that such shortage of gas, in turn, caused the restrictions imposed on gas exports and the increase in export taxes. (A/S-MD ¶¶ 338 and ss) ----------

988. Particularly, AESU and Sulgás argue that the gas shortage is mostly attributable to the lack of exploration and exploitation of gas resources by YPF. YPF knew it had a declining *deliverability* and failed to take the measures necessary to repair it. According to Moore's report, YPF knew its maximum production would take place in the year 2003 or 2004, and that subsequently, its gas production capacity would decrease annually. This situation was aggravated in Neuquén Basin, since its main oilfield - Loma la Lata was an ancient oilfield, decreasing its production by 10% per year and no oilfields were discovered to replace it. They also knew that the lack of gas reserves

and the failure to explore were making this supply problem worse, which began with deliverability crisis but would continue even worse for a lack of reserves. Therefore, they claim that YPF, as the main gas producer in Argentina, knew that if it diminished its deliverability of gas, a supply crisis would occur. ----------

989. While YPF was not the only gas producer company that reduced its investments in the area, due to its dominant market position, YPF could not ignore the devastating effect that its failure to invest would cause, and that actually caused, not supplying to the internal gas market despite of being legally and contractually bound to do so. Indeed, when negotiating the Gas Supply Agreement, YPF had already declared the reserves which represented 42.7% of the proven natural gas reserves of the country. With this participation interest, YPF knew that any reduction in the production or decrease of gas reserves would substantially influence in the offer of gas supply to comply with the domestic demand and its export commitments. These YPF reserves decreased by about 70% from the year 2000 to the year 2008, while the natural gas production increased only by 2.4% in that period, such an increase that is ridiculous considering the expected demand increase that YPF had to comply with. ----------

990. AESU and Sulgás assert that the responsibility of YPF and of the other gas producers has been confirmed by several experts. AESU and Sulgás particularly quote a report issued by eight former Secretaries of Energy of the Nation dated on May 2011 (Annex A6/S6); statements by members of such group of Former Secretaries of Energy published in the newspaper called La Nacion on April 23, 2009 (Annex A23/S23); statements of the former Secretary of Energy and arbitration expert called Alieto Guadagni (Annexes to Alieto Guadagni´s Report); and a Report published by the Economic Commision for Latin America and the Caribbean [CEPAL, for its acronym in Spanish] of the United Nations entitled *"Crisis de la industria del gas natural en Argentina"* ["Crisis of the Natural Gas Industry in Argentina"] dated March 2005 (Annex A5/S5). Particularly, said report states: ----------

"On August 5, 2000 and regarding the negotiation to extend the license of the oilfield called Loma La Lata, Repsol YPF projected the possibility of increasing the production of 75 million barrels of oil for the years 2004-2005, that is to say, a 33%. After the pesification [conversion of US dollar to Argentine pesos] of the price between the year 2002 and 2003, it alleged the decrease of the oilfield and technical problems. This means that in the proposal of Repsol-YPF, the production of Loma la Lata could provide more than 15 million of cubic meters per day to the offer, at which point it would not have caused internal deficit in the cut-off of the exports". ----------

991. According to AESU and Sulgás, this extract confirms the responsibility of YPF, not only for the shortage of gas to comply with the domestic demand regarding the failure to perform its duties to export gas under the Gas Supply Agreement by YPF but also for the willful misconduct incurred by it.----------

992. AESU and Sulgás allege that the lack of exploration took place due to a disinvestment policy initiated by YPF before 2004. Following this strategy, YPF overexploited the oilfield called Loma la Lata during the first years in the 2000s, in order to obtain the greatest gas production with the least possible investment so as to comply with its duties to supply the domestic market and to export the volumes agreed under the Gas Supply Agreement. YPF knew that the above-mentioned, combined with the lack of investment in exploration, would inevitably lead to a rapid decrease in its production, as it actually happened. When the license of this oilfield was extended, YPF removed itself from its duty to explore and produce the gas volumes agreed upon.

993. According to AESU and Sulgás, if YPF had produced the volumes agreed upon, it would have supplied all domestic demand that YPF had committed to supply, and it could have exported the volumes agreed upon, without any regulatory or operational problem. ----------

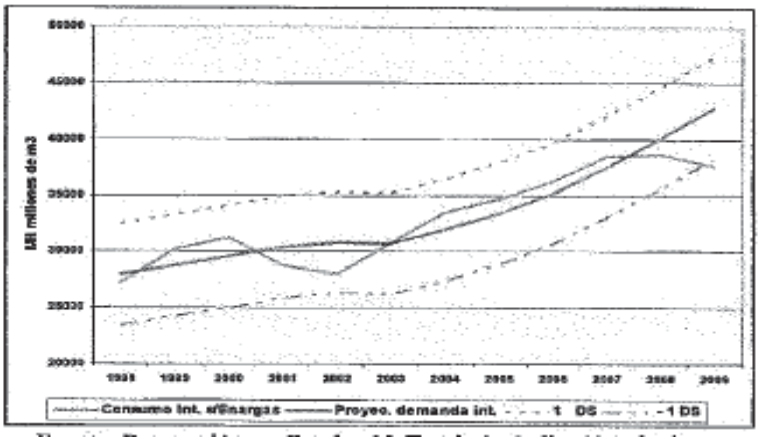
994. AESU and Sulgás allege that this reckless neglect in exploration and production of natural gas oilfields by YPF led the Government to issue the regulations invoked by YPF as force majeure grounds. But due to the fact that YPF was the one which precisely caused the shortage related to these measures, YPF is involved in the issuance of these measures and, therefore, it cannot invoke them as force majeure grounds. AESU and Sulgás emphasize that this involvement is confirmed by the measures, as the recitals of the respective rules specifically refer to the lack of investment by the gas producers. ----------

995. AESU and Sulgás deny the reasons given by YPF to explain the shortage of gas (A/S-AF, ¶¶ 493-161). Firstly, they deny that the decrease in the reserves is related to the measures taken by the Government of Argentina before the crisis of the year 2002, particularly, the pesification and price freezing. Based on Mr. Moore's statements during the hearing, they assert that if the gas prices had been below the operating expense of the oilfield (as YPF affirms), the drop in the reserves (EUR, Expected Ultimate Recovery) would have been drastic by late 2002, and should remain constant from then on, but we can see a reduction in the year 2002, followed by further reductions in the years 2003, 2004 and 2005. They assert that YPF has not showed that the pesification did not permit to invest, and particularly, it has not showed the lost in their gas

operations, but rather the opposite. But even if the pesification had possibly had an impact on investments, the crucial point is that such pesification of the year 2002 could not have had an effect on the *deliverability* in the year 2004. (Tr., Day 3, page 642 (Moore)). ----------

996. Secondly, AESU and Sulgás deny that the domestic shortage was caused by a sudden and exponential increase in the domestic demand as a result of the pesification and the price freezing. Quoting Mr. Mezzadri, AESU and Sulgás assert that the domestic gas demand increased within the expected and normal parameters. Mr. Mezzadri provides the following chart, (First Report of Mezzadri, page 45): ----------

Chart III.3 - Projected domestic demand since the year 1998 vs. effective progress in the domestic consumption according to ENARGAS. 1998-2009 ----------



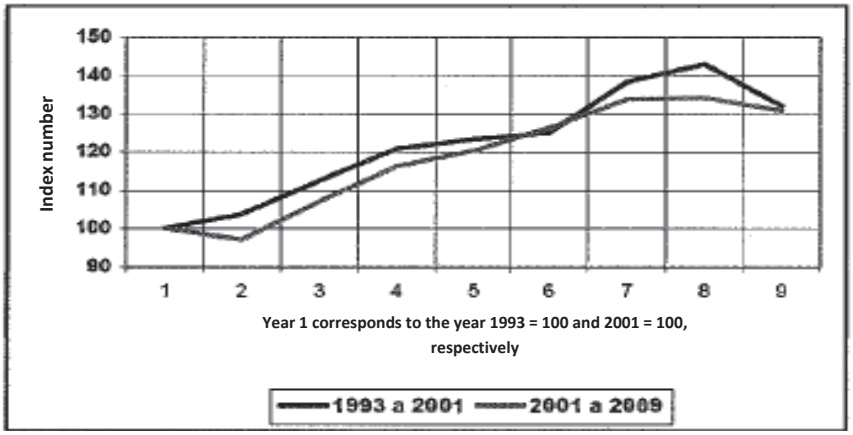
Source: Projection in Table 10 - Total, Statistical Annex. - Final consumption. Table 3 of Statistical Annex. ----------

997. Mr. Mezzadri explains: "The compared information generally reveals similar growth trends in both curves, but can be divided into three periods: The first one, between the years 2000 and 2004 with a clear temporal acceleration of the domestic consumption levels in the year 2003 which, however, is not enough to recover the low records of the year 2000. This happens in the following year, 2004, and thereafter the growth rates are considerably moderated and the consumption of domestic natural gas grows to a 4.8% annually between the year 2004 and 2007 (a variation consistent with the historical growth) and it evolves to levels somewhat higher than the expected demand. In the third period, the expected demand becomes in a considerably higher to the consumption by applying a severe rationing to the large users of natural gas since the year 2007, although it had begun importing natural gas from Bolivia in the year 2005. At no time during the analyzed years, the observed consumption is diverted in more than one standard

deviation of the expected demand, except in the year 2009 where, in addition to redirecting and shipment constraints to large users, the drop in economic activity was also added". (First Report Mezzadri, pages 45-46). ----------

998. Similarly, the expert Mezzadri alleges that "if the growth rates of the final usage of gas in Argentina are compared, before and after the year 2002, that is to say, during the periods of the years 1993-2001 and 2001-2009, they are surprisingly similar: 31,9% in the first case and 31,7% in the second period". (Third Complementary Report Mezzadri, page 7). This is graphically shown in the following chart: ----------

Evolution of the end usage of gas in Argentina before and since the year 2002 ----------



Source: Author's calculations based on information from the Table 3 of the Statistical Annex of the report dated on July 1, 2011.----------

See Table 5 of this Statistical Annex. ----------

999. Mr. Mezzadri adds that it is a mistake to compare the year 2004 to the year 2002, because the year 2004 should be compared to the year 2000, because it is not right to take the year of the crisis as a point of comparison (Tr., Day 5, page 1174 (Mezzadri)). The expert concludes that the increase in the demand was not the reason of the shortage; the lack of exploration in the years prior to the pesification was the reason of the above-mentioned, along with the *write-off* of reserves attributable to mistakes of YPF, which prevented YPF from supplying a demand with a normal growth (Tr., Day 5, page 1192 (Mezzadri)). ----------

1000. In any case, based on Mr. Moore's reports, AESU and Sulgás allege that the demand of the year 2004 grew less than the predicted by the Government in the year 1997 (which was the forecast used by the GCA Report 1997 to make the estimation of reserves), and that the production has never reached the demand expected by GCA in the year 1997 (Second Report of Moore, ¶31, Tr., Day 4, pages 924¬925). ----------

1001. AESU and Sulgás allege that expert Guzzetti could not discredit what has been said by experts Moore and Mezzadri regarding the increased demand. ----------

1002. For all these reasons, AESU and Sulgás assert that YPF was the main responsible for the gas crisis in Argentina due to its acts and omissions. They add that YPF faced this situation being aware of the effects it produced on the rights of Sulgás and AESU under the Gas Supply Agreement, and hence, this constitutes a new willful misconduct by YPF regarding its failure to comply with its contractual duties. ----------

1003. According to AESU and Sulgás, the breach of YPF not only caused the ordering of the regulations restricting exports, but also it had a direct consequence on the modification of the natural gas appraisal base subject to export rights and a substantial increase in the proportional rate of the natural gas export rights that later YPF wanted to transfer to Sulgás. This is because, due to domestic shortage (caused in turn by YPF), the Government of Argentina had to import natural gas from Bolivia. The worsening of the domestic supply situation, caused by the sustained failure to produce gas by YPF, caused that as from 2008 the usage of "regasification" of LNG brought by ships became really necessary. The price of the gas imported from Bolivia by ENARSA or through the regasification vessel is sold to the domestic market at a much lower price than its acquisition price, which can reach US$ 17 MM/BTU Through the export taxes, the government intends to finance the difference between the price of the acquisition of gas and its price of domestic market and to move them to the gas exports. If this import had not been necessary, the creation of export taxes would not have been necessary, or at least, its cost would not have been so high. ----------

1004. As explained in the above-mentioned Part VII.A.6, AESU and Sulgás allege that YPF could not transfer the import taxes to Sulgás without first complying with the consultation procedure specified in section 13.1 of the Gas Supply Agreement. Notwithstanding the above-mentioned, it was not reasonable to transfer that tax to Sulgás because YPF was precisely the one who caused the shortage of domestic gas demand due to its lack of investment in exploration, causing the need to import gas. Additionally, AESU and Sulgás allege that YPF is benefited from the difference between the import price paid by ENARSA to import gas from Bolivia or LNG, and the sales price in the domestic market, and that it also benefits from the LNG business since it is the company which provides the regasification business. AESU and Sulgás add that for these reasons YPF did not seriously contest export duties. ----------

(h) YPF conditioned the performance of its duties under the Agreement to the compliance of obligations not contractually agreed upon by AESU and Sulgás. ----------

1005. AESU and Sulgás assert that YPF conditioned the export of gas to the compliance of obligations not contractually agreed upon by AESU and Sulgás regarding the administrative acts related to the gas export, the effects of the import taxes and the royalties in charge of YPF (A/S-Complaint, ¶¶ 557-568; Replication, ¶¶ 635-642,668-670). ----------

1006. AESU and Sulgás alleged that YPF conditioned the resorting to the regimes of the energy substitution (which according to AESU and Sulgás would have allowed the gas exports) to the fact that AESU and Sulgás pay the higher costs for resorting to such regimes. According to AESU and Sulgás, such cost was to be borne by YPF, due to the need to deliver the gas at the Point of Delivery. For that reason, AESU and Sulgás did not agree to pay the highest cost resulting in that the gas was not exported under these regimes. ----------

1007. Furthermore, AESU and Sulgás allege that upon the implementation of the taxes on gas exports, YPF made conditional the delivery of gas to the payment of AESU and Sulgás of such withholdings and also to the payment to YPF of the royalty amount that YPF had to pay to the provinces from which the gas was extracted. The Tribunal has already analyzed the parties' allegations on this matter. The Tribunal determined that AESU and Sulgás were contractually bound to bear the cost of export taxes, but not the cost of the increased royalties, which was borne by YPF. ----------

1008. AESU denied both conditions. ----------

a Regarding the first requirement of YPF, because not only did YPF not comply with the procedures stated in the Gas Supply Agreement in order to include the new taxes in the price of gas, situation that has been highlighted in the letters sent to YPF, but also YPF was informed that the tax was unconstitutional and the payment was not applicable. (See Part VII.A.4 *supra*). ----------

b. In relation to the second requirement, the payment of royalties, AESU and Sulgás refused to pay them for being an exclusive and specific matter of YPF. There is no provision included in the Gas Supply Agreement stating that AESU or Sulgás had to bear, under any circumstances, such exclusive cost of YPF (See Part VII.A.4 *supra*). ----------

1009. As AESU and Sulgás did not agree with YPF requirements, YPF did not deliver the gas. [170] According to AESU and Sulgás, such conduct constitutes a willful and fraudulent breach of the Gas Supply Agreement. It also results in a breach of the provisions of Act 25,156 on Protection of Competition, which punishes the abuse of dominant position.[171] In this sense, AESU and Sulgás say that YPF had a dominant position in the gas market arising from Neuquén Basin since its share in the reserves of such basin was of a 57% and all of the requirements of section 5 of Act 25.156 to determine the existence of a dominant position are met. [172] AESU and Sulgás allege that if YPF could condition the deliveries of gas to AESU and Sulgás as described, it is because it had a dominant position in the gas market, and the constraints created an abuse of such dominant position to obtain an unfair and not contractually agreed upon advantages. ----------

1010. Sulgás and AESU argue that in order to analyze the breaches of the Act 25,156 is the same to be in a contractual or non-contractual situation; what matters is the economic situation (section 3 of Act 25,156). In addition, under section 51 of Act 25,156, the affected individuals have common law actions as offenses, for which, the violations to the Act 25,156 by YPF may be invoked in this arbitration. ----------

1011. AESU and Sulgás add that, following the recommendation of the National Commission for Protection of Competition, YPF was punished for abuse of dominant position in gas matters; such punishment was confirmed by the Supreme Court of Justice of Argentina (Annex AL9/SL9). (AESU and Sulgás do not state whether that penalty was imposed by the abuses reported by them in this arbitration). ----------

b. Position of YPF ----------

---

[170] AESU and Sulgás admit that there was an occasion in which the constraints of YPF were accepted: when the gas tests in the power station were needed on August 26, 27 and 28, 2008. However, as already explained, they allege that YPF not only gave quantities significantly inferior to those requested, but also took advantage of the situation to make conditional the provision to the fact that the taxes on export and royalties due to the provinces were paid. AESU and Sulgás explain that given the need to test, they accepted these constraints but reserving their rights and stating that YPF was exploiting AESU need condition (see paragraph 627 *supra*). ----------

---

[172] AESU and Sulgás allege that: (i) the gas is not easily replaceable, and in cases in which the substitution is possible, this is onerous, (ii) there are administrative constraints in Argentina related to the entry of other products or suppliers since it is necessary to have the appropriate license granted by the Government to produce and trade gas and (iii) due to its shares in the reserves, YPF can unilaterally influence on the pricing or restrict the supply.----------

1012. YPF does not challenge that during the dates stated by AESU and Sulgás it did not deliver the quantities of gas stated by the latter. However, it alleges that the days of non-delivery of gas are excused by regulatory force majeure. ----------

---

1013. Additionally, it argues that the scope of its duty to supply gas was more limited than the claims submitted by AESU and Sulgás and that it complied with its (related) duties meeting the requirements. It also claims to have acted at all times as a Reasonable and Prudent Operator, pursuant to the terms of section 17.4 (d) of the Gas Supply Agreement. ----------

1014. In any case, YPF observes that, if necessary, the quantification of damages related to the failures of delivery of gas will correspond to the second stage of the arbitration. ----------

(i) The real scope of the duty of YPF to deliver the gas. ----------

1015. YPF rejected the extensive interpretation of sections 2 and 3.4 of the Gas Supply Agreement made by AESU and Sulgás, according to which a complementary obligation arises for YPF to ensure the absence of problems in the supplying of the domestic market (Y-MD, ¶¶ 205-221). According to YPF, three duties of YPF arise out of these sections: ----------

a. Firstly, the obligation to deliver 2,800,000 m3/day of natural gas (according to the respective period) based on its licenses to exploit hydrocarbons in Neuquén Basin and for a period of 20 years. YPF agrees with AESU and Sulgás that it is an obligation of result, as the obligations of buyer and seller are generally considered in sales contracts, but it highlights that these obligations are excused by force majeure. [173] YPF notes that the Gas Supply Agreement excuses the obligation to pay DOP in the case of force majeure of YPF (section 14.1.2.1 of the Gas Supply Agreement), and that the Gas Supply Agreement clarifies that in case of force majeure, YPF does not have any obligation to provide substituted gas (section 17.4 of the Gas Supply Agreement). YPF also notes that, as a result of the restrictions on gas exports imposed by the Government of Argentina, the parties amended the Gas supply Agreement to explain that: ----------

"The Parties acknowledge and agree that none of the statements and/or provisions included in this 2 CR Agreement or CR Agreement can be construed as: … (ii) a YPF representation, statement or warranty related to the provision of gas volumes, both during the summer and winter terms, in

[173] YPF quotes a judgment of the Court of Appeals in Civil and Commercial Matters, DIvision III, *La Segunda Coop. Ltda. Seguros Generales c. Expreso Andriani y otro,* Law 2004-B, 940, Annex YL-151, stating that "[i]n terms of contractual obligations of result, the mere breach presumes the debtor´s fault, so, to be exempted from responsibility it has to prove that the failure to deliver the goods is due to an act of God or force majeure".----------

case of A YPF ACT OF GOD OR FORCE MAJEURE, under the agreement, regardless of the obligations expressly indicated in the Agreement, CR Agreement and this 2 CR Agreement". (Section 3.2 of the Second Conflict Resolution Agreement). ----------

b.Secondly, an obligation of means ("best efforts") involving the maintenance and effect of its licenses of exploitation of Neuquén Basin. The reason for this duty was that, at that time (as in section 6 of the Export Authorization), most of YPF licenses in Neuquén Basin were due in the year 2017, while the Gas Supply Agreement expired a few years later (December 2020). YPF alleges that it complied perfectly with this obligation, because in the year 2001 and 2008, YPF obtained from the Government of Argentina and from the government of the Province of Neuquén, respectively, the extension of the term of all of its hydrocarbons exploitation licenses located in the Province of Neuquén (Neuquén Basin) where the Importer was supplied. ----------

c.Thirdly, YPF's obligation of means to maintain "in reliance of YPF" the export authorization (i.e., SE Resolution No. 465/98 which was published in the Official Gazette on October 1, 1998) to export gas under the condition stated in the Gas Supply Agreement. YPF argues that it complied with its duty, because it maintained it in full force and effect and did not incur in any of the grounds that would allow its revocation. According to YPF, it was the Government of Argentina which interrupted and subordinated the Gas Supply Agreement to the full supply of the domestic market and which prevented the firm gas export under the condition provided for in the Gas Supply Agreement. According to the Gas Supply Agreement, YPF is only responsible for the failures to supply (including the payment of the penalty for DOP) if its rights under the Export Authorization are affected by its failure, but not by the failure of a third party (including the Government of Argentina). ----------

1016. In view of the above, YPF denies that sections 2 and 3.4 of the Gas Supply Agreement consider YPF as a joint and several guarantor of the full supply of the domestic market of Argentina, as alleged by AESU and Sulgás, for the following reasons: ----------

a. Firstly, because it does not arise from the text. According to YPF, a so significant obligation should, at least, have been expressly contemplated in the agreement, but it was not the case. YPF relies on Mrs. Kemalmajer's opinion: ----------

"No clause in the agreement that I had before me may be interpreted in the sense that the obligations of YPF included the prior provision of indefinite quantities of gas at undefined prices to the domestic market. A significant and relevant obligation should have been provided for in

the text of the agreement as the above-mentioned possible exchange restrictions were forecasted". (Legal Opinion of Dra. [lawyer] A. Kemelmajer, ¶ 159). ----------

b. Secondly, the regulatory framework did not establish such obligation by YPF. As explained in more detail below, YPF asserts that until the year 2004, the export agreements could not be interrupted or subordinated to the domestic supply problems. ----------

c. Thirdly, if the theory of the Importer was right, the Gas Supply Agreement would contain an implicit obligation of YPF to provide the domestic market with indefinite and unlimited quantities of gas at undefined prices, which would be invalid for not having a defined and certain purpose. Furthermore, when the obligation is subordinated to the occurrence of a positive impossible event (for example, keeping the domestic market fully supplied), the obligation is not valid (section 530 of the Civil Code). ----------

1017. YPF alleges that, in short, the importer took the risk of the Act of State which prevented the delivery of gas (as well as the tax risk of Argentina). In turn, YPF assumed the risks inherent to the business of YPF and its duty to act as a reasonable and prudent operator, including the geological risk of its oilfields and the commercial risk of agreeing on a sales price of natural gas for a period of twenty years. This is the reason why being bound by the clause of DOP, YPF expressly (i) excludes the accrual of such obligation if the failures to deliver were due to force majeure events, including acts of state (section 14.1.2.1 of Gas Supply Agreement) and (ii) limited its maintenance commitment of the Export Authorization "in reliance of YPF" (section 3.4 (ii) of the Gas Supply Agreement). ----------

1018. YPF asserts that there was a reason to transfer the risk to the Importer: As in every project financing where there exist several related agreements in which an event that occurs under a contract affects others, the original PPA between AESU and electrical distributors in Brazil had a clear pass-through system to the ones with risks that AESU had assumed under other contracts of the marketing chain, including the Gas Supply Agreement. Such pass-through included, *inter alia*: (i) the transfer to electrical distributors of any Argentine tax on gas exports (Sections 10.1, 10.2, 10.6 and 10.7 of the PPA, Annex Y-27) and (ii) the transfer, for these purposes, of any force majeure event in Argentina under the Gas Supply Agreement (Section 18.3 of the PPA, Annex Y-27). ----------

1019. Additionally, YPF denies having to rely on reserves and production capacity necessary to supply the domestic market in case of crises. Whereas neither the regulatory framework nor the contractual framework imposed on YPF the contractual obligation to supply the domestic market;

YPF sustains that the obligation of any exporting producer of natural gas, acting in good faith, was to have reserves and production capacity enough to comply with its portfolio of sales agreements in the regional wholesale market of natural gas. As the gas producers of Argentina were not aware (could not be aware) of the supply problems that could arise in the future as a result of a change in the rules, the obligation of those until the year 2004 was to have sufficient reserves and production capacity to supply their firm agreements up to the maturity date thereof. As explained in Part (iii) *infra*, YPF asserts that it has always complied with this obligation. (Y-MD, ¶¶ 195-198). ----------

(ii) The failure to deliver gas is excused by regulatory force majeure ----------

(a) Facts invoked by YPF: Restriction measures to the gas export imposed by the Government of Argentina ----------

1020. YPF asserts that the restriction measures to export imposed by the Government of Argentina since the year 2004 made it impossible to comply with its duty to deliver gas on certain dates (Y-MD, ¶¶ 465-460; Y-MC, ¶¶ 70-88; 453-464). YPF asserts in this regard that "[t]he rules ordered by the Government of Argentina as from 2004 drastically modified the Export Regime of Natural Gas providing that: (i) firm export authorizations, including the Export Authorization {of YPF} should be discontinued when domestic supply problems arise (or even to supply any domestic market customer's request even if these did not involve a real problem of domestic supply); and (ii) the firm transportation for export provided by the Carrier is subject to interruption and is subordinated to the needs of supply and transport of all domestic demand. That is, it forced the producers and carriers of natural gas to reassign the injections in the transportation systems so that injections for export are subordinated to the prior fulfillment of all natural gas demand and transportation required by the domestic market users of the respective carrier". (Y-Complaint ¶ 456). ----------

1021. YPF claims that these measures affected all days of failure to deliver gas by which AESU and Sulgás claim the payment of DOP penalties, i.e. the penalty billed for the year 2006, and the penalty claimed but not billed for the years 2007 and 2008. ----------

1022. Regarding the failures to deliver gas that were the basis for the DOP penalty billed in the year 2006, YPF claims (and the Tribunal has confirmed) that a 90% of the claimed penalties were not accrued because they were miscalculated or because the deliveries were not possible due to an event of force majeure caused by labor union. YPF claims that the remaining 10% (specifically,

the penalties accrued over the period from April 15 to 19, 2006) were not possible by regulatory force majeure. ----------

1023. Specifically, YPF sustains that between April 15 and 19, 2006, by orders of Additional Permanent Injection ["IAP" for its acronym in Spanish] issued by the SSC Notes No. 671, 697 and 728, the Fuel Undersecretariat forced YPF to partially affect volumes designed to comply with the deliveries under the Gas Supply Agreement and other export agreements, to allocate them to the domestic market. YPF sustains that the lAPs required YPF (under penalty established in the rule to declare the maturity of its export authorizations, and even the loss of the license), to redirect the export gas volumes agreed upon (customers with agreements) to CNG stations and thermoelectrical generators of the domestic market (customers without agreement). YPF expert, Engineer Carlos Bastos, explains that "[t]hese additional injection orders involve, for producers-exporters, a new or additional obligation to supply the domestic market that, as explained, is not provided in the Regulatory Framework" and adds that "[...] in the facts, the additional volume injection requirements required by the Government of Argentina as a condition to allow export effectively prevent or limit the ability of the producers to export in order to meet their pre-existing agreements". (First Report of C. Bastos, ¶¶ 231-234).----------

1024. In this context, Eng. Dante Kogan, witness of YPF, explains: ----------

"The "additional" gas the governmental authority required from an operative day to another, in practice, meant having to take gas from "A" (customer with agreement) to give it to "B" (customer without agreement). Client "A", under the obligation of the new regulation, was our export customers, including AES-U. This is also due to an intrinsic characteristic of the gas industry. Producers (e.g. YPF) have a limited capacity of gas production and a limited processing ability to put the gas in commercial terms (e.g., water extraction and impurities). Carriers also have a limited capacity of natural gas transportation. A rational and appropriate exploitation of a gas oilfield, according to the practice of the gas industry, means that producers make a projection of its natural gas production over time based on its best estimate for a rational exploitation of hydrocarbons resources. This level of production ends being the level of the firm supply commitments, i.e. the contractual demand of the respective producer. Thus, the fact that the producers have a gas production capacity and a "contingent" or "idle" gas processing to comply with the mere projection of changing demand, but whose effective use is subordinated to the cyclical need of the demand for natural gas in a given market does not correspond to a rational and appropriate exploitation of the oilfield. Ultimately, *the practical effect of the orders of the*

government was a redirection to an indirect displacement of the export volumes". (First Testimony of Dr. Kogan, ¶26. Emphasis added). ----------

1025. For these reasons, YPF claims that "the measures taken by the Government of Argentina implemented by the SSC Notes No. 671, 697 and 728 were an "act of state" that prevented YPF from delivering (i) 233,325 m3/day on April 15, 2006, (ii) 312,971 m3/day on April 16, 2006, (iii) 461,090 m3/day on April 17, 2006, (iv) 99,794 m3/day on April 18, 2006, and (v) 100,000 m3/day on April 19, 2006.". (Y-MC, ¶ 83).[174] ----------

1026. Regarding the alleged penalties that YPF would have accrued during the year 2007 and 2008, YPF sustains that all days of failure to deliver gas during that period are excused by regulatory force majeure. YPF states that since the year 2007, the operational control of the gas shipment was under control of the Secretariat of Domestic Commerce, which actually and by informal means, strongly audited the natural gas market and the agreements freely negotiated by producers, users and carriers, being carriers, including TGN and TGM which, following the instructions of the Government of Argentina, stated which were the ones which receive the injected natural gas in the pipelines of Argentina daily. ----------

1027. According to Eng. Kogan, "[t]he new methodology was not reflected in any rule. Under this system, by orders directed to the carriers (including TGN), which in many cases were simply verbal or sent by emails or spreadsheets, the authorities [...] ordered the transportation companies on the volumes of gas that they could export, the gas volumes that the producers have to inject and the recipients of the injected gas". He explains that "[w]ithin this modus operandi, the authorities also established certain amounts of gas or 'allocation of export' that usually were intended primarily to supply residential consumers in Chile [...], as well as Uruguay". He adds that "[i]n December 2005, the Government of Argentina agreed with the Government of

---

[174] According to YPF, "such IAP provided the following: ----------

- On April 6, 2006, the **SSC Note No. 671** [Annex Y-67] ordered YPF to inject from Neuquén Basin a permanent additional natural gas volume to the domestic market for a total of 450.103 m3/day since the operating day April 8, 2006 to the operating day April 30, 2006. The IAP had as beneficiary users in the CNG Stations (Compressed Natural Gas) located within the areas of the distributors called Camuzzi Gas Pampeana SA, Metrogas SA, Camuzzi Gas del Sur SA, Gas Natural Ban SA, Litoral Gas SA, Distribuidora de Gas del Centro SA, Gas Nea SA, Gas Cuyana SA, Redengas SA. ----------

On April 6, 2006, the **SSC Note No. 697** [Annex YL-165] ordered YPF to inject from Neuquén Basin a permanent additional natural gas volume to the domestic market for a total of 3.236.363 m3/day since the operating day April 8, 2006 to the operating day April 30, 2006. The lAP had as beneficiary users, on the one hand, to the CNG stations located within the areas of the distributors Camuzzi Gas del Sur SA, Emgasud SA, Distribuidora de Gas Cuyana SA, and Distribuidora de Gas del Centro SA, for a volume of 5.306 m3/day.- On April 10, 2006, the **SSC Note No. 728** [Annex Y-67] reduced the volume stated in the SSC N° 697 Note for the thermoelectric from 3.231.057 m3/day to 2.952.000 m3/day, keeping the effective term of the lAP until April 30, 2006". (Y-MC, ¶ 75) ----------

Brazil through the 'Memorandum of Understanding between the Federal Republic of Brazil and the Republic of Argentina on Energy for the Temporary Period' to allow the export of at least 1,200,000 m3/day to Brazil during the summer period in Argentina (October to May)". However, there were several days when the government did not even authorize the export of this volume. Based on verbal information shared between YPF operators and TGN, Eng. Kogan explains that YPF deduced that the gas pipeline interconnection valve of TGM with that of Sulgás was closed by TGN. It was during these periods of "close valve" when most of the export cutoff produced, which coincide with the cutoffs provided by the government". (First testimony of D. Kogan, ¶¶ 29-33). --

1028. As evidence, YPF sustains that from September 16 to November 16, 2007, the Secretariat of Domestic Commerce ordered TGN to cut to zero (0) m3/day the hired transportation service to Uruguayana power plant, despite the fact that each of those days YPF had confirmed AESU the availability of the entire nominated gas (2,800,000 m3/day) and it had required the carrier the transportation service for such volume. YPF is based on instructions from the Secretariat of Domestic Commerce regarding the natural gas delivery scheduled for September 17 to 23 and October 1 to 15, 2007 (Annex Y-75), and in the Annual Report of TGM as of December 31, 2010, incorporated in the Financial Statements of TGM of 2010 (Annex Y-164), where it sustains that TGM acknowledges the government intervention in the gas transportation.[175] YPF adds that the cut-offs imposed by the Secretary of Domestic Commerce continued during the year 2008. YPF is also supported by the FIEL report that explains how the government policy of "allocation of export" evolved (First Report of FIEL, ¶¶ 165, 173-174). ----------

(b) Facts invoked constitute a force majeure event ----------

1029. YPF sustains that the invoked facts met with the legal requirements in order to constitute a force majeure event as an excuse from its liability for breaches. ----------

1030. YPF's expert, Dr. Kemelmajer, highlights that the Section 514 of the Argentinean Civil Code establishes two requirements in order to constitute force majeure: (i) the unforeseeable nature of the fact, and (ii) the inevitability of its consequences (i.e. that constitutes an unsurpassable

[175] TGM's Annual Report as of December 31, 2010, incorporated into the Financial Statements of TGM of the year 2010 (Annex Y-164), states: "Since the year 2007, the presence of the governmental agencies relating to various controls and interventions in the operating of gas delivery increased. Particularly, weekly meetings were held with participation of ENARGAS, officers of the Ministry of Federal Planning, Public Investment and Services and the Secretariat of Domestic Commerce reporting to the Ministry of Economy and Public Finance, in which the authorities established dispatch guidelines. Additionally, in times of increased demand, the authorities daily indicated the consumption of the volumes authorized for each type of user".----------

obstacle). She adds that Argentinean books of authority and case law have also required that the following additional requirements be met: that the fact is strange or external to the debtor, that it is extraordinary, and that makes it impossible to fulfill the provision (Kemelmajer, ¶¶ 6-7; 12-69). ----------

1031. Particularly, YPF sustains that in Argentine Law the acts of government or "acts of state" which prevent the fulfillment of duties create a force majeure event. Dr. Kemelmajer explains: ----

"The so called “act of state” (*factum principis, fait du prince,* Restraints of Princes) or act of the sovereign, or act of government, or governmental action, or *Acts of State* is defined as "any order or decision of a public authority, unforeseeable and inevitable, which lies in the area of private autonomy making it difficult or impossible to comply with the duties undertaken by the parties. -- In the note to section 514, Velez Sarsfield explains: “The Force Majeure events are acts of men, as the war, the act of the sovereign, or force of prince, as stated in European books. Acts of sovereign are those deriving from his authority, intended to diminish the rights of citizens.” (Legal opinion of A. Kemelmajer, ¶¶ 97-98). ----------

1032. Dr. Kemelmajer adds that: ----------

"[T]he described export restrictions qualify as a force majeure event which releases YPF. These restrictions seem to be a 'discharge order', i.e., an order with varying doses of coercion which requires the debtor to act in a certain way, which normally does not release the debtor liability. However, well-understood in their practical purposes, these restrictions imposed an "obstacle order" because the act of the authority interposed between the debtor of the obligation and made the fulfillment impossible creating the defense provided in section 514 of the Civil Code". Dr. Kemelmajer adds that "[t]he legal inability created by the restrictions not only for the producers but also for the gas carriers, is included in the provisions of section 891 of the Argentinean Civil Code, which regulates the impossibility of payment [...]". (Kemelmajer, ¶¶ 151-152). ----------

1033. Furthermore, Dr. Boggiano says that "the state intervention usually is, by its nature, events which are beyond the control of the party who invokes them, and therefore, it constitutes a force majeure event under the Argentinean Civil Code or an exemption under the Vienna Convention”. (Legal opinion of A.Boggiano, ¶ 29). ----------

1034. Based on the reports of legal and technical experts, YPF sustains that the facts described in the previous part are eligible to be considered as force majeure: ----------

a. As described in the previous section, the measures imposed by the Government of Argentina in response to the gas shortage crisis made it *impossible for YPF to totally comply with its duty* to deliver gas to AESU and Sulgás ----------

b. YPF alleges that the measures were *supervening*, as they were ordered and implemented several years after the termination of the Gas Supply Agreement. ----------

c. Measures were *unforeseeable*, because at the time of executing the agreement the legal framework did not required that in order to comply with the Gas Supply Agreement YPF had to supply the domestic market; and YPF's right to export under the Export Authorization was firm. Government measures drastically changed the export and transportation system of natural gas existing at the time of hiring, extinguishing the final condition of the Export Authorization and the Transportation Service Agreements. According to YPF, this is an open breach of the express warranties contained in the regulatory framework applicable to gas exports in the Export Authorization, and in international commitments undertaken by Argentina with neighboring countries, including Brazil, on energy integration. ----------

d. Government measures were *irresistible*, as export rationalization programs and transportation services related to the export, created and implemented through administrative acts, were mandatory, were supported by the principle of legitimacy and enforceability assumption of the administrative acts and its unawareness involved serious penalties (including expiration of the exploitation of hydrocarbons licenses of the export producer). In any case, YPF asserts that it challenged the measures through appropriate means in accordance with current legislation and using the same resources as the other operators in similar circumstances, in accordance with the standard of the Prudent and Reasonable Operator stated in the Gas Supply Agreement. ----------

e. Additionally, the government measures were *unsurpassable,* because given the magnitude of the imbalance between supply and demand for gas in Argentina, and the policy of export subordination to the total local supply, any increase in the production would not have caused the reduction of redirection orders, but that most of the production would had been redirected to local consumption or would have been applied to reduce gas imports. In any case, YPF affirms that, despite the fact that the Gas Supply Agreement did not require YPF to provide substitute fuels in case of Force Majeure, YPF collaborated with AESU accepting to carry out the operations of substitution of energy

(OSEs) requested by the latter, and accepted to bear part of their cost, notwithstanding that the OSEs were inadequate to comply with a long-term agreement as the Gas Supply Agreement. ----------

f. YPF also states that the failure to deliver gas under this new regulation was *external* to YPF, since it did not contribute in any way to the orders of the new legal framework. YPF also denies that the gas shortages in Argentina were attributable to it or to other gas producers. Based on the expert's reports of FIEL, Gaffney & Cline and Carlos Bastos, YPF sustains that the real causes of the shortages were the measures taken by the Government of Argentina in response to the economic crisis of the year 2002, particularly the pesification and price freezing, which on the one hand led to an exorbitant increase in demand of natural gas, while discouraged the investment in exploration and development of reserves, creating an increasing gap between the supply and demand of natural gas (Y-MD, ¶¶ 222-247). ----------

g. Finally, YPF alleges that this situation was *present* when the force majeure was alleged, and even continues to be so, because the legal regulations for the supply and transportation of natural gas for export continue in effect, and the circumstances do not allow to note the restoration of the regulatory framework in force when the Gas Supply Agreement was signed in the year 1998. ----------

1035. In any case, YPF denies that the gas shortage situation was the reason of YPF failure to delivery. The real reason of YPF failure to deliver gas during certain periods (leaving aside the labor union force majeure event that affected certain deliveries in the year 2006) was the measures taken by the Government of Argentina. As explained in the following part, YPF asserts that it always had the reserves and the production capacity *(*deliverability*)* necessary to comply not only with its obligations under the Gas Supply Agreement but also with its remaining commitments. The redirections of additional amounts to those provided in the "agreements" and cut-off export orders prevented YPF from complying with its deliveries under the export agreements, including the Gas Supply Agreement. (Y-Reply Brief, ¶¶ 197-198, 312-318, 327-328; Y-Replication, ¶¶ 132; Y-Rejoinder, ¶¶ 106-118, 141-170; FIEL, Gaffney and Cline and Carlos Bastos reports). ----------

1036. Some of YPF's allegations on force majeure are developed in its allegations in response to the reasoning of AESU and Sulgás about other YPF defaults of its duties "related to" the duty to

deliver the gas, so, the Tribunal will address them in the following part. The Tribunal will address the other detailed YPF's allegations regarding the force majeure when the Tribunal analyzes it. ----

(iii) YPF complied with its legal and contractual duties ----------

1037. YPF complements its allegations on force majeure with allegations intended to show that it has always had enough reserves and production capacity to comply with its sales commitments, and that it have always complied with its other legal or contractual duties. Some of these arguments are raised by YPF spontaneously, while others are intended to content the allegations of AESU and Sulgás regarding the alleged breaches of "obligations" related to the duty to deliver gas. The Tribunal states these allegations as follows. ----------

(a) YPF has always had enough reserves and production capacity----------

1038. YPF sustains that it has always had enough reserves and production capacity *(deliverability)* necessary to comply not only with its obligations under the Gas Supply Agreement but also with other commitments. This shows that the failures of gas delivery were due to the restrictions imposed by the Government of Argentina, not for lack of reserves or of *deliverability* of YPF. (Y-AF, ¶¶ 170-182). YPF is based on the reports of Cesar Guzzetti from Gaffney & Cline and of FIEL. ---

1039. First, YPF asserts that it has always had enough gas reserves to comply with all firm sales commitments undertaken until 2004 and that renegotiated after the measures of the Government of Argentina. In this sense, it assures that it had sufficient reserves at the beginning of each year in Neuquén Basin, from which the Gas Supply Agreement was supplied, to comply with the volumes agreed upon in their sales agreement. ----------

1040. As explained in detail below, YPF rejects being overcontracted. It asserts that it had sufficient reserves to comply with its firm sales commitments and that until the year 2004, it kept the same level of firm sales commitments it had in the year 2001, and since January 2004 it neither signed new agreements nor extended existing agreements. ----------

1041. YPF claims to have proved that it has always had enough reserves (discounting the write-off of the year 2005) and the production capacity to comply with: ----------

a. The original CDC, that is, its original contractual commitments. Based on the First Report of Guzzetti, item 2.c and chart 2.c.1., YPF highlights that the criteria used by Guzzetti to calculate reserves (P1 + 50% of P2, also used by Resolution SEyM No. 131/01) is more conservative than the criterion that expert Moore admits as *"base case"* or indicative of last recovery, which includes all probable reserves (P2). It also notes that Mr. Moore acknowledged that, upon the

execution of the Gas Supply Agreement, YPF technically had sufficient reserves (Tr., Day 3, p. 658). ----------

b. Adjusted CDC, i.e. the original contractual commitments of YPF updated by (i) the volumes derived from MINPLAN Resolutions No. 208/04 and SE No 599/07 (which approved the agreements signed by most gas production with the Government of Argentina in the years 2004 and 2007), and (ii) the reduction of commitments agreed between YPF and its export customers. YPF quotes the First Report of Guzzetti, items 2.c and 2.e and charts 2.c.2 and 2.e.2, and the chart included in Slide 5 of the presentation used by Mr. Guzzetti in his direct examination (Annex Y-234), Tr., Day 3, p. 706, 20:22; page 707, 1:4. ----------

1042. According to YPF, this conclusion was confirmed by (i) the charts submitted by the expert of AESU/Sulgás, Chris Moore, in his direct examination, (ii) his answers to the questions made in the cross-examination, and (ii) the confrontation of the experts Moore and Guzzetti. (Tr. Day 3, pages 595, 640, 679-680, (Moore); Tr., Day 3, pages 712-716 (Guzzetti); Tr., Day 4, pages 867-868 (Moore)). ----------

1043. Specifically, YPF asserts it had reserves and production capacity sufficient to comply with the Gas Supply Agreement and with its contractual commitments even in the most demanding scenario for YPF submitted by Mr. Moore in his direct examination, consisting of: ----------

a. Considering only YPF proven reserves (P1) instead of proven reserves (P1) plus the 50% of the probable reserves (P2) as stated by the SEyM Resolution No. 131/01; ----------

b. Advancing a year the accrued CDC in each year used in the comparison with the remaining reserves, a mistake that Moore acknowledged in his confrontation with Guzzetti; ----------

c. Postponing to the year 2010 the acknowledgment of the reduction in the delivery commitments agreed upon between YPF and Gas Valpo, ignoring the practical effect of the addendum of June 2006 which entailed tuning interruptible the export commitments of YPF for that customer to expand the force majeure provision and to include any possible interference or conditioning to exports by government measures; and ----------

d. Not calculating the whole reduction of the firm commitment of YPF with Innergy. ----------

1044. According to YPF, it was proven that: ----------

a. the standards used by Chris Moore are inconsistent and unfair since it corrects the chart 2.c.2 of Guzzetti's Report to defer the calculation of reductions in export commitments of YPF to the years in which, at his sole (wrong) discretion, took place, while at the same time it does not differ (to the year in which they were undertaken), the calculation of the additions of YPF commitments

with domestic customers since the year 2004, even when most of them were incorporated only in the year 2007 with the SE Resolution No. 599/2007.269 ----------

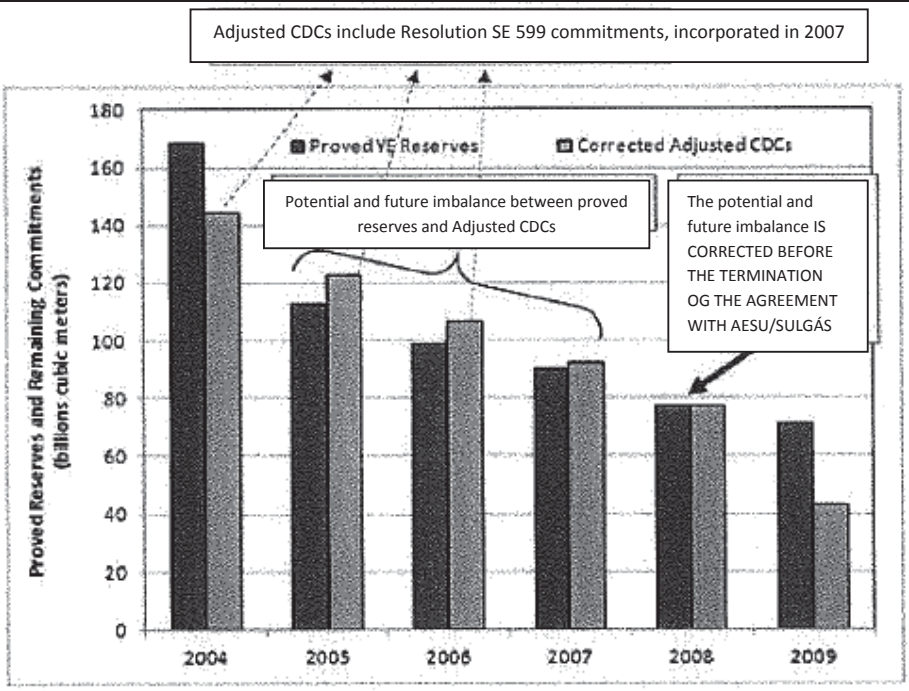
b. Even with the inconsistent standard of Mr. Moore, only in the years 2005-2007 it can be seen a small difference between the remaining proven reserves of YPF and YPF accrued contractual commitments (i.e. the accrued COC including the volumes which derived from the MINPLAN Resolutions No. 208/04 and SE No. 599/07). ----------

c. This "gap", according to Moore judgment, does not mean that YPF would not have had enough gas to comply with its contractual commitments in the years 2005-2007, but only a future potential problem if the deficiency had not been corrected in subsequent years. To make this assertion YPF is based on the comments of Mr. Guzzetti during the hearing, who noted that the bars in the charts do not show a gas volume owed every year, but accrued commitments and that YPF restored the balance of its commitments in the year 2008 (Tr., Day 3, pages 712-716 (Guzzetti)). YPF also noted that Mr. Moore confirmed that this balance will be restored in the year 2008 (Tr., Day 3, page 640 (Moore)). ----------

d. For the year 2008, before the termination of the Gas Supply Agreement dated on March 2009, that difference would have been corrected via the renegotiations that YPF made for the export contracts (even with expert Moore's judgment to postpone the acknowledgement of the CDC reductions of the Gas Valpo agreements until the year 2010 and not entirely compute the reduction of the firm commitment of YPF with Innergy). ----------

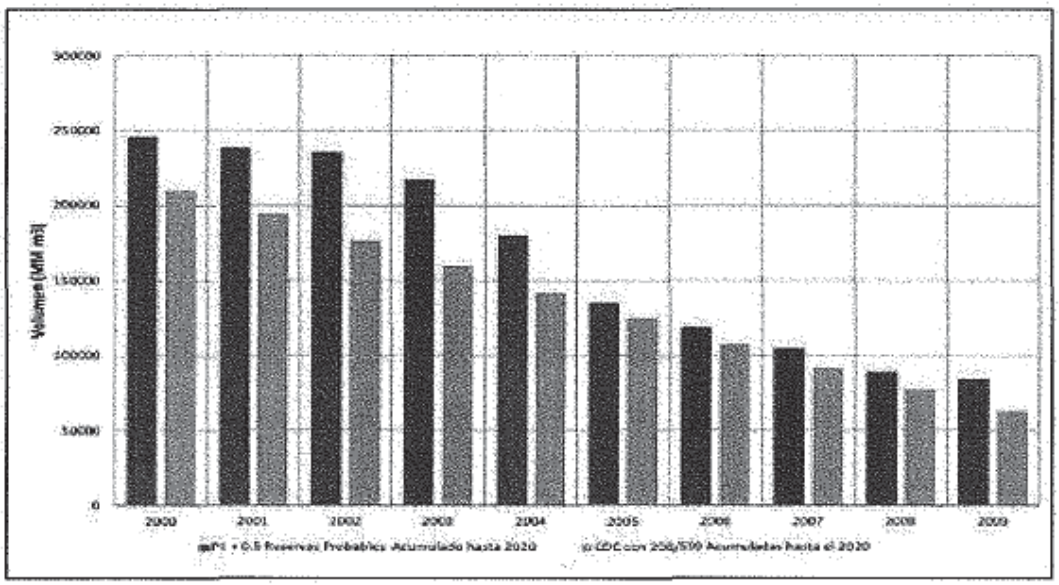
1045. According to YPF, this chart shows the above-mentioned notes: ----------

CHART SHOWING THE MOST DEMANDING SCENARIO FOR YPF ACCORDING TO MOORE----------



1046. On the other hand, adopting the standard used by the Energy Secretariat for the calculation of reserves (Proved Reserves plus a 50% of the Probable ones, standard that qualifies as more realistic for YPF), Mr. Guzzetti concluded that "YPF has always had enough reserves to comply with all its gas sales commitments including the gas sale agreement with AESU/SULGÁS until the year 2020" (Second Complementary Report of Guzzetti, ¶17), as reflected in the following chart: ----------

CHART SHOWING THE MOST REALISTIC SCENARIO FOR YPF ACCORDING TO THE CALCULATION OF RESERVES OF THE ENERGY SECRETARIAT (SEM RESOLUTION 131/2001)[274] ----------



Notes: - CDCs means Daily Contract Quantity that represents the volumes whose delivery is undertaken by YPF. ----------

- The red bar shows the total proved reserves plus the 50% of probable reserves reported to the SEN as of December 31 of each year. ----------

- The green bar shows the sum of the Adjusted CDCs (including those corresponding to the agreement with AESU/Sulgás) committed until the year 2020 plus the consumption of YPF, remaining in each year, from the year 2000 to the year 2009. ----------

1047. YPF also sustains that it has always had not only enough reserves but also production capacity *(*deliverability*)* to comply with the Gas Supply Agreement and the rest of its contractual commitments. Particularly, it asserts that: ----------

a. With the exception of the economic recession period among the year 2000 and 2002, the production of YPF in Neuquén Basin has always been superior to the different sales forecasts reported to the Energy Secretariat. The production peak of YPF in Neuquén Basin took place in the year 2004, and YPF increased its production between the years 2002 and 2004 at a rate greater than that of the other gas producers. Since the year 2004 and throughout the period in which the government imposed restrictions on exports, YPF produced greater volumes than the forecasted demand, showing its quick response to the drastic and strong increases of domestic demand since the year 2002 (20% among 2002-2004 and 37% among 2002-2007). ----------

b. Its gas production until the year 2009, plus its production forecasts until the year 2020, are greater than (i) all firm sales commitments undertaken by YPF prior to the year 2004 and

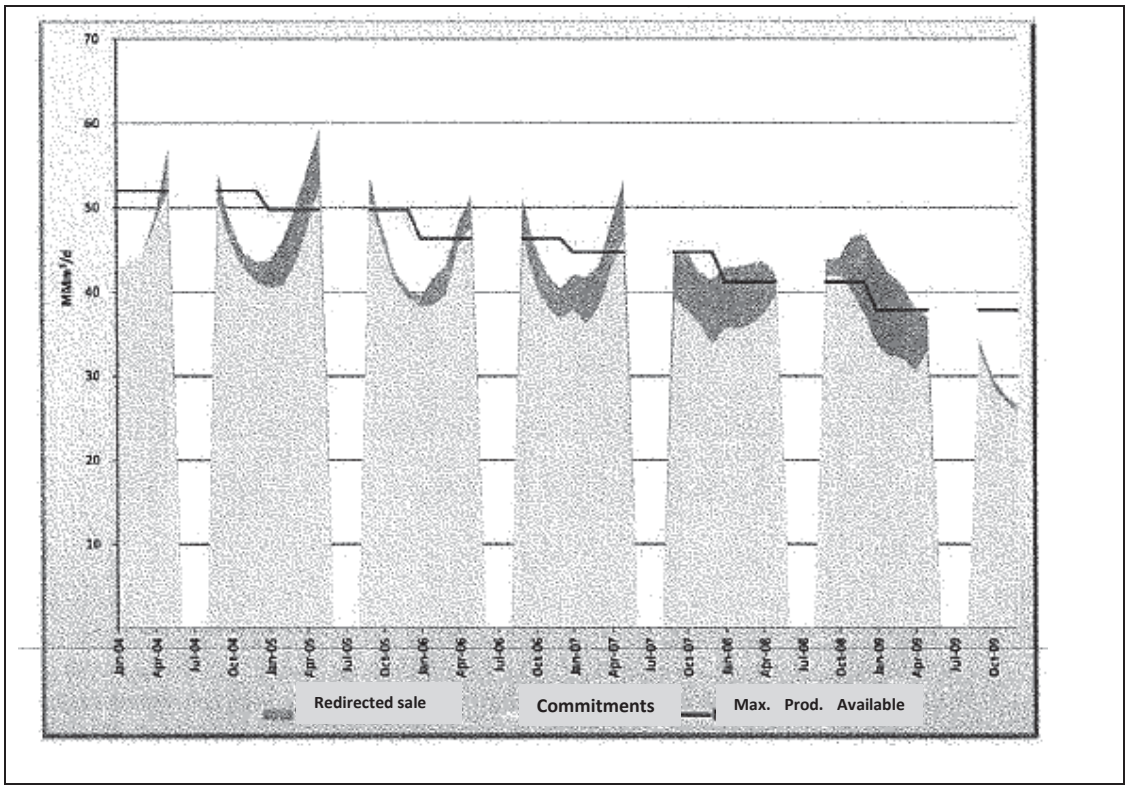
renegotiated after the measures of the Government of Argentina, valid until the year 2020, and (ii) all delivery commitments (redirected sales) that emerged from the MPFIPS Resolutions 208/2004 and SE 599/2007 (Annexes YL-84 and YL-104) (First Report of Guzzetti, ¶ 133). ----------

c. As from the beginning of the measures of the Government of Argentina that restricted exports in the year 2004, until the termination of the Gas Sales Agreement in the year 2009, YPF has always been able to produce, during the period outside the winter period agreed with AESU/Sulgás, volumes of gas sufficient to comply with all its firm sales commitments. ----------

1048. The previous notes are shown in chart 2.e.1 of the First Report of Guzzetti, page 45: ----------

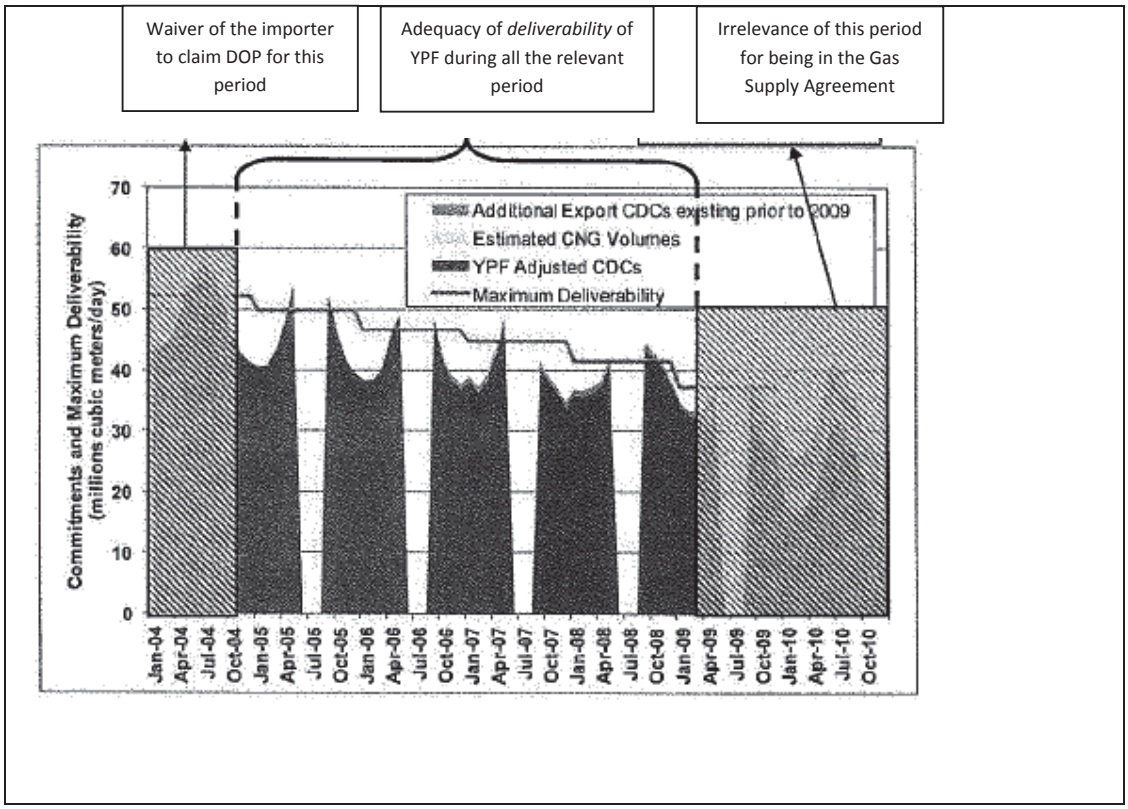
Chart 2.e.1. Comparison of the Adjusted CDCs plus the Redirected Sales vs. the maximum gas production capacities at 9,300 Kcal/m3 of gas for the periods from September 15 to May 15 of each year. ----------

Source: YPF. ----------



1049. YPF alleges that Mr. Moore recognized the adequacy of deliverability of YPF during the hearing, when submitting in his direct examination a chart consisting of a modified version of the chart 2.e.1 of Guzzetti's Report that, limited to the relevant periods, shows that YPF's production capacity exceeds its contractual commitments in the periods out of the "winter period" in which AESU and Sulgás had the right to appoint gas volumes (the maximum production capacity of YPF, (represented by the red curve) is above the agreed volumes of YPF). (Slide 5 of the presentation used by Mr. Moore in his direct examination, transcribed in ¶954 *supra*) ----------

1050. According to YPF, from Mr. Moore chart (i) the block corresponding to the period of the year 2004 before the waiver of the Importer to make claims for failure to deliver contained in Section 4 of the First Conflict Resolution Agreement dated August 31, 2004, and (ii) the block corresponding to the period after March 2009 should be removed because they are outside the term of the contract. YPF highlights that during the confrontation between the experts Moore and Guzzetti, Mr. Guzzetti explained the corrections to be made to the chart included in the slide number 5 of the presentation used by Moore in his direct examination, and Mr. Moore did not contend him. (Tr., Day 4, pages 854 to 857. Tr., Day 3, C. Moore, pages. 684-686). According to YPF, the result of these amendments is as follows: ----------



1051. YPF highlights that Mr. Guzzetti contended the allegation of Mr. Moore about the production forecast of YPF in the year 2000, showing a "deliverability shortage situation in the long term." (Tr. Day 3, pages 645-646). Mr. Guzzetti explained to the Tribunal that YPF production projects are made on the basis of the existing agreements and not projecting a potential future demand. He explained that, for example, a production forecast for the year 1994 does not include any of the new commitments undertaken by YPF after that year (including the Gas Supply Agreement, which obviously existed). (Tr. Day 4, pages 928). Thus, according to YPF, it was shown that the production projection of YPF for the year 2000 did not need to include any term extension of commitments, for example with gas distribution companies of Argentina. This does not mean that YPF had decided to stop supplying gas in the year 2000 to such distribution companies (and indeed YPF continued supplying gas to the domestic market and to the gas distribution companies of Argentina through Resolutions 2008/04 and 599/07). ----------

1052. According to YPF, this confirms the conclusion of Guzzetti's Report in the sense that the failures of delivery of YPF were caused exclusively by the redirectioning orders of the Government of Argentina on YPF and/or the carriers TGN and TGM. ----------

(b) Write-off of the year 2006 ----------

1053. YPF denies that the review of reserves made in a report submitted in the year 2006 before the U.S. Securities and Exchange Commission (SEC), the National Securities Commission [CNV for its acronym in Spanish] and the Energy Secretariat of Argentina has affected the adequacy of its reserves. According to YPF, the reports of Mezzadri and Lisi also show the write off on a bias (First Report of Mezzadri, pages 70-71; Lisi's Report, ¶¶ 61-65). YPF asserts that both reports incur in significant omissions leading to derogatory suggestions. (Y-MC, ¶¶ 303) ----------

1054. Expert Guzzetti explains the origin and scope of this reserves review. Particularly, he asserts that: ----------

a. "The reserves write-off of the period 2004 -2005 was not caused by a business decision of YPF, but due to technical reasons, which were shown over time as YPF acquired a better knowledge of the area and of the response of the reservoir. [...] [T]he major reserves review was due to the identification of hydrocarbons outside the reservoir called Sierras Blancas of the oilfield Loma La Lata". (First Report of Guzzetti, ¶ 244) ----------

b. "In early 2000, YPF and its auditors identified certain volumes of reservoirs that were originally identified as reserves to produce, that were not being drained (extracted) for the above-mentioned reasons. Therefore, and given the definitions of reserves, in the year 2004, it was decided to conduct a review of the volumes of proved reserves of the oilfield Loma La Lata - Sierras Blancas. Thus, between the years 2004 and 2005, 16% of the original reserves of this oilfield were removed from the proved reserves category, although many of them were reclassified as probable reserves". (First Report of Guzzetti, ¶ 245) ----------

c. Upon discovering the oilfield called Loma La Lata, the information available for an estimation of its reserves was necessarily incomplete. Just after the commencement of the drilling of development wells and through its productive response, it was possible to collect the information necessary to gradually approach to a detailed description on the size of the reservoir and its possible recovery efficiency". (First Report of Guzzetti, ¶ 246) ----------

d. "As it happened in other large oilfields, the evolution of the production and pressure showed characteristics, which were impossible to predict at the beginning of their exploitation. In the case of Loma La Lata, reducing the pressure due to gas extraction allowed to show that some parts of the reservoir are not proportionally uncompressed, stating that not the whole reservoir was a large unit. Parts of what was originally considered as a unit were isolated from the main body. This effect, this phenomenon beginning to be noted in the year 2003, was studied in the

year 2004 and was reflected in the reserves declaration in early 2005. As a result of this analysis it was found that the 'not contacted' parties contained approximately 16% of the original reserve, which resulted in *the* write-off': (First Report of Guzzetti, ¶ 247-248)----------

(c) YPF did not cause the gas shortage ----------

1055. YPF denies that there was a causal relationship between the gas shortage and the measures of the Government of Argentina (since, as explained below, YPF sustains that the regulations in force did not allow the Government of Argentina to restrict the firm gas exports) (Y-MC, ¶ 224). As already noted, YPF also denies that the gas shortage has caused the failure to deliver of YPF, since it asserts to have always had reserves and enough production capacity to comply with its commitments (Y-MC, ¶ 225). ----------

1056. Without prejudice to having explained the irrelevance of the gas shortages for this arbitration, YPF denies being the originator of the gas shortages in Argentina or in particular (and as explained in detail in the following part), YPF denies that the gas shortage was attributable to the lack of its investment or the reduction of its gas reserves, or the activity of any of the gas producers in Argentina (Y-MC, ¶ 226, 270). Contrary to the opinion of AESU and Sulgás, YPF asserts that the problems of domestic gas supply in Argentina were not caused by YPF, but they replied to the governmental measures taken since the year 2002 that affected all gas producers. Based on the expert's reports of FIEL, Cesar Guzzetti from Gaffney & Cline and Carlos Bastos, YPF sustains that the real causes of the shortages were the measures taken by the Government of Argentina in response to the economic crisis of the year 2002, particularly the pesification and price freezing, which on the one hand led to an exorbitant increase in demand of natural gas, while on the other discouraged the investment in exploration and development of reserves, creating an increasing gap between the supply and demand of natural gas (Y-MD, ¶¶ 222-247; Y-AF, ¶¶ 129-138).----------

1057 In this sense, YPF sustains that in the year 2001 there were enough reserves in Argentina to meet the demands of the upcoming decades. According to YPF, the problem was caused by the drastic regulatory change in the domestic market, caused by the measures of pesification and the freezing of electric and natural gas rates in the year 2002. In the year 2002, the Government of Argentina pesified gas prices by reducing them to a third of its previous value, and then froze those prices through different measures.----------

1058. YPF sustains that the depressed prices caused a drastic increase in demand (a 20% among 2002 and 2004 and more than a 37% among 2002 and 2007) by the movement of the demand to

other more expensive alternative fuels towards natural gas. The increased demand of gas consumed the existing reserves faster, and the monitored prices eliminated the price signals essential to make investments in exploration that could lead to the incorporation of new reserves. According to YPF, the expert Mezzadri of Sulgás and AESU recognized the large year-over-year increase of a nearly 10% in each of the years 2003 and 2004. If instead of taking the year 2002 as a comparison basis that the expert Mezzadri is criticizing, the comparison is made with the average level of production of the period 1998-2001, the result does not change: as shown by expert FIEL, the domestic gas demand increased by 43% between such period and the year 2007 (FIEL Report, Table 3.7). ----------

1059. YPF asserts that the Government of Argentina recognized in official documents that the natural gas supply problems are abide by their own measures, which affected all producers, not just YPF. Particularly, YPF quotes the following documents: ----------

a. Note No. 153 of the Energy Secretary Eng. Daniel Cameron to the Minister of Federal Planning, Public Investment and Services, Architect Julio De Vido, on February 13, 2004 (Annex YL-155), in which the Secretary of Energy recognizes that "[t]he impact of the emergency measures on the sale of natural gas agreements has generated three main problems, namely: [...] (II) Direct impact on the investments on exploration and gas production. The pesified prices do not allow recovering the investment costs to explore, exploit and maintain the gas production. (III) The subsequent increase in consumption and the risk of supply problems". ----------

b. Memorandum of the Gas Advisory Team of the Fuel Undersecretariat to Fuel Undersecretariat dated January 16, 2004 (Annex YL-153), which explains that: "[...] There has been a significant decrease on the investment flows related to the exploration and development of natural gas reserves. [...] The above-mentioned should not cause surprise given that it is sufficiently developed in the economic theory that the analysis of the consequences that derived from the investments in a productive activity under market conditions when prices perceived by producer do not allow the repayment of such investments. In such circumstances, the investments are not made with the inevitable problem of supply in time, because the increase of an asset demand is not accompanied by a consistent growth in the supply of the same asset [...]. " ----------

1060. YPF states that neither AESU and Sulgás nor their experts could contest this test: ----------

a. Experts Mezzadri and Moore acknowledged they had not taken into account the government acknowledgements in their reports (Tr. Day 3, pages 606, 608 (Moore)), Day 5, pages 1147-1148, 1153 (Mezzadri)).----------

b. Expert Mezzadri, in his capacity as director of TGM, approved its financial statements for the year 2005, which indicated: "As a result of the "de facto" freezing of the price of gas at the wellhead and of the “de iure” freezing of the regulated transportation and distribution rates at the beginning of the year 2002, an underbalance between supply and demand which led to a major supply deficit in early 2004 took place. Regarding the supply, low prices discouraged investment, resulting in a reduction of the availability of gas at the wellhead. [...] At the same time, in a framework of a significant recovery of economic activity, low prices produced an unusual increase in demand, compounded by a substitution effect of the alternative fuels whose prices increased drastically following the devaluation. [...] "(Financial Statements of TGM for the year 2005, Annex Y-57). ----------

c. The expert called Lapuerta acknowledged that the issue of the freezing price was relevant to the discussion on gas exploration investments (Tr., Day 2, page 395 (Lapuerta)). ----------

d. YPF highlights that AESU in itself has asserted before the ANEEL that the "gas prices in Argentina are low and do not make new investments viable." (Presentation of AESU before the ANEEL on March 6, 2008, slide 13, Annex Y-76) ----------

1061. YPF sustains that, as a result of the government measures in reply to the crisis of the year 2002, the gas reserves of all producers decreased generally and drastically. According to YPF, it is undeniable- and it was not disputed in the hearing- that, any form of measurement used, the drop in gas reserves was a general event that affected all producers, not just YPF. It was also shown that the period of greatest drop in reserves in Argentina (34%) occurred over the period 2002-2005 in which prices were frozen at their lowest levels. Therefore, YPF cannot be blamed for the gas shortage which resulted from the governmental measures restricting exports. However, YPF made every effort to minimize the effect of these measures both in investment and business activity. ----------

1062. In this context, YPF criticizes the reports of the experts of AESU and Sulgás, Mr. Mezzadri, Lisi and AGM Finanzas, which try to blame YPF for the gas shortages (Y-MC, ¶¶ 271-287). According to YPF, these experts: ----------

a. Fail to explain that the review and estimation process of hydrocarbon reserves is characterized by the uncertainty, as acknowledged by the applicable regulatory standards and the international definitions used in the industry. (First Report of Guzzetti, ¶ 3, 22-23) ----------

b. Fail to explain that in the gas production activity, the periodic review of reserves is normal and expected (First Report of Guzzetti, ¶ 53; FIEL Report, ¶ 95). ----------

c. Fail to explain that the price of gas is a crucial factor in the estimation of reserves, existing a matching between the levels of reserves and the price of gas (First Report of Guzzetti, ¶ 44; Report FIEL, ¶ 95). They also fail to note that the strongest drop of reservations both in the country and YPF took place over the period 2002-2005, which was the period with the lowest prices and the most rigid freezing. (First Report of Guzzetti, ¶ 73, Chart 1.d.2.2; FIEL Report, ¶94).

d. Submit the drop of reserves of YPF as a particular event, and fail to mention that the drop of reserves in Argentina was a general event. YPF adds that while YPF's reserves dropped by 45% over the period 2000-2005, other producers suffered even greater drops (e.g., Tecpetrol 69% and Pluspetrol 57%). Also, they fail to note that the percentage of decrease of YPF (45%) is similar to the overall national average (43%) and to the average of the six largest producers (41%). (First Report of Guzzetti, ¶ 86; item 1.f; charts 1.f.1 and 1.f.2). ----------

e. Fail to indicate that, despite the fact that the drop of proven reserves of YPF in Neuquén Basin in the year 2004, YPF had a percentage of reserves over the total reserves in this basin (61%) higher than the percentage it had in the year 1998 (58%). Therefore, in the year 2004, YPF was in the same condition of reserves and production capacity that in the year 1998. Thus, there is no causal relationship between the evolution of the YPF reserves and the restriction measures imposed on the gas export by the Government of Argentina from the year 2004. ----------

f. Submit the Reserves/Production Index (R/P) in a way that misrepresents its function, in order to show the situation of reserves of YPF as it was an extraordinary weakness for being low for 10 years, considering that a low ratio R/P is indicative of high efficiency in the usage of resources. Expert Guzzetti explains that the R/P ratio indicated two things: (i) it is a picture at the end of each year about the rate at which the reserves are being consumed considering the existing production levels and considering that the relevant factors still remain, and (ii) if a R/P ratio is very loose, it means that there are no incentives to invest in exploration because there will be delay in the monetization of resources. (First Report of Guzzetti, ¶ 59-61). The expert FIEL adds that the R/P ratio shows a trend towards the past, and that is a warning about possible future changes, but it does not have the purpose of predicting future trends of resource availability. (FIEL Report, ¶ 236). ----------

g. judge ignoring the abrupt and deep change of economic and regulatory circumstances that have taken place since the year 2002. As the expert FIEL explains, "the reports in question ignore or underestimate the real impact that the massive governmental intervention taking place since the year 2002 had on the gas demand, investments, reserves and gas production; taxes on

increasing gas exports, submission of price controls for most domestic users below cost values, and significant increases in the cost of investment in exploration and exploitation as a result of the increase in the international energy prices. This is an important omission, since an objective analysis of the problem cannot be done without considering what could reasonably be expected for these patterns in the context of free prices and null taxes for the natural gas exports as guaranteed under the current regulatory framework at the moment of the execution of the Export Agreement". (FIEL Report, ¶ 218). These experts also fail to indicate that since the year 2002 gas producers were deprived from a number of additional alternatives they had in case they had a difficulty in the compliance with their agreements (such as the possibility of not renewing their agreements with industrial customers and electrical generators in the domestic market) (FIEL Report, ¶¶ 220-221). ----------

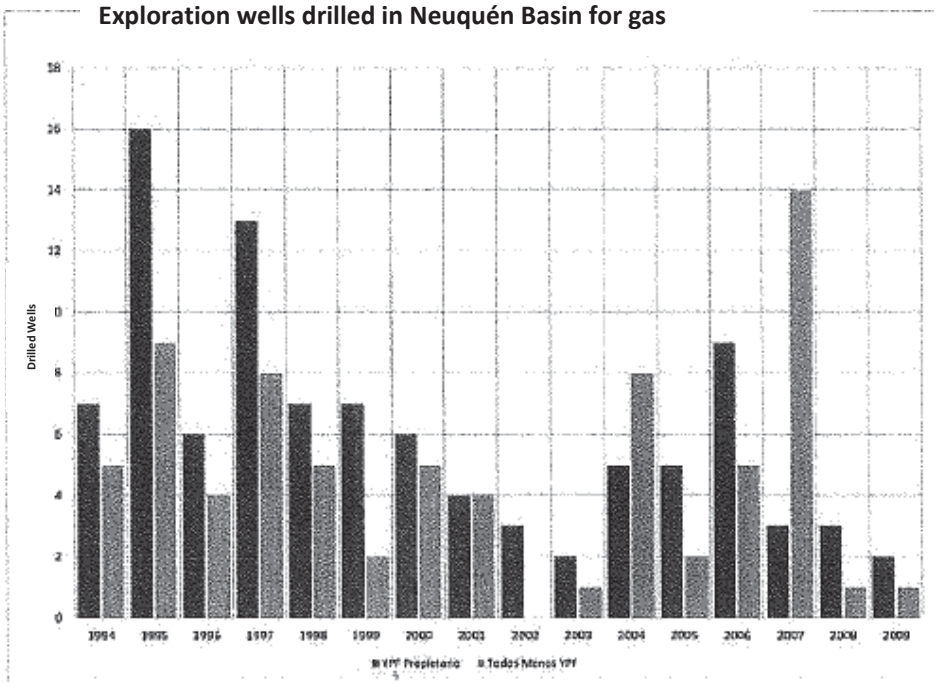
(d) YPF complied with its duties as licencee and reached good investment levels ----------

1063. While YPF sustains that it was not the one who caused the gas shortage, it asserts that in any case, as from the signing of the Gas Supply Agreement, and despite the adverse market conditions, YPF continued investing in the exploration and development of Neuquén Basin in an effort to maintain its reserves and production capability (deliverability). ----------

1064. Specifically, YPF sustains that among the years 2000 and 2009, it invested in exploration and production in Neuquén Basin more than the rest of the five largest gas producers in the basin together (i.e., during that period, YPF invested in exploration and development in Neuquén Basin more than a 50% of the total investment carried out by producers of natural gas). This circumstance has not been contested by AESU and Sulgás and was recognized by Mr. Moore not only during the written stage but also the oral stage in this arbitration. [Tr., Day 3, C. Moore, pages. 626, 1:15. See also Second Report of C. Moore, ¶¶ 90-91: "The extensive review of YPF's investments in Chapter 3 of the Guzzetti Report concludes that YPF was responsible for over 50% of the total investment in Neuquén over the period 2000-2009 and that YPF invested more than its planned investments. Based on the data provided, these statements appear correct [...]." -------

1065. YPF sustains that, when thoroughly observing the investments in Neuquén Basin, clearly arises that "[i]n the period over 1994-2009 there were only two years (2004 and 2007) where the rest of the owners drilled more exploration wells than YPF. [...] The information shows that in the period over 2000-2009 YPF drilled more exploration wells than the other producers together". (First Report of Guzzetti, ¶ 159, and Chart 3.b.2) The chart 3.b.2 of the Guzzetti's Report shows thes following observations: ----------

Chart 3.b.2: Exploration wells drilled by YPF and third parties in Neuquén Basin for gas oilfields.-

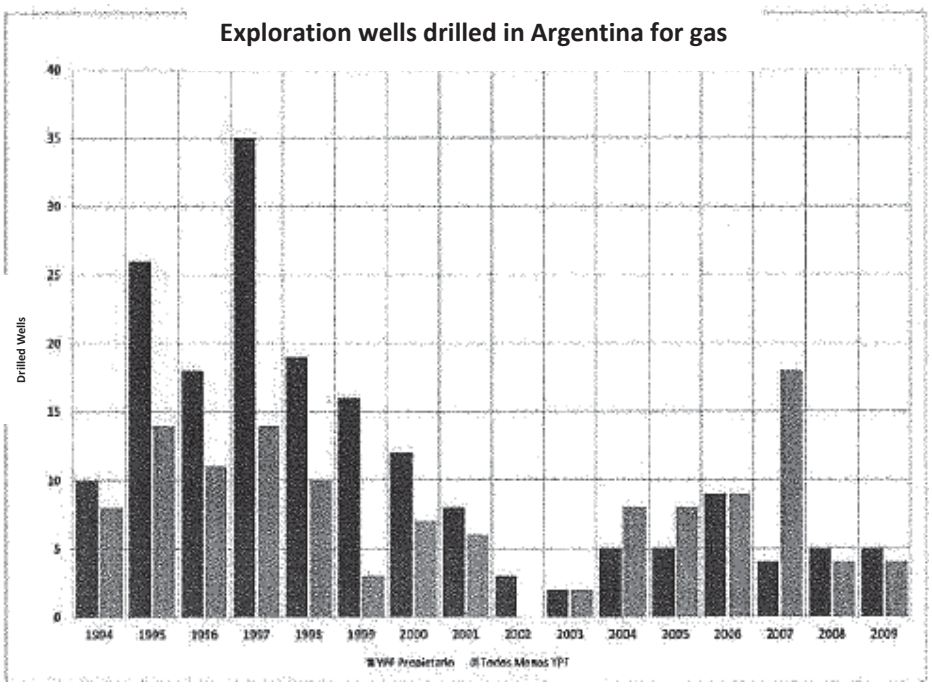


Source: IAPG and YPF. Compiled by author.----------

1066. In connection with the exploration of wells throughout the country, the chart 3.c.2 of the First Report of Guzzetti shows the number of wells drilled by YPF and third parties (other operators besides YPF) in Argentina to explore gas oilfields. According to Mr. Guzzetti, "[i]t is clearly observed that in the period over 1994 -2009, YPF drilled more wells than other operators together. That is, YPF performed a higher exploratory effort for gas oilfields in the country than the rest of the producers together" (First Report of Guzzetti, ¶ 165). Mr. Guzzetti explains that the numbers quoted for YPF include its participation in non-operated areas. The chart 3.c.2 of the First Report of Guzzetti is inserted follows: ----------

Chart 3.c.2. Exploration wells drilled by YPF as owner and by other producers in the Argentina for gas producer areas. ----------

---



Source: IAPG and YPF. Compiled by author.----------

1067. YPF also alleges that the experts of AESU and Sulgás, Mezzadri, Guadagni, and Moore significantly underestimated the number of exploration wells of YPF when they did not compute the net percentage corresponding to YPF in areas where this does not work, but where it keeps significant shares. (Complementary Report of Guzetti, ¶ 15 and Second Complementary Report of Guzetti, ¶¶ 27-32, 47-48 and 55; Rejoinder of YPF, ¶ 137). According to YPF, this was recognized by Mr. Moore himself repeatedly during the hearing. (Tr., Day 3, Moore, pages 605, 614). ----------

a. For example, the experts of AESU and Sulgás failed to consider YPF interest in the areas Aguada Pichana and San Roque which are the second and third area in Neuquén after Loma La Lata and which represent approximately 24% of the reserves and production in Neuquén Basin. ----------

(Tr., Day 3, C. Moo. page 623; Day 4, C. Moore, page 870; Day 4, F. Mezzadri, pages 1126-1128). --

b. To verify the lack of information of the experts of AESU and Sulgás, it is just enough to observe the list of gas exploration wells drilled by YPF during the period over 1994-2011 presented by Mr. Guzzetti in its Complementary Report which shows that during the period over 1994-2009, YPF drilled directly or indirectly (as non-operator partner) more wells than the rest of the producers

in Neuquén Basin.[176] This net number of wells (109) drilled by YPF considerably diverges from the 11 exploration wells that AGM Finanzas attributed to it or the 10 wells mentioned by Mezzadri or the 15 wells that Guadagni recognizes.[177] ----------

c. Mr. Guzzetti rejects the criticism made by Mr. Moore in his Second Report: ----------

i. "Data listing YPF as "owner" is data corresponding to wells drilled directly by YPF or by its partners in areas operated by those partners where YPF had an interest. The sum of wells drilled in the province of Neuquén in the period over 1994-2009 in which YPF had an interest were 98. If this number is adjusted (multiplying it) by the percentage of interest of YPF in areas where it had less than 100% ownership, this adjusted number is equal to 80.47 exploration wells drilled in the period over 1994-2009. The numbers described in our First Report as the information on "All except YPF" are all the wells drilled in Neuquén Basin, except for those drilled in areas where YPF was the operator. This comparison is not a problem because YPF has no partners in the areas that it operates in Neuquén Basin. Therefore, the number of drilled wells attributed to "others" also includes "third party" wells; these are wells where YPF has an interest. That is, it is a number that overestimates the actual number that "third parties" drilled according to their interest. [.. .]." (Second Complementary Report of Guzzetti, ¶27). ----------

ii. "This same analysis applies to Moore's comments on the Chart 3.c.2. of our First Report. In this case, in the period over 1994-2009, the total drilled wells in Argentina where YPF had any ownership interest amounts to 182. If we consider these wells by YPF's interest in areas not operated by it, that number is equal to 110.49 wells. If we wanted to compare this last number with the wells drilled by "third parties", there should be a similar reduction in the number of wells drilled presented as "third parties", based on considering this number by the percentage of their interest in areas where YPF is a partner". (Second Complementary Report of Guzzetti, ¶28). -

1068. YPF also alleges that it was demonstrated that (i) YPF complied with all its investment duties as a hydrocarbons licensee; and (ii) the experts of AESU and Sulgás ignored the evidence and the various awards of this fact by national and provincial authorities. Particularly, the authorities of the Energy Secretariat of the Nation and the Province of Neuquén admitted that YPF had complied with all its commitments as licensee and had achieved good levels of investment. Specifically: ----------

[176] See Complementary Report of Guzetti, ¶¶ 14-15 and the Lists of Exploration Well in pages 8-10; Second Complementary Report of Guzetti, ¶¶27-32, 47-48, and 55 and Complementary Report of Gaffney.----------

[177] See Complementary Report of AGM dated on September 23, 2011, ¶ 11; Second Complementary Report of MEZZADRI, page 30, item 10 (in fine) and GUADAGNI´s Report, ¶29.----------

a. In the year 2000, when analyzing the order of the license extension "Loma la Lata - Sierra Barrosa", the Executive Power of Argentina declared that "YPF SOCIEDAD ANONIMA" has appropriately complied with the obligations arising out of the Exploitation License of the Area "LOMA LA LATA – SIERRA BARROSA." (Executive Order No. 1252/2000, Annex YL-145). This condition was a requirement for the acquisition of the term extension of the licenses of Loma La Lata in the year 2000 (Section 35 of the Hydrocarbons Act, Annex YL-124). ----------

b. In 2008, YPF obtained the term extension of its other licenses in the province of Neuquén, which implied the acknowledgement that YPF had complied with its obligations as a licensee (Act No. 2615 dated October 9, 2008 of the Province of Neuquén, Annex YL-170). ----------

c. YPF also complied with the duty to invest US$ 8,000 million as a condition for obtaining the extension of the Loma La Lata license. The amount of those commitments arises expressly from the terms of the Resolution and certifications from the competent authority of the Province of Neuquén (Resolution No. 178/08 of the Secretary of State for Natural Resources of the Province of Neuquén dated August 29, 2008, Annex YL-169). ----------

d. In an internal Memorandum sent by the Legal Advisory to the Fuel Undersecretariat on January 16, 2004, officers from the Energy Secretariat analyzed the level of investment in supplementary exploration and exploitation in the country over 2000 and 2002-2003, and concluded that "The provinces most affected were Salta (71%), Tierra del Fuego (65%) and Santa Cruz (62%). Surprisingly, Neuquén did not reduce its investments due to YPF's commitments with the province due to the term extension of Loma La Lata license". (Annex YL-154). ----------

e. This was confirmed in another memorandum of the National Exploration and Exploitation Office on March 24, 2004 that analyzed the level of investment in the various hydrocarbon areas of the country, and made the following observation: "It may be observed the general slowdown of the applied funds, highlighting those for the areas of Acambuco (90%), Centenario (82%), Aguarague (53%) and the mentioned CAM-1. It is worth mentioning the atypical behavior of the area of Loma La Lata - Sierra Barrosa where the investment drop was not so significant". (Annex YL-156). ----------

f. The Energy Secretary recognized that the investments in Neuquén Basin "have allowed to cope with the crisis we are experiencing in a smooth way, so far" (Note No. 153 of the Energy Secretary Eng. Daniel Cameron to the Minister of Federal Planning, Public Investment and Services, Architect Julio De Vido, dated February 13, 2004, page 577, Annex YL-155). ----------

1069. YPF further alleges that both before and after the year 2004, when the Government of Argentina adopted the measures restricting the natural gas export, YPF has always invested in exploration. In this sense, YPF states that it followed the market trend in its investment commitments prior to the year 2004. YPF founds its statements on the First Report of FIEL, which proves that the performance of YPF on exploration investments in Argentina over the period prior to 2004 was similar to that of all producers together. ----------

1070. YPF also notes that the hearing demonstrated that the level of investment in exploration of any gas producer (not just of YPF) during this period must be judged by virtue of the following circumstances: ----------

a. During the years 1998 and 2000 in which the Gas Supply Agreement was signed and started to be executed, YPF had an average reserves/production ratio (R/P index) of about 18 years and the average R/P index nationwide exceeded 22 years. There was no sign that the regulatory framework would be considerably altered and that the government would interfere in gas prices since the year 2002 affecting the investments in exploration and replacement of reserves. ----------

b. During that period, we could see that YPF had enough reserves to comply with its contractual commitments. ----------

c. In the year 2004, when the Government of Argentina started to apply restrictions on gas exports, YPF had the same percentage of reserves in Neuquén (61%) than in 1998 (58%) when they signed the Gas Supply Agreement. ----------

c. The same expert of AESU and Sulgás, Chris Moore, attributed the declining evolution of exploration investments of all producers in Argentina- including YPF- since the late 1990s to the following factors: ----------

"[...] The fact that the exploration levels decreased in the years 1999, 1998 [...] it was an overall time with a low exploration budget." (Tr., Day 3, Moore, page 654). ----------

[...] The response to low prices was a general reduction of the exploration budgets as a result of low prices, approximately in the year 1998." (Tr., Day 4, Moore, page 871). ----------

"Any change in the pricing system has an impact on the industry, especially if it is supported by other issues. This is evident in exploration because it is discretionary". (Tr., Day 3, Moore, page 653) ----------

1071. YPF quotes Mr. Guzzetti, who explained in the context of economic assessment of exploration projects that "[t]he exploration is not carried out simply because it has to be made. That is, first, there must be a demand that needs to be addressed, there must be a reasonable

price of gas that can justify the payment of the exploration costs and the subsequent development costs". (Tr. Day 3, page 740 (Guzzetti)). ----------

1072. According to YPF, Mr. Moore acknowledged the investment efforts of YPF in exploitation, exploration and in development and operation of their oilfields despite the economic situation of the year 2002, stating that "[i]t is true that the pesification and the reduction of the values could have a significant impact on the exploitation, exploration and the development and operation of the new resources for the risks of exploration, require a higher investment, of higher value" but "[...] if we look at the expenditures of YPF in the year 2001, in 2002 there were no signs that YPF had stopped investing in deposits after the pesification. (See Tr., Day 3, C. Moore, pages. 604-605). ----------

1073. On the other hand, YPF alleges that the fact that it had more mature areas with already developed reserves allowed YPF to react more quickly than the other producers before the huge increase in demand that took place after the year 2002 as a result of the pesification and the freezing of natural gas prices. Such circumstance, combined with the investment of YPF in development, allowed YPF to increase its production in Neuquén Basin more than any other producer: 23.8% between the years 2002 and 2004 compared to 12.7% of the other producers. This was explicitly recognized by the expert of AESU and Sulgás, Mr. Mezzadri. Furthermore, if an earlier period was taken as comparative criterion, the result would not change: between the years 2000 and 2004, YPF increased its production by 24% compared to 13.7% of the other producers. ----------

1074. Also, while YPF's production began to decrease after the year 2005, if we count all its production (including the production of unoperated areas by YPF where it has an interest), YPF maintained a production level in the year 2009 equal to that in 1997, and over the 10-year period 1999-2009, the gas production of YPF decreased by 8%, i.e. less than 1% per year. In addition, the six major gas producers showed a decrease in the production from 2007/2008. ----------

1075. Consistent with this, YPF asserts that the hearing also showed (without being denied or contended by the experts of AESU and Sulgás) that (i) in the period over 1997-2010, the investment of YPF was higher than the economic growth, with the exception of the period of recession over 1998-2001, and that (ii) YPF " appropriately complied " with its duties as a licensee of hydrocarbons, thus, it could obtain term extensions of the license of Loma La Lata in the year 2000 and other licenses in Neuquén in the year 2008. ----------

1076. YPF also rejects the suggestion of AESU and Sulgás based on expert AGM Finanzas, that YPF did not invest much in the *upstream* (exploration and production of oil and natural gas). The expert FIEL explains that the comparisons with other companies which produce oil and natural gas which operate in Argentina (particularly, Pan American Energy and Petrobras) are inappropriate, since the levels of investment of these companies include ventures in other countries and different products. FIEL adds that the investments also depend on the remaining term of the exploration permits and exploitation licenses, the magnitude of resources and the existing economic incentives. In any case, the expert FIEL concludes that the comparison does not show any substantial difference between the investment behaviors of YPF. (FIEL Report, ¶¶ 251-253). ----------

(e) There is no correlation between YPF investment levels and the dividends paid by YPF to its shareholders ----------

1077. YPF asserts that the hearing also evidenced that the investment levels had no correlation whatsoever with the dividends paid by the company during this period. According to YPF, it clearly arises from the chart in Mr. Guadagni's report that in the years 1998-2000 when the prior level of investment of YPF began to decrease, the dividends paid by the company were the lowest in a period of 13 years. Also the dividend paid by YPF in the year 2002 was reduced. This was the year when the levels of investment in exploration decreased because of the economic recession. According to YPF, Mr. Guadagni could not explain the consistency of his thesis to attribute all the "evils" of YPF to the dividends paid by the latter, with this apparent lack of correlation. The expert could not explain how the dividends paid by YPF since 2008 onwards may have had an impact on the production levels for the years 2008 and 2009, due to the delay of time of at least five to seven years (as all experts agreed) between the execution of the investment and the eventual higher production if the exploration was successful. ----------

1078. Expert FIEL also criticizes AGM Finanzas biased usage of the information related to YPF dividends. FIEL notes that "focusing the analysis on the distributed dividends overlooks the financing policy chosen by each company, the investment opportunities it has, and so on. The investment can be financed with debt, with retained earnings or with new contributions from shareholders. Over time, those who provided the funds may withdraw all (or part) of the rebate generated in the activities of the company. Those who contributed debt will collect interest and those who contributed net assets will receive dividends. Generally, focusing the analysis on the "high" distributed dividends is not relevant, and it is more irrelevant to suggest that a company

has not invested. In this regard, it should be noted that YPF invested more than the depreciation of fixed assets of the year in each of the years from 2000 to 2010". (FIEL Report, ¶ 257). ----------

1079. In any case, YPF alleges that it had never invoked the lack of funds or lack of access to the credit market to overcome the regulatory force majeure. Indeed, YPF invested more funds than any other producer in Neuquén Basin. The distribution of its dividends is totally irrelevant. On the other hand, YPF alleges that the balance of benefits and the behavior of each of the parties regarding an agreement should always be done under that particular agreement; it cannot be analyzed taking into account the overall operation of that party, especially when they are important companies as Grupo Repsol and The AES Corporation. (Y-MC, ¶¶ 309-310). ----------

(f) YPF did not irregularly exploit its exploitation licenses ----------

1080. YPF denies having exploited its exploitation licenses irregularly (Y-MD, ¶¶ 444-452). Particularly, it asserts to have met the requirements under section 31 of the Hydrocarbons Act, requiring licensees to make such "necessary investments for the execution of the works required by the development of the entire surface encompassed by the license [...] ensuring the maximum production of hydrocarbons consistent with the proper economic exploitation of the oilfield". -----

1081. Based on the legal opinion of Dr. Martelli, YPF sustains that, according to this provision, the licensee's duty is no longer a duty to explore (to "locate hydrocarbons" pursuant to section 20), but to "develop", to "exploit" the licensed area or to "produce" (Legal Complementary Opinion of Hugo Martelli, ¶ 47). According to Dr. Martelli, "[t]he applicable regulatory framework does not impose any obligation to provide some portion or part of the domestic market, or to maintain a certain level of production or sales or reserves for the domestic gas market, nor even imposes less liability in the obligations and duties of licensees and producers." (Idem, ¶ 56) ----------

1082. Based on the experts Martelly and Bastos, YPF adds that: ----------

a. Neither the Hydrocarbons Act nor the supplementary rules ordered pursuant to it define the type of investments in production to be performed nor set a quantum; ----------

b. The established investment duty is not unconditional. Rather, those necessary investments for the development of the license are required, but a development that was always consistent with the "proper and economical" exploitation of the oilfield, so, the licensor cannot be required to show an uneconomic investment and license exploitation". ----------

c. The investment and development plans required by section 32 of the Hydrocarbons Act are submitted by the exploitation licensees before the enactment authority, which can challenge them or request their modification, and verify their fulfillment. ----------

1083. YPF asserts to have complied with its duties under the Hydrocarbons Act. It repeats that both the Energy Secretariat of the Nation and the Province of Neuquén recognized the high level of investment made by YPF and the fulfillment of its obligations as an exploitation licensee. It also notes that all of its licenses on areas located in the province of Neuquén were extended in the years 2000 and 2008 to the year 2027, which means that, according to the competent authorities, YPF "has appropriately complied " with its obligations as a licensee, because this is the legal standard required to approve the extension of a hydrocarbons exploitation license pursuant to section 35 of the Hydrocarbons Act. ----------

1084. YPF rejects the allegations of the experts of AESU and Sulgás, Mr. Mezzadri and Lisi, regarding the exploitation area of Loma La Lata - Sierra Barrosa (Y-MD, ¶¶ 288-295). First, YPF denies that the drop of reserves in Loma La Lata has been "surprising", and emphasizes that the normal drop of the oilfields in Argentina is around 10% according to various reports of the Energy Secretariat (Annex Y-152 and Y-153). YPF relies on expert Guzzetti's statement, who confirms that "the drop in the production of Loma La Lata - Sierra Barrosa from the year 2004 has been very reasonable: An annual 10%, better than many other oilfields with similar characteristics nationwide and worldwide. The reduction of reserves of the oilfield Loma La Lata is also normal in heterogeneous oilfields where there is not a horizontal and vertical continuity allowing a homogeneous drainage of it". (First Report of Guzzetti, ¶ 223) YPF also states that the Energy Secretariat acknowledged that "It is particularly worth mentioning the atypical behavior of the area of Loma de La Lata-Sierra Barrosa, where the drop in reserves was not so significant" (Memorandum of Exploration and Exploitation Office to the Fuel Undersecretary, on March 24, 2004, Annex YL-156). YPF also asserts that the history of production of Loma La Lata contests the allegations of expert Lisi, who said that since the year 2005, YPF had sharply and continuously decreased its production. ----------

1085. YPF also denies having overexploited the area of Loma La Lata using the technique of *"infill drilling"*, as Mr. Mezzadri asserts. As explained by Mr. Guzzetti, the *"infill drilling"* program was subject to the particular features of the site (complying with geological features), and was a rational practice to improve production, not to overexploit it. Moreover, even an eventual overexploitation would not have affected the amount of recoverable natural gas, but only the recovery of liquid hydrocarbons, which are not related to this arbitration. (First Report of Guzzetti, ¶¶ 239-242). ----------

1086. Additionally, YPF criticizes the experts' reports for the following reasons: ----------

a. it argues that Mezzadri exhibits distorted figures on the drop and production projections of Loma La Lata, as shown by the expert Guzzetti (First Report of Guzzetti, ¶¶ 228-229). ----------

b. When expert Lisi refers to the high potential in Loma La Lata, trying to create the appearance that this is wasted by YPF, the only thing that he is showing is that in Neuquén Basin there is still a remaining exploration potential, but he fails to mention that we cannot take the risk of exploring these resources without a proper price. As pointed out by Mr. Mezzadri out of this proceeding, a price higher than US$ 4.00/MMBtu (well above the current average received by producers) is needed to develop these resources (Francis A. Mezzadri, *"Costo de los subsidios explícitos e implícitos"* ["Cost of explicit and implicit subsidies"] Oil and Gas, May 2008, Annex YL-154). ----------

(g) YPF did not increase the domestic demand by agreements with related companies. ----------

1087. YPF denies having increased the domestic demand entering into agreements with related companies. (Y-MC, ¶¶ 425-434). ----------

1088. Firstly, YPF says that it has always had reserves and production capacity to meet all firm sales commitments. Therefore, it is irrelevant the fact that a portion of YPF's reserves has been converted into money, before the year 2004 by the gas sales agreements where YPF had a share of ownership. ----------

1089. Secondly, it states that it is all about contractual duties undertaken before the year 2004, when there was no regulation establishing the interruptible nature of the export agreements for domestic supply problems. ----------

1090. Thirdly, it assures that the volumes agreed upon by YPF with these companies reported by AESU and Sulgás in their Opening Brief are not correct. YPF provides the correct volumes in the following chart (Y-MC, ¶ 428; there is no reference to the source): ----------

	Client	**CDC according to AESU**	**REAL CDC**	
		CDC	**Real CDC**	**Clarification**
1	**Compañía MEGA**	Between 5,200,000 and 5,600,000	5,094,795 m3/day	The contractual commitment is 13.6% out of 34,520,548 m3/day, plus gas fuel ("RTP", or thermal recovery) of about 400,000

		m3/day		m3/day.
2	**Compañía PROFERTIL**	2,500,000 m3/day	0 m3/day	YPF does not supply natural gas from Neuquén Basin to PROFERTIL, PROFERTIL is supplied by different producers. YPF only delivers 565,000 m3/day from Cuenca Golfo San Jorge.
3	**Metanol**	1,000,000 m3/day	700,000 m3/day	300,000 m3/day is acid gas without specification that is not ready to be injected in the Transportation System.
4	**Refineries Luján de Cuyo (Mendoza) and Plaza Huincul (Neuquén)**	1,000,000 m3/day	1,000,000 m3/day	The Refinery Luján de Cuyo consumes approximately 575,000 m3/day and the Refinery Plaza Huincul consumes 480,000 m3/day. The supply was not increased in these refineries maintaining it at around 1,000,000 m3/day over the period 2004-2009. The supply is not carried out under the supply agreement because it is “own consumption”.
5	**Power Plant Plaza Huincul**	260,000 m3/day	0 m3/day	Volume consumed by the Plant Plaza Huincul is part of the 480,000 m3/day consumed by the Refinery Plaza Huincul.
6	**Power Plant Chihuidos**	400,000 m3/day	0 m3/day	Volume consumed by the Power Plant Chihuidos is approximately 400,000 m3/day. It is supplied with

				gas from the area that is partly of poor quality. The supply is not carried out under the supply agreement because it is "own consumption".
7	**Power Plant Dock Sud**	3,400,000 m3/day	1,735,000 m3/day	By amendment dated 10/20/2006, between May 15 and September 15 of each year, the agreement has an advantage without the duty to supply by YPF.
8	**Power Plant Los Perales**	600,000 m3/day	0 m3/day	YPF does not supply with natural gas from Neuquén Basin to the Power Plant Los Perales. The 600,000 m3/day are supplied from Cuenca Golfo San Jorge. Moreover, it is about the gas transformed in energy for own consumption of the YPF oilfields.
9	**Power Plant Mendoza and La Plaza Cogeneración**	1,500,000 m3/day	560,000 m3/day (Power Plant Mendoza) and 1,032,000 m3/day (La Plaza Cogeneración)	
	TOTAL	Between 15,860,000 and 16,260,000 m3/day	10,051,000 m3/day	There is a difference of more than 6,000,000 m3/day between the volumes reported by AESU and the real volumes.

1091. Fourthly, YPF sustains that there was no discriminatory treatment by YPF from the shipment of natural gas regarding the deliveries to its customers where YPF has an ownership interest, compared to exports, including those to AESU/Sulgás. YPF adds that its local customers (such as PROFERTIL and MEGA) were also affected in their deliveries. ----------

1092. On the other hand, YPF denies having increased its commitments after the year 2004. On the contrary, since the measures imposed by the Government of Argentina that disrupted export agreements in the year 2004, YPF did not sign any new natural gas sale agreements from Neuquén Basin. YPF is based on the First Report of Guzzetti, ¶ 109. ----------

1093. YPF also asserts that the allegations of AESU and Sulgás have significant mistakes, such as: --

a. In intending to prove alleged increases in volumes traded by YPF by showing the evolution of all sale commitments of YPF in millions of dollars, they incur in significant methodological mistakes: (i) they do not discriminate by basin as they should cover only those commitments related to Neuquén Basin, and (ii) they use monetary units and not physical units as must be done to demonstrate the increases in the commitments of delivery of natural gas. ----------

b. They assert that in the year 2006, "the commitments were increased by 63%, in a context of price variation of 20%." According to YPF, these figures are wrong, because the price increase derived from a combination of factors, including: the price increases in certain partially not regulated areas *(unbundling)*, formulas of prices of previously signed agreements, increase in export taxes (MEyP Resolution No. 534/2006). Furthermore, the volumes agreed upon by YPF in the year 2006 decreased by 5% compared to previous year. ----------

c. They assert a hypothetical existence of "85% growth in all nominal commitments of future sales between the years 2007 and 2008, but, given the variation in gas prices in the year 2008 (39%), it shows a substantial growth of 33% in the agreed physical volumes". This is a mistake, since the above mentioned growth of 85% primarily arises from the impact generated by the increase in export taxes by the application of the MEyP Resolution No. 127/08, which increased considerably regarding the levels of the year 2007. Excluding these increases in the monetary values of the projected sales of YPF, in the year 200[8] the remaining contractual volumes decreased once again by 8% compared with its value in the year 2007. ----------

(h) The Export Authorization is an administrative valid act ----------

1094. YPF rejects the allegations of AESU and Sulgás on the alleged invalidity of the Export Authorization (Y-MC, ¶¶ 174-191; Y-Reply, ¶¶ 183-188,194-199). ----------

1095. YPF alleges that the procedural requirements of the SE Resolution 299/98 did not apply to the processing of the Export Authorization, in accordance with the provisions of the Provision SSC 274/98 (Annex YL-140, paragraphs 7 and 8 and section 8). According to YPF, regarding the processing of the Export Authorization (and the processing of other authorizations that might be in a similar situation) was virtually completed when the Resolution 299/98 was ordered. Such Provision established that the procedural requirements of the SE Resolution 299/98 regarding all procedures complying with the conditions therein stated shall not apply. ----------

1096. Regarding the SE Resolution 465/98, it rejects that had a defect cause and that the data related to reserves submitted by YPF when requesting the authorization was false. In connection with the amendment to the reserves made by YPF in the year 2006, YPF sustains that the estimation of reserves always involves some degree of uncertainty and that it is made for a given date or period, so, the actual results may vary as a result of different variables. It also clarifies that the amendment of reserves held in the year 2006 was limited to the period 2003-2004 and, in any case, YPF kept the reserves to comply with the Gas Supply Agreement even after the review of the reserves published in the year 2006. ----------

1097. YPF also indicates that year to date, and showing that the Export Authorization is not administratively or judicially void, it is still in full force and effect and should be considered as a legal and effective administrative act. This is according to the principle of legitimacy assumption of the administrative act, whereby any administrative act is assumed to be legitimate and remains effective as long as it is not otherwise stated by the competent body. ----------

(i) YPF did not make conditional the delivery of gas nor abuse from its dominant position in the gas market ----------

1098. YPF denies having made conditional or suspended the gas deliveries under the Agreement upon AESU and Sulgás refusal to address the following features (i) the payment of the higher costs involved in the performance of energy substitution operations [OSE, for its acronym in Spanish], (ii) the payment of export taxes on gas, and (iii) the payment of royalties generated by the increase of the export tax. YPF also denies that its performance constituted an abuse of dominant position. (Y-MC, ¶¶ 465-478) ----------

1099. YPF says that AESU and Sulgás cannot prove a single day when YPF has justified a failure of delivery of gas due to the Importer's refusal to pay these benefits. By contrast, even before the Importer's defaults to comply with the payment of such costs, YPF had always delivered gas to the Importer up to May 20, 2008, when the Importer stopped nominating gas under the Gas

Supply Agreement based on the winter period under the Supplementary Agreement. In any case, YPF alleges its complaint about these payments constituted the regular exercise of a right that can never be illegal (Section 1071, Civil Code). ----------

1100. According to YPF, AESU and Sulgás mislead the facts. In connection with the OSEs, YPF says that it accepted all the OSEs requested by AESU even when the Gas Supply Agreement releases it from the above-mentioned. Therefore, it is not true that YPF has failed to deliver gas to the Importer for its failure to undertake the higher costs involved in the performance of it. But in any case, Section 17.4 of the Gas Supply Agreement expressly releases YPF from any obligation to replace the gas affected by a force majeure event. Therefore, YPF had the right to require the Importer to bear the incremental costs that would be generated by the implementation of an OSE, and, under no circumstances this may be interpreted as an "abuse of its dominant position" in the gas market, but it is simply in compliance with the terms of the agreement. ----------

1101. As regards export taxes, as already explained, YPF says that in section 13.1 of the Gas Supply Agreement, the importer expressly assumed the risk of the application of export taxes on gas. (See Part VII.A.6 *supra*). Therefore, it was a contractual obligation of the Importer, and the requirement of payment by YPF could not constitute an abuse of its dominant gas market position, but the regular exercise of its right. ----------

1102. Regarding the payment of incremental royalties, YPF acknowledges that the additional royalties had a negative impact on the exporting producers of natural gas, including YPF. It also admits that it tried to transfer the cost of the additional royalties to their foreign customers who had taken the risk and cost of the higher taxes on gas export, including AESU. However, YPF rejects that it had made conditional or suspended the gas deliveries under this reason. It argues that it was only a claim stated in letters but that it did not result in any retaliation or restrictive fact. (See Part VII.A. *supra*). ----------

1103. Additionally, YPF sustains that, contrary to the Importer's claims, the alleged "violations by YPF of Act 25.156" cannot be invoked in this arbitration; not because they cannot be treated in arbitration, but for exceeding the scope subject matter of the arbitration clause. Thus, section 20.2 of the Gas Supply Agreement limits the jurisdiction of the arbitrators to the disputes "arising out of the interpretation and/or execution of this Agreement." Clearly, the alleged "violation" of the Protection of Competition Act by YPF is not a dispute arising out of the interpretation and/or execution of the Gas Supply Agreement. Thus, even considering that YPF had somehow breached the Protection of Competition Act, if the Importer would feel affected by it, the Importer has the

common law actions granted by section 51 of the above mentioned law to enforce his rights, but it cannot submit the issue to this arbitration proceeding. However, YPF emphasizes that the Importer has never filed any claim against YPF on this subject, nor before the National Commission for Protection of Competition, or before the Courts of Argentina, which proves that the alleged infringement actually does not exist. ----------

1104. Finally, YPF says that AESU and Sulgás mislead the judicial decision they quote and that YPF has never been sanctioned for abusing of its position in the natural gas market. In the case quoted by the importer, it was discussed YPF's performance in the GLP (Liquefied Oil Gas) [GLP, for its acronym in Spanish] market that is not related to the natural gas market, and even has a different legislative treatment. ----------

c. Analysis ----------

1105. There is no dispute between the parties that, on several occasions between 2004 and 2006, YPF did not deliver the gas nominated by AESU acting on Sulgás's behalf. Therefore, the discussion focuses on whether YPF failures of gas delivery were excused by force majeure or not. -

1106. The discussion also addresses whether YPF has complied with additional obligations arising from section 3.4 of the Gas Supply Agreement, whose scope is also in dispute. ----------

1107. Additionally, AESU and Sulgás allege that YPF breached other duties related to the main duty to deliver gas, and they claim that they do not arise from the text of the Gas Supply Agreement but must be understood as implicitly contained therein. ----------

1108. Before starting the analysis, the Tribunal considers it useful to provide some preliminary explanations regarding the scope of the duties of YPF and the way in which the Tribunal will address the allegations of AESU and Sulgás regarding the alleged breaches by YPF (i). ----------

(i) Scope of the duty of YPF - The alleged breach of duties related to the duty to deliver gas -------

1109. There is a dispute between the parties regarding the scope of YPF duty to deliver gas.---------

1110. On the one hand, AESU and Sulgás provide a broad scope, arguing that under the terms of Sections 2 and 3.4 of the Gas Supply Agreement, YPF guaranteed the supply of gas, undertaking to do everything necessary to comply with its duty. The Tribunal understands that the allegation of AESU and Sulgás is that such would be the source of the other duties related to the duty to deliver gas, whose infringement is also alleged.----------

1111. On the other hand, YPF sustains that its duty to deliver gas is expressly limited to the behaviors set forth in section 3.4 of the Gas Supply Agreement, constituting, thus the

understanding stated by AESU and Sulgás considered as non-sensical in the sense that it aims to turn YPF into the guarantor of the domestic demand.----------

1112. The Tribunal considers it appropriate to specify two points. The first one is that the Tribunal does not interpret the position of AESU and Sulgás in the sense that YPF has undertaken a duty to guarantee domestic demand. The allegation of AESU and Sulgás is that, in addition to its contractual duties, YPF is committed, under the Acts of Hydrocarbons and Gas, to give precedence to the fulfilment of domestic needs. AESU and Sulgás argue that YPF knew or should have known that if it wanted to comply with its contractual duties, firstly it had to comply with its legal duties (A/S-Rejoinder, ¶¶ 238-295).----------

1113. The second point is related to the scope of the duty of YPF and its association to the allegations of the parties on force majeure and on other breaches of alleged "duties" of YPF. The Tribunal agrees with YPF in that its duty to deliver gas is subject to the behaviors stated in Sections 2 and 3.4 of the Gas Supply Agreement, without prejudice to recognize, as alleged by AESU and Sulgás, the demanding standard that YPF forced itself to observe under these provisions. These sections state: ----------

“Section 2 – SUBJECT MATTER ----------

YPF is committed to put at the disposal of Petrobras and to sell Petrobras {today Sulgás} NATURAL GAS corresponding to UNDERLYING GAS, ADDITIONAL GAS AND PEAK GAS, as appropriate, in the quantities, conditions and during the term established in this AGREEMENT; and Petrobras {today Sulgás} is committed to receive, purchase and pay YPF the above-mentioned GAS in accordance with the terms, conditions and during the term established in this AGREEMENT”.----------

"3.4) Guarantee of supply----------

YPF guarantees PETROBRAS {today Sulgás} the supply NATURAL GAS under the terms set forth in this AGREEMENT for all the TERM established in Section 3.1, for which purpose YPF undertakes to: ----------

i) Make its best efforts to maintain its licenses of exploitation of hydrocarbons and everything needed to comply with the provisions of Section 2 of this AGREEMENT, including obtaining term extensions of the above-mentioned licenses; ----------

ii) Maintain, to the extent dependent on YPF, the export authorization needed to make the gas export possible under the terms established in this AGREEMENT”. ----------

1114. The Tribunal agrees with AESU and Sulgás that the warranty obligation, under the term "to guarantee" established a greater intensity for YPF in the compliance with its duty to deliver. The Tribunal also interpretes that paragraphs (i) and (ii) of section 3.4 do not eliminate the general proposition contained in the *chapeau* of section 3.4 (the guarantee of supply), but they complement it, indicating specific behaviors that YPF is committed to carry out to ensure such supply ("To which purpose, YPF is committed"). ----------

1115. In this regard, the Tribunal notes that YPF committed its "best efforts" to keep its hydrocarbons exploitation licenses, including the acquisition of the necessary term extensions, and to make "everything necessary" to comply with its duty to make available and sell natural gas to Sulgás in the quantities, conditions and during the term stated in the Gas Supply Agreement. ---

1116. In addition, YPF “is committed to […] keep, to the extent dependent on YPF, the export authorization needed to carry out gas export under the terms agreed upon in this AGREEMENT” (Section 3.4, paragraph (ii)). The Tribunal considers that pursuant to this commitment, YPF also committed itself to maintain the conditions necessary to keep such export authorization in full force and effect. ----------

1117. In the Tribunal's point of view, these provisions impose on YPF a higher standard of diligence than a "real family man" or "reasonable" person that usually governs the contractual obligations. While the level of diligence to be expected in the duty to deliver, both in the Vienna Convention and under Argentine Law, does not exceed the one expected of a gas producer under the same condition and in similar circumstances to those of YPF, the warranty obligation agreed upon under section 3.4 of the Gas Supply Agreement imposes a greater expectation of compliance by YPF. This means that, in order to be excused from the compliance with its duty to deliver gas, YPF must show that it performed its best efforts to make "everything necessary" to comply with this warranty, using everything available to supply gas and maintain the export authorization. ----------

1118. In this context, the Tribunal considers that the allegations of AESU and Sulgás about the fact that YPF did not comply with those "related duties " to the duty to deliver gas are admissible, (such allegations are summarized in PartVII.B.1.a (iv) *supra*). Most of these "related duties " to the main duty to deliver gas are neither isolated nor meaningless by themselves, but they are behaviors necessary or conducive to the fulfillment of the above mentioned which constitutes the main duty. AESU and Sulgás seem to have understood it accordingly. Indeed, except for the duty to behave "as a reasonable and prudent operator," to pay DOP penalties and to assume the

responsibility for the gas transportation, the duty to deliver gas is the only specific duty that AESU and Sulgás identified in the text of the Gas Supply Agreement and that could have been breached by YPF. Additionally, although AESU and Sulgás argue that "the duties incurred by YPF under the {Gas Supply Agreement} are not only those specifically described in the text of the {Gas Supply Agreement}", it is explained below that the duty of YPF "is extended to comply with everything necessary to fulfill the obligations described in the text of the {Gas Supply Agreement} and to refrain from anything that would jeopardize its compliance [...]" (A/S-MD ¶ 484). In this sense, AESU and Sulgás sustain that the "{Gas Supply Agreement} required YPF to perform certain acts or to meet certain behaviors as well as to omit certain acts, all of which would contribute to the delivery of gas by YPF pursuant to the {Gas Supply Agreement}" (A/S-MD ¶ 483). This confirms that these alleged "related duties" represent just different angles of the duty to deliver gas.---------

1119. For this same reason, the behaviors described by AESU and Sulgás as "breaches" of these "related duties" do not create separate and different breaches from the failure to supply gas, but they are part of the duty to deliver and are relevant only to the extent that might have contributed to the failure of the main duty of YPF, consistent with the duty to deliver gas under section 3.4 of the Gas Supply Agreement. As long as YPF complies with its duty to deliver gas, the breach of these alleged "related duties" does not create any liability to YPF. ----------

1120. Having said that, the behaviors alleged by AESU and Sulgás may act as proof regarding the failure of YPF to comply with its main duty to deliver gas under section 3.4 of the Gas Supply Agreement. Although the Gas Supply Agreement does not require YPF to undertake a certain level of exploration or exploitation, nor restrict the number of sales agreements that it may enter into, nor set the limits on the amount of dividends that YPF may distribute to its shareholders, it is worth recognizing that a lack of exploration, or an abusive exploitation of YPF's reserves, as well as an overhiring or an excessive dividends distribution could, hypothetically, mean that YPF did not make its best efforts to comply with its duty to deliver gas, or that it did not do everything necessary to keep the Export Authorization. This behavior of YPF could show that YPF did not comply in good faith with its duty to fulfill the Agreement, infringing section 1198 of the Argentinean Civil Code, which provides that "[t]he contracts should be entered into, interpreted and implemented in good faith and in accordance with what was credibly understood or could have been understood by the parties, acting careful and caution". ----------

1121. For these reasons, except for those breaches referring to independent obligations under the Gas Supply Agreement (alleged breaches of the duty to pay DOP penalties, the duty to act as

a reasonable and prudent operator, and the responsibility for the transportation), the Tribunal did not address the alleged breaches of YPF separately, but in the context of a breach of YPF of its duty to deliver gas. To a greater extent, the behavior that AESU and Sulgás attribute to YPF is the basis of its allegations about the absence of force majeure, so, they will be firstly addressed in this context. ----------

*** ----------

1122. Below, the Tribunal will determine if YPF is released from the compliance with its duty to deliver gas on the grounds of force majeure. The Tribunal will first address the applicable rules (ii), then the requirements in order to be considered as force majeure, (iii) and then, it will consider whether these requirements are met in this case (iv). Finally, the Tribunal will render a decision regarding the alleged breach of YPF of its duty to deliver gas (v). ----------

(ii) Rules applicable to force majeure ----------

1123. Although section 79 of the Vienna Convention establishes the general principle regarding the release from liability under this Convention, the Gas Supply Agreement establishes specific rules regarding the release from liability for acts of God or force majeure events (the Tribunal understands that the two terms are indistinctly used in Argentina law). In fact, section 17 of the Gas Supply Agreement establishes: ----------

"Section 17 –FORCE MAJEURE OR ACT OF GOD ----------

17.1) DEFINITION, SCOPE AND EFFECTS ----------

The definition, scope and effects of the FORCE MAJEURE OR ACT OF GOD shall be the ones specified in the Argentine Civil Code (section 513, and subsequent and related sections) and in this Section 17." ----------

17.2) FORCE MAJEURE OR ACT OF GOD OF YPF ----------

FORCE MAJEURE or ACT OF GOD OF YPF stands for any FORCE MAJEURE or ACT OF GOD that prevents YPF from offering PETROBRAS any quantity of GAS that YPF would be otherwise obliged to put at PETROBRAS's disposal by virtue of this AGREEMENT, including the impossibility to supply and/or transport GAS to the POINT OF DELIVERY by the FORCE MAJEURE OR ACT OF GOD OF TGN or by FORCE MAJEURE OR ACT OF GOD OF TGM, or comply with any other obligation of YPF by virtue of this AGREEMENT which was not an obligation to pay outstanding sums of money pursuant to the AGREEMENT. ----------

In the event of FORCE MAJEURE OR ACT OF GOD OF YPF, YPF shall not be liable before PETROBRAS for damages. The compliance with the duties of the PARTIES subsequent to the

FORCE MAJEURE OR ACT OF GOD shall be suspended, as long as the cause that gave rise to it lasts, including the PRICE OF SEGMENT A OF TRANSPORTATION and the PRICE OF SEGMENT B OF THE TRANSPORTATION. ----------

[...] ----------

17.4) NOTICE AND RESTORATION OF USUAL PERFORMANCE ----------

Any of the PARTIES or PARTICIPANTS who mentioned a release from its contractual duties due to FORCE MAJEURE or ACT OF GOD: ----------

a) shall immediately notify the other PARTY about the circumstance mentioned as FORCE MAJEURE or ACT OF GOD; ----------

b) in the aforementioned FORMAL NOTICE, or as soon as possible after such notice, it shall give the information on the event, the actions and the time deemed necessary to normalize the situation, supporting said information with any document or record available; ----------

c) shall immediately grant the other PARTY when possible, the access to any facility affected by such event to inspect the place, at the own cost and risk of the PARTY who makes the inspection;

d) shall perform at its own cost and expense a REASONABLE AND PRUDENT OPERATION in order to remedy the failure, or mitigate the consequences of said situation over a shorter term as soon as possible; ----------

e) in relation to any of the matters affected by the cause of the FORCE MAJEURE OR ACT OF GOD, it will exercise its rights in good faith and duly considering the interests of the other PARTY, providing, however, that none of the PARTIES shall be forced to agree through the mediation of a labor conflict, unless in the way they deem proper at their own opinion, and providing, moreover, that YPF shall not be obliged to replace the GAS with another natural gas.----------

[...] ” ----------

1124. In turn, sections 513 and 514 of the Argentine Civil Code set forth: ----------

“SECTION 513. –Debtor shall not be liable for the damages and interest originated to the creditor for the failure to comply with the duty, when they turn to be force majeure or act of God events, unless debtor would have taken the responsibility for the consequences of the force majeure event, or this had been its fault, or it had felt in arrears, that was not motivated by force majeure or act of God. ----------

SECTION 514. –Act of God is that one that has not been foreseen, or if foreseen, it could not be avoided” ----------

1125. The expert of YPF, Dr. Antonio Boggiano, explains that there are no major differences between the exemption regime of the Vienna Convention and the release from liability regime by force majeure of the Argentinean Civil Code in general. (Boggiano, Supplementary Opinion {quoting Garro}, ¶ 11). Since, according to the express terms of section 17(1) of the Gas Supply Agreement, it is applied the regime of release from liability by force majeure pursuant to Argentine Law, the Tribunal declares that the parties agreed to a partial *opt out* of the Vienna Convention and that it will base its analysis on Argentine Law. ----------

(iii) Concept and requirements of force majeure ----------

1126. There is no dispute between legal experts of the parties about the fact that the force majeure is a ground for release from liability for the breach, although there are different opinions regarding its nature. Particularly: ----------

a. On the one hand, the legal experts of AESU and Sulgás, Dr. Alberto Garcia Lema and Estanislao Bougain, explained that sections 513 and 888 of the Argentinean Civil Code attribute to force majeure the legal consequence of exoneration for the failure to comply with the duties of the debtor, with special attention to the absence of fault on its part. Sections 512 and 902 establish the extent of debtor's fault (Garcia Lema/Bougain, A8/S8, ¶¶ 209-210). In this sense, Dr. Garcia Lema and Bougain seem to adhere to the classical books of authority where the force majeure is consistent with the lack of fault. ----------

b. The expert of YPF, Dr. Aida Kemelmajer de Carlucci, points out that the modern trend is not considering a force majeure event that is consistent with the lack of fault, but as a cause of causal exemption (in the sense that force majeure interrupts the causal link, and the debtor is not the one who caused the damage) (Kemelmajer, ¶¶ 70-81). Dr. Alberto Bueres, expert of AESU and Sulgás seems to agree with Dr. Kemelmajer, stating that "[t]he Act of God is not a factor of presumption of innocence but of non-causality" (Bueres, A98/S98, ¶ 1.2). Dr. Bueres points out that the consolidation of the objective cause-and-effect theory (of the inability to pay) does not emphasize the fault/no fault of the debtor to avoid the cause (inevitability and irresistible character) but it focuses on the risks on the control and organization area of debtor, so, the lack of fault does not releases debtor until the latter proves a positive cause external to such risks. (Bueres, ¶ 1.6). ----------

1127. Beyond these theoretical disagreements about the nature of the force majeure as grounds for release from liability, the experts agree on the identification of most of the requirements to be considered as force majeure under the Law of Argentina. Dr. Kemelmajer, highlights that

section 514 of the Argentinean Civil Code establishes two requirements in order to constitute force majeure: (i) the unforeseeable nature of the event, and (ii) the inevitability of its consequences (i.e., that constitutes an unsurpassable obstacle). She adds that Argentine books of authority and case law have also required the following additional requirements are met: That the fact is strange or external to debtor, extraordinary, and that it makes it impossible to fulfill the obligations (Kemelmajer, ¶¶6-7; 12-69). ----------

1128. The experts of AESU and Sulgás generally agree with the identification of these requirements. According to the opinion of Dr. Garcia Lema and Dr. Bougain, the books of authority of Argentina demand that two of the main requirements be met to consider force majeure that allows to hold debtor harmless; that is: (i) an unforeseeable event and beyond the debtor's control and (ii) the non-attribution of liability to debtor. In addition, it is required that the event is extraordinary, public and well-known, supervening (that is, after the creation of the duty) and has to make the fulfillment of the obligation impossible (Garcia Lema/Bougain, A8/S8, ¶¶206-209). However, they highlight that the debtor may only be exempted from the fulfillment of the services if there is an event complying with all these requirements (external, unforeseeable, inevitable, extraordinary and well-known, turning the fulfillment of the obligation impossible, whether permanently or temporarily), that there is no debtor's fault, which is understood taking into account the acts required by the nature of the duty, debtor's circumstances and the diligence duty corresponding to him. They affirm that the releasing excuse must be rejected if the person intending to oppose it failed to take the necessary precautions required by the circumstances of persons, time and place (Garcia Lema/Bougain, A8/S8, ¶¶209-212). ----------

1129. Another AESU and Sulgás expert, Dr. Alberto Bueres, highlights we must distinguish between the fact, that must not be attributable to the debtor, and the inability to pay or the impossibility derived from the performing the obligation, that must be objective and absolute (effective) (Bueres, ¶ 1.3). Dr. Bueres also makes reference to the requirements of unpredictability, inevitability/non-exceeding and non-involvement/strangerness. ----------

1130. Considering the unanimous opinion of the experts regarding the identification of the requirements of force majeure, the Tribunal concludes that these are: ----------

a. Unforseeable event; ----------

b. Inevitable event or inevitable consequences of it, requirement that may also be related to the unsurpassable nature of the event or its consequences; ----------

c. Failure to comply with the duty; ----------

d. Non-involvement/strangeness of the event regarding the person who invokes it. ----------

1131. Except for certain exceptions, the experts of the parties also agree on the interpretation of these requirements. The Tribunal will refer to these understandings when addressing the different requirements. ----------

(iv) Was there a force majeure event? ----------

1132. Below, the Tribunal will determine whether in this case the requirements of the force majeure are met or not. The Tribunal will begin with the legal requirements of unpredictability and inevitability and subsequently, it will continue with the other requirements of books of authority, if necessary. ----------

(a) Facts invoked by YPF: Were said events unforeseeable? ----------

1133. The experts of the parties agree on their interpretation of the unforeseeable requirement. Dr. Kemelmajer argues that the foreseeable duty should be required based on the assumed duty, and adds that the criterion prevailing in the Argentine system is that unpredictability is relative (i.e., regarding debtor, in the circumstances). In any case, she says that predictability is linked to the concept of reasonableness. (Kemelmajer, ¶¶ 12-21). Dr. García Lema and Dr. Bougain seem to agree with this point of view, noting that their understanding may only derive from the nature of the duty, from the environment in which it is originated and developed, and from the people involved in it (Garcia Lema/Bougain, A8/S8, ¶ 207). ----------

1134. In this case, the Tribunal considers that there are two relevant angles from which the topic of unpredictability may be analyzed. Upon the execution of the Gas Supply Agreement: ----------

a. Was it foreseeable that, in a situation of shortage of gas, the Government of Argentina could restrict gas exports to benefit the domestic supply? ----------

b. Was it foreseeable that a situation of shortage of gas in Argentina would take place? ----------

1135. The parties have addressed all these items in this arbitration, although not all of them in the express context of the requirements of force majeure. Below, the Tribunal will refer to all allegations considered relevant to answer the two questions made. ----------

(1) *Was it foreseeable that, in a situation of shortage of gas, the Government of Argentina could restrict gas exports to benefit the domestic supply?*----------

Position of YPF ----------

1136. YPF argues that the changes in the rules and measures taken by the Government of Argentina were unforeseeable, because upon the execution of the Gas Supply Agreement could not be foreseen that the government would drastically modify the regulatory framework applicable to gas exports, or that it would violate the legal continuity of the rights arising out of the export authorizations already granted (such as the Export Authorization of YPF to deliver gas to the Uruguayana power station, Annex YL-61) or the non-discrimination commitment between domestic and foreign consumers stated in all Energy Integration Agreements, including the Protocol with Brazil (Annexes YL-56 and 64). According to YPF, this constituted an open breach of the express guarantees contained in the regulatory framework applicable to gas exports in the Export Authorization, and in international commitments undertaken by Argentina with neighboring countries, including Brazil, on energy integration and it was not foreseeable at the moment of execution of the Gas Supply Agreement. ----------

1137. YPF, based on experts Carlos Bastos and Hugo Martelli's opinions (Carlos Bastos's Report, ¶¶ 60-88, 105-119; Complementary Report of Carlos Bastos, ¶¶ 10-35; Legal Opinion of Hugo Martelli, ¶¶ 31-62; Complementary Legal Opinion of Hugo Martelli, ¶¶ 4-20) argues that, as of the date of execution of the Gas Supply Agreement, natural gas exports were not subject to the principle of self-supply established in the Hydrocarbons Act (Annex AL1/SL1), but to the principle of not involvement of domestic supply (regardless of the source of supply) contained in section 3 of the Gas Act (Annex YL-10, AL1/SL1, T-VI-2). This is because, according to YPF, since the Gas Act was enacted, the Hydrocarbon Act is not applicable to the export of natural gas. YPF notes as proof of the foregoing that neither the main rules on natural gas exports, nor the 34 export authorizations granted by the government since the effective date of the Gas Act, quote the Hydrocarbons Act among its sources. According to YPF, the most evident proof of the opt out of the principle of self-supply in natural gas is the coexistence of natural gas imports and exports in Argentina between 1997 and 2004. ----------

1138. YPF sustains that, according to the current regulatory framework, upon the execution of the Gas Supply Agreement (i.e., the Gas Act and its complementary provisions), the exporting producers were not required to supply the domestic market as a condition to export. The only condition to export, imposed by section 3 of the Natural Gas Act, was to obtain a prior

authorization of the Energy of Secretariat, whose granting was subject to verification, prior to its granting, that the export of these volumes would not affect the domestic market supply.[178] --------

1139. YPF explains that these authorizations could possibly be rejected or authorized for lower volumes than the requested ones, but once granted, they were final; in other words, they could not be interrupted because of future problems in the domestic supply and under any circumstance could its legal continuity be affected. This was clearly stated in section 12 of the SE Resolution No. 299/1998 (Annex YL-58), which, after stating that the Energy Secretariat would conduct an evaluation of the process of gas export authorization every five years, added that "[i]n any case the legal continuation of the export authorizations granted up to that date will not be affected." This is also confirmed by Mr. Bastos, who says that it was "a clear and undisputed premise" about the fact that, once an authorization was granted, "this would not be affected in case of future problems in the gas supply in Argentina" (C. Bastos's Report, ¶ 73). ----------

1140. According to YPF, the rules foresaw only one type of volumes of gas that could be interrupted, and these were "surplus" volumes. YPF explains that Executive Order 1738/92 (Annex YL-47) distinguished two volumes: the firm ones (or maximum authorized ones) and surplus. According to Section 3, only the latter was interrupted in case of difficulties or domestic supply problems. According to YPF, the Export Authorization for the Uruguayana Power Station was granted with a firm feature, as revealed by the express text of Section 1 of the Resolution 465/1998 (Annex YL-61), where such authorization was expressed. ----------

1141. In view of the above mentioned, YPF sustains that at the time of executing the Gas Supply Agreement, it could not be foreseen that this regulatory framework would change, turning firm volumes into interrupted volumes based on the supply of the domestic demand. ----------

1142. Considering the regulatory context and the Energy Integration Agreements (which did not allow a discriminatory treatment based on the place of the consumer location), it could never be "considered" that the government would act as it did, disrupting and restricting firm exports granted under the framework of the regional Energy Integration Agreements signed with Brazil, among others. ----------

1143. YPF relies on Dr. Kemalmajer's opinion who asserts that when signing this agreement there was no indication which led to think that regulations would change. According to this expert, the foreseeability is consistent with the reasonableness, and the latter is intended to anticipate what,

[178] Section 3 of the Gas Act (Annex YL-10) indicates: "In each case, natural gas exports must be authorized by the Executive Power of Argentina, within ninety (90) days upon the reception of the request, to the extent that this does not affect the domestic supply". ----------

within the regular course, can be verified, and to set aside what breaks with the natural sequence of events. The expert notes that the Gas Supply Agreement was executed in the year 1998, when the government promoted exports, and a company has a legitimate expectation that the governmental actions do not violate the acquired rights, such as the rights granted through export authorizations. Consequently, the restrictions imposed should be considered abnormal and an organized and foresighted contractor did not have to anticipate them at the time of closing his deals. The expert warns that the parties foresaw the restrictions on foreign exchange for the payment duty of the foreign company (section 15.4.2 of the Agreement) but they did not foresee anything about the restriction and the fuel exports. (Kemelmajer, ¶¶ 153-158).----------

1144. Dr. Kemelmajer adds that no provision contained in the Gas Supply Agreement may be understood in the sense that the obligations of YPF included the prior provision of the domestic market. According to the expert, such a significant and relevant obligation should have been foreseen in the text of the agreement, as the above-mentioned probable exchange restrictions were foreseen" (Kemelmajer, ¶ 159).----------

Position of AESU and Sulgás ----------

1145. AESU and Sulgás deny that the government measures restricting gas exports have been unforeseeable. They allege that the measures of the Government of Argentina did not change the existing regulatory framework at the moment of execution of the Gas Supply Agreement, according to which, natural gas exports have always been subject to the prior supply of the domestic demand. Being YPF the most important operator in the natural gas industry in Argentina, it should have known the rules governing its acts. ----------

1146. Based on the legal opinions of Dr. Garcia Lema and Dr. Bougain and Mr. Francisco Mezzadri, AESU and Sulgás state that Argentinean laws and regulations governing the export of natural gas at the time of signing the Gas Supply Agreement already conditioned gas exports to the fact that the local demand was satisfied (Legal Opinion of Alberto García Lema and Estanislao Bougaín, ¶ 19). In this sense, they argue that the correct understanding of Section 3 of the Hydrocarbons Act (Act 17,319), Section 6 of the Gas Act (Act 24,076) and Section 42 of the Argentine Constitution, is that the legal regime gives priority to the compliance with the domestic demand over export commitments, and that exports must yield to the needs of the domestic demand. ----------

1147. Against the allegations of YPF, AESU and Sulgás say that there is no conflict between Section 6 of the Gas Act and Section 6 of the Hydrocarbons Act. According to AESU and Sulgás,

the straightforward will of the legislator when approving the Gas Act was to maintain Section 6 of the Hydrocarbons Act in full force and effect. In any case, they argue that Section 3 of the Gas Act did not innovate regarding the provisions of Section 6 of the Hydrocarbons Act, therefore, due to the fact that there was no regulatory conflict between those provisions, both remained in full force and effect. ----------

1148. In this sense, Mr. Mezzadri argues that the provisions of Section 3 of the Gas Act estabilishing that the domestic market shall not be affected, are consistent with the criteria of Section 6 of the Hydrocarbons Act, considering the domestic market benefits in the whole chain of hydrocarbons production and distribution (F. Mezzadri´s Report, page 32). ----------

1149. In reply to the allegation of YPF that the enactment of the Natural Gas Act changed from a principle of self-supply to a principle of non-impairment of the domestic supply, AESU and Sulgás answer that "[t]he preference for the self-sufficiency is no longer absolute after the enactment of Act 24,076 {Gas Act} which introduced the free fluid import; however, for the purposes of considering the exports convenience, to it is still taken into account the convenience of the self-supply and the proper preservation of existing reserves in the oilfields of Argentina so as to assess the possible impairment that the export could cause to the supply of the domestic market" (A/S-Replication, ¶ 150).----------

1150. For these reasons, AESU and Sulgás argue that the Export Authorization, "instead of establishing [...] a solid right that keeps in full force and effect [...] over the 20 years of the {Gas Supply Agreement}, it anticipated that the exports are subject to the real existence of balances once the domestic market is supplied (Section 6, {Hydrocarbons Act}, Section 3 {Gas Act}) and even the Executive Power could restrict the exports at any time (Section 6, Executive Order 1589/89)" (A/S - Complaint, ¶ 299). They also state that all legal regulations still in full force and effect in Argentina have taken into account the existence of enough reserves in the country to ensure the supply to the domestic market for the purposes of the assessment of the authorization to export natural gas. ----------

1151. Therefore, AESU and Sulgás argue that YPF should have anticipated that if such a situation of domestic gas shortages was produced, the Government would take part to secure the supply of the domestic demand. YPF could not ignore that any measure ordered by the Government would affect exports, because, through them the gas required to comply with the domestic demand was diverted. ----------

1152. The experts of AESU and Sulgás confirm that the export restrictions may not be considered as an unforeseeable event for the purposes of the force majeure. Dr. Garcia Lema and Bougain argue that the requirement to keep the domestic natural gas market supplied was a condition inherent to the export authorizations because they are an effect of the legislation. This is why export restrictions cannot be considered as unforeseeable, when YPF had to comply with its duty to keep natural gas domestic market supplied, in addition to complying with its export commitments, because that was required by express and repeated rules of the applicable legislation (Garcia Lema/Bougain, A8/S8, ¶¶ 45-47; 207-208). ----------

1153. Dr. Bueres also qualifies the export restrictions as a foreseeable event. According to this expert, YPF, as a leading company in its sector, could not ignore that the domestic market supply would be a priority. Therefore, it had to use a higher degree of care to anticipate, not only due to the understanding of the rules, but also because in the guarantee provision of the Agreement (Section 13.4 (i)) it committed its "best efforts" to comply with its duty to deliver, and not only the efforts of a real family man. Dr. Bueres concludes that the restrictions arose from the logical implication of the passive behavior of YPF (Bueres, A98/S98, ¶13). ----------

1154. Dr. Bueres does not agree with Dr. Kemelmajer when she states that a provision related to the gas export restrictions should have been included in the Agreement, since he understands that these restrictions arose from the logical implication of the passive behavior of YPF. In addition, he does not believe that the Agreement had to contain an explicit provision concerning the need to supply the domestic market, as this has always been done. (Bueres, ¶ 3). ----------

1155. Finally, AESU and Sulgás allege that the conclusion about the foreseeability would not change if the Export Authorization was irrevocable because there are not absolutely irrevocable administrative acts. Quoting section 18 of Act 19,546 (Annex AL7/SL7), they state that, for reasons of convenience, merit or opportunity, the Government may amend, revoke or replace administrative acts even when subjective legal rights for the administrators derived from them. In this case, the Government must compensate the administrators, but the administrative act producing the modification, substitution or revocation of the original act is perfectly valid. But even if this act were invalid or unlawful, that would not change the foreseeable nature, which prevents it from being considered a force majeure event. Quoting Section 2337 of the Argentinean Civil Code, AESU and Sulgás assert that the unlawful acts of third parties (including the Government), while foreseeable, are not considered force majeure events.----------

Discussion. ----------

1156. After analyzing the allegations of the parties, the experts' reports and the applicable regulations, the Tribunal concludes that the restrictions on gas export could and should have been anticipated by YPF. Specially, the Tribunal considers that facing a shortage of gas crisis, YPF could have anticipated that the Government of Argentina would restrict the gas exports to give preference to the supply of domestic demand. The applicable regulatory framework when signing the Gas Supply Agreement contained the principle of priority of domestic supply, which permits to anticipate that, when facing a shortage of gas crisis, the government could take measures that restrict gas exports to favor the domestic supply. ----------

1157. The Tribunal notes that Section 6 of the Hydrocarbons Act indicates in its relevant part: -----

"***During the period in which the national liquidated hydrocarbon production was not sufficient to meet the domestic needs, the use of all available hydrocarbons of national origin in the country shall be required,*** except in cases in which justified technical reasons do not recommend it. [...] ----------

The Executive Power shall allow the export of hydrocarbon or its derivatives not required for the proper compliance with the domestic needs, provided that such exports were made at reasonable commercial prices and that, in such a situation, it may fix the criteria that will govern operations in the domestic market, so as to allow a sound and equitable share in all producers in the country". (Emphasis added) ----------

1158. This rule clearly states that exports are subordinated to the needs of the domestic demand and it anticipates that in a gas shortage crisis, these exports could be restricted in favor of domestic customers. ----------

1159. YPF asserts that this provision was not applicable after the enactment of the Gas Act. The Tribunal does not agree with the reasoning of YPF. By its own terms, the Gas Act "governs the transportation and distribution of natural gas which constitute a national public service, and the production, attraction and treatment are governed by Act 17,319 {Hydrocarbons Act}" (Section 1 of the Gas Act). It adds that "Act 17,319 shall only be applied to the natural gas transportation and distribution stages, when this Act expressly refers to its rules." However, the Gas Act does not expressly state that it controls natural gas *trade*. Recognizing this ambiguity, the administrative acts containing the restrictive export measures ordered by the Government of Argentina from 2004 refer to both laws. For example: ----------

a. Executive Order 181/2004[179] quoted the Hydrocarbons Act in its considerations, and expressly stated that "the gas production is controlled by Act No. 17,319 and its regulations, in terms of access to natural resources and their conditions of exploitation and trade".----------

b. Resolution 265/2004[180] quoted the Hydrocarbons Act in its considerations, and noted in its recitals that "the gas production is governed by Act No. 17,319 and its regulations, regarding the access to natural resources, and its exploitation and trade conditions, having to consider the convenience of the domestic market". ----------

c. Provision 27/2004[181] expressed in its recitals that "guaranteeing the domestic supply of natural gas constitutes a matter of general interest as well as a fundamental need, as set forth in section 6 of Act No. 17,319 and Section 3 of Act No. 24,076." ----------

d. This was repeated in the recitals of Resolution 659/2004.[182] ----------

1160. The Tribunal considers unnecessary to develop this discussion, because, in its opinion, whatever the law governing the natural gas trade is, this anticipates the priority of the domestic supply. The Tribunal notes that section 3 of the Hydrocarbons Act provides in its second subsection: ----------

"In each case, natural gas exports shall be authorized by the Executive Power of Argentina, within a period of ninety (90) days upon reception of the request, ***as long as this does not affect the domestic supply***". ----------

(Emphasis added) ----------

1161. YPF alleges that this provision means that, before the granting of the respective export authorization (permission that is granted only once and regarding each gas export agreement), the Energy Secretariat had to analyze whether the respective gas export agreement would affect the domestic demand or not and, in case it does not affect it, the authorization shall be granted.

---

[179] Executive Order 181/2004 (Annex Y-81), one of the first measures taken by the Government of Argentina before the gas shortage, empowered the Energy Secretariat to enter into agreements with natural gas producers to establish a price adjustment at the Point of Entry into the Transportation System acquired by the service providers of gas distribution by networks and the implementation of the protection systems for the benefit of the users of these providers who start the acquisition of natural gas directly from the producers who signed these agreements. See paragraph 112 *supra*.----------

[180] Resolution 265/2004 (Annex Y-82) established the criteria to apply restrictions on natural gas export and the Fuel Undersecretariat was ordered to prepare a rationalization program of natural gas exports. See paragraph 113 *supra*.----------

[181] Provision 27/2004 (Annex Y-83) approved the "The Rationalization Program of Natural Gas Exports and Usage of the Transport Capacity" provided in Resolution 265/2004. See paragraph 114 and ss. *supra*. --------

[182] Resolution 659/2004 dated on June 17, 2004 (Annex YL-87) approved the supplemental natural gas domestic market supply program, which replaced the above mentioned "Streamlining Program of Natural Gas Exports and Use of Transport Capacity", approved by Provision 27/2004. See paragraph 133 *supra*.------

According to YPF, once such authorization was granted, under no circumstance could the authorized firm volumes be interrupted for future problems in the domestic demand. ----------

1162. The Tribunal does not agree with the restrictive reasoning of YPF. The Gas Act does not specify that the analysis and the decision whether a particular export affects the domestic supply should have been made only upon the granting of the export authorization. Section 3 of the Gas Act only establishes that "natural gas exports must [...] be authorized [...] as long as they do not affect the domestic supply." ----------

1163. This reasoning is confirmed by considering the text of the Hydrocarbons Act, which is the general rule on hydrocarbons. Section 3 of the Gas Act only confirms the principle of priority of domestic supply over exports, already set forth in section 6 of the Hydrocarbons Act. The Gas Act provides in Section 96 that "[i]n the event of regulatory conflict among other laws and this law, this law shall prevail." If there is no conflict between the two rules, section 3 of the Gas Act does not act as a tacit repeal of section 6 of the Hydrocarbons Act. Therefore, both rules must be understood in harmony. ----------

1164. Accordingly, the Tribunal considers that, upon the execution of the Gas Supply Agreement, regulations in force at that time allowed the government to restrict gas exports to meet the domestic demand. Therefore, YPF could anticipate that, if a shortage crisis occurred, the government could take measures restricting exports as those invoked by YPF as grounds for force majeure. ----------

(2) Was it foreseeable that a situation of shortage of gas in Argentina would take place? ----------

1165. As regards this question, the Tribunal will first explain the allegations of AESU and Sulgás, because the allegations of YPF are directed mostly to object them. ----------

Position of AESU and Sulgás ----------

1166. AESU and Sulgás argue that, upon the execution of the Gas Supply Agreement, YPF could anticipate that there would be a gas shortage crisis in Argentina. Based in particular on the reports of Moore, AESU and Sulgás say that YPF could anticipate that the lack of exploration and exploitation by the gas producers would lead to a gas shortage crisis. ----------

1167. Mr. Moore analyzed the report of Gaffney & Cline dated 1997 *"La Evaluación de Solicitudes para la Exportación de Gas Natural en la República Argentina"*("The Assessment of Requests for the Export of Natural Gas in the Argentine Republic (hereinafter the "GCA Report 1997", Annex A53/S53), that has been authorized by gas producers to analyze the feasibility to allow gas exports from Argentina, and concluded that, due to the assumptions and methodology used by

GCA in this report that, since the year 1997 not only YPF but also other gas producers should have had to anticipate gas shortage if certain assumptions did not occur. ----------

1168. Firstly, Mr. Moore asserts that GCA made an incorrect analysis of its ***"base case"***, so, its projection of future reserves was misleading, and that both GCA and gas producers (including YPF) should have noticed that. The flaw is that GCA included in its future estimates the Possible Reserves (3P), instead of limiting itself to include the most Probable Proven Reserves (2P), both for existing reserves and for the projected additional resources (First Report of Moore, ¶¶ 43-49). As a result, GCA overestimated the size of the existing reserves and the projection of the additional resources (First Report of Moore, ¶105). Applying the appropriate base, Mr. Moore reached the following conclusions in relation to CGA *base case*: ----------

a. "Using the appropriate parameter of 2P EUR[183] as the basis reduces the total reserves plus resources by 23%" (First Report of Moore, ¶54)[184] ----------

b. "The R/P ratio in 2010 drops from 16 years to 10 years. Moreover, the established reserves base alone, using the GCA 2P case, would have an R/P ratio in 2010 of just 4 years, and would be exhausted by 2013. This compares to an R/P ratio in 2010 of 7 years for GCA's 'established reserves base' (its 3P case), with exhaustion 2017 "(First Report of Moore, ¶58)[185] ----------

1169. Specifically, Mr. Moore reaches the following results (First Report of Moore, ¶ 51). [186] --------

Future Resources
Billions (10^9) cubic meters

Area	GCA P50	Corrected P50	% of GCA
Noroeste (Palacozoic)	245.0	196.7	80%
Austral (TDF Offshore)	223.5	115.9	52%
Austral (Santa Cruz)	13.4	12.6	94%
Neuquina	215.6	209.3	97%
San Jorge	4.2	3.7	88%
Total	701.7	538.4	77%

[183] EUR means the *Expected Ultimate Recovery*, that is, the maximum expected recovery.----------

[184] Translation of the Tribunal. The original documents states: *"[U]sing the appropriate 2P EUR [Expected Ultimate Recovery] as the basis reduces the total of reserves plus resources by 23%."* (First Moore´s report, ¶54)----------

[185] Translation of the Tribunal. The original documents states: *"[T]he R/P ratio in 2010 drops from 16 years to 10 years. Moreover, the established reserves base alone, using the GCA 2P case, would have an R/P ratio in 2010 of just 4 years, and would be exhausted by 2013. This compares to an R/P ratio in 2010 of 7 years for GCA's 'established reserves base' (its 3P case), with exhaustion in 2017."* (First Moore´s report, ¶58)------

[186] Mr. Moore explains that correcting this mistake would require to fully perform the analysis of GCA again, since the magnitude of the mistake for each area depends on its age. Notwithstanding the foregoing, Moore tries with a simple correction assuming that the overestimation of EUR is evenly distributed (First Report of Moore, ¶51).----------

1170. Mr. Moore shows the restated results of GCA (containing the proven reserves plus the corrected most probable resources P50) in the following table (First Report of Moore, ¶52): --------

Remaining Gas Reserves/Resources at 1/1/97			
Billions (10^9) cubic meters			
Country Total	**1P**	**2P**	**3P**
Reserves	686.9	932.5	1,214.8
Resources (P50)		538.4	
Reserves+ Resources		1,470.9	

1171. Additionally, Mr. Moore notes that "the GCA resource estimates quoted are its P50 case. Fifty per cent of the time, therefore, the actual results of the exploration program would be expected to be less than the GCA P50 case"(First Report of Moore, ¶81)[187] Mr. Moore explains that while the measure 2P is appropriate, it is in the 50th percentile (also called P50), which means that it is successful in only 50% of cases *("there is an equal chance (50%) that the true value is less than or greater than this amount')* (First Report of Moore, ¶¶ 47-49, 105). ----------

1172. Finally, Mr. Moore asserts that "although in the corrected GCA *base case*, there are sufficient reserves and resources through 2010, a further constraint on meeting demand is whether deliberability from the existing reserves base can be increased, and if so, sustainably, year after year, at the required rate.[188] Applying the necessary assumptions,[189] Mr. Moore concludes that the deliverability required from the existing 2P reserves base increases from 93 MMm3/day in 1997 to 125 MMm3/day in 2001 (an increase of 19% compared to 1997), to 121

---

[187] Translation of the Tribunal. The original documents states: *"the GCA resource estimates quoted are its P50 case. Fifty per cent of the time, therefore, the actual results of the exploration program would be expected to be less than the GCA P50 case."* (First Moore´s report, ¶81)----------

[188] Translation of the Tribunal. The original documents states: *"although in the corrected GCA base case there are sufficient reserves and resources through 2010, a further constraint on meeting demand is whether deliverability from the existing reserves base can be increased, and if so, sustainably, year after year, at the required rate"* (First Moore´s Report, ¶71).----------

[189] Mr. Moore explains that the results of GCA required to give certain assumptions on deliverability (production capacity) that may have been unrealistic. The GCA Report does not refer to the deliverability, but Mr. Moore applies the necessary assumptions (those qualified as aggressive) to the analysis. Specifically, Mr. Moore assumed that the newly discovered resources are added to the available production two years after their discovery and that are allocated to supply a long-term demand (20 years), and that, therefore are forced to produce at least a 5% of resources per year. Mr. Moore also assumes that incremental production of the existing reserve base is also allocated to supply a long-term demand. (First Report of Moore, ¶54, 65-67). ----------
According to Mr. Moore, *"[i]t follows from these assumptions that, at some point, incremental demand cannot be satisfied from the existing reserves and resource base without borrowing (perhaps stealing) from the reserves and resource base that is committed to meet existing demand."* (First Moore´s report, ¶67) ----

MMm3/day in 2004 (an increase of 31% compared to 1997), and to 141 MMm3/day in 2010 (an increase of 52% compared to 1997). (First Report of Moore, ¶¶ 65-76). ----------

1173. Mr. Moore also asserts that GCA should have considered and evaluated a possible *"downside case"*, but it did not do it. Mr. Moore argues that the data handled by GCA could anticipate in 1997 that, if a possible *downside case* (negative case) occurred in the year 2003, a technical supply failure would occur (insufficient uncommitted reserves to supply an incremental demand). *("In 1997, a plausible Downside resource case forecast a technical supply shortage (insufficient uncommitted reserves to supply incremental demand) as early as 2003."* First Report of Moore, ¶106). In this regard, Mr. Moore explains that, in addition to the *base case*, GCA should have considered a *downside case* taking into account only the most probable proven reserves plus the P90 resources (i.e., 90 percentile). Mr. Moore carries out this analysis and concludes that "not only does this reduce the theoretical R/P ratio in 2010 to just six years, but it illustrates other important issues. It requires a sustained increase in deliverability from the existing reserves base, which must reach its 188% of its production capacity by 2010 (i.e., it must nearly double). In addition, if incremental production is always allocated to twenty year demand, at some point incremental demand cannot be satisfied by incremental production without borrowing from future commitments with other clients (and this is not be sustainable as the shortfall continues to rise thereafter). This was projected to occur as early as 2003". (First Report of Moore, ¶82, see also, ¶¶59-62).[190] ----------

1174. Specifically, Mr. Moore obtains the following outcome: ----------

Future Resources

Billions (10^9) cubic meters	From GCA Report		Corrected	
Area	**P90**	**P50**	**P90**	**P50**
Noroeste (Palaeozoic)	45.4	245.0	36.5	196.7
Austral (TDF Offshore)	90.4	223.5	46.9	115.9
Austral (Santa Cruz)	2.4	13.4	2.3	12.6
Neuquina	152.5	215.6	148.0	209.3
San Jorge	2.3	4.2	2.0	3.7
Total	293.0	701.7	235.7	538.4

[190] Translation of the Tribunal. The original documents states: *"[n]ot only does this reduce the theoretical R/P ratio in 2010 to just six years, but it illustrates significant other issues. It requires a sustained increase in deliverability from the existing reserves base which must reach 188% of its starting production capacity by 2010 (i.e. it must nearly double). Moreover, if incremental production is always dedicated to twenty year demand, at some point incremental demand cannot be satisfied by incremental production without borrowing from future commitments to other customers (and this is not sustainable as the shortfall continues to rise thereafter). This was projected to occur as early as 2003."* (First Moore´s Report, ¶82, see also, ¶¶59-62).----------

1175. Applying the necessary assumptions about deliverability, Mr. Moore concludes that the deliverability required from the existing 2P reserves base increases from 93 MMm3/day in 1997 to 119 MMm3/day in 2001 (an increase of 28% compared to 1997), to 138 MMm3/day in 2004 (an increase of 49% compared to 1997), and to 174 MMm3/day in 2010 (an increase of 88% compared to 1997). ----------

1176. Mr. Moore adds that "more importantly, while there are theoretically sufficient reserves and resources in the *Downside case* (as shown in Figure 3 *above*), these are not available to satisfy incremental demand after 2003. Figure 6 below shows this using 2P + Resource EUR volumes. The lower two colored bars show existing commitments assuming all incremental production is committed to supplying 20-year demand. The thin black line shows the total available EUR. During the early years, there are uncommitted and excess reserves. But from 2003, the demand displayed above the thin black line can only be satisfied by borrowing from those volumes already committed to existing customers. If the committed volumes were actual contractual commitments from which it was not possible to borrow, the incremental demand could simply not be supplied" (First Report of Moore, ¶75).[191] The following table shows Mr. Moore observations: ----------

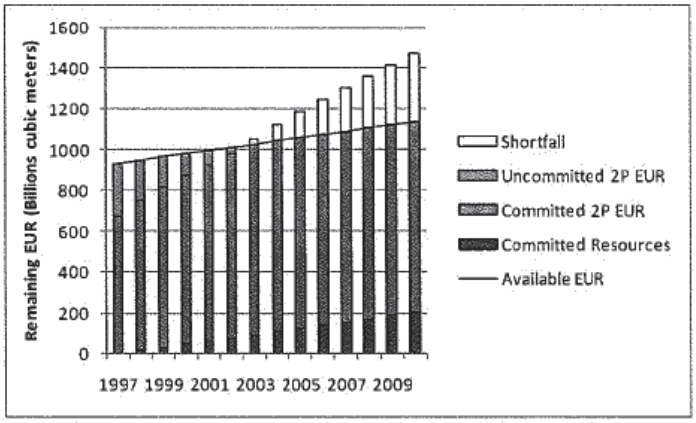


Figure 6: 2P Reserves and Resource Remaining EUR Commitments using the demand forecast in the GCA Report, 20 Year Demand Volumes, and a Downside Resource case

[191] Translation of the Tribunal. The original documents states: *"[m]ore importantly, while there are theoretically sufficient reserves and resources in the Downside case (as was shown in Figure 3 above), these are not available to satisfy incremental demand after 2003. Figure 6 below shows this using 2P + Resource EUR volumes. The lower two colored bars show existing commitments assuming all incremental production is committed to supplying 20 years' demand. The thin black line shows the total available EUR. In the early years, there are uncommitted, or excess, reserves. But from 2003, the demand shown above the thin black line can only be satisfied by borrowing from those volumes already committed to existing customers. If the committed volumes were actual contractual commitments from which it was not possible to borrow, the incremental demand could simply not be supplied."* (First Moore´s report, ¶75).----------

1177. For the above-mentioned reasons, Mr. Moore states that "in 1997, the results provided by GCA on behalf of the producers demonstrate that it cannot be stated that there will be sufficient gas to satisfy the demand **with reasonable certainty**, whether before or after correcting for flaws in the GCA analysis". (First Report of Moore, ¶83, emphasis in the original)[192]. Moore states that YPF, as well as other gas producers should have realized about these flaws in the GCA's analysis and should have understood its implications for the number of reserves and the Reserve/Production ratio. ----------

1178. Additionally, Mr. Moore states the estimation of future reserves from GCA Report 1997 required, as an assumption to be complied with, that a certain level of new oilfields be explored, or existing ones be exploited. In fact, the GCA Report assumed that 1340 wells would be drilled during the term of 15 years, beginning in 1997 (GCA Report 1997, Table 1, page 7). Mr. Moore explained that the number of wells drilled in 1997 (95) was consistent with the assumptions made by GCA, but such number significantly decreased in the following years (First Report of Moore, ¶¶86-87): ----------

---

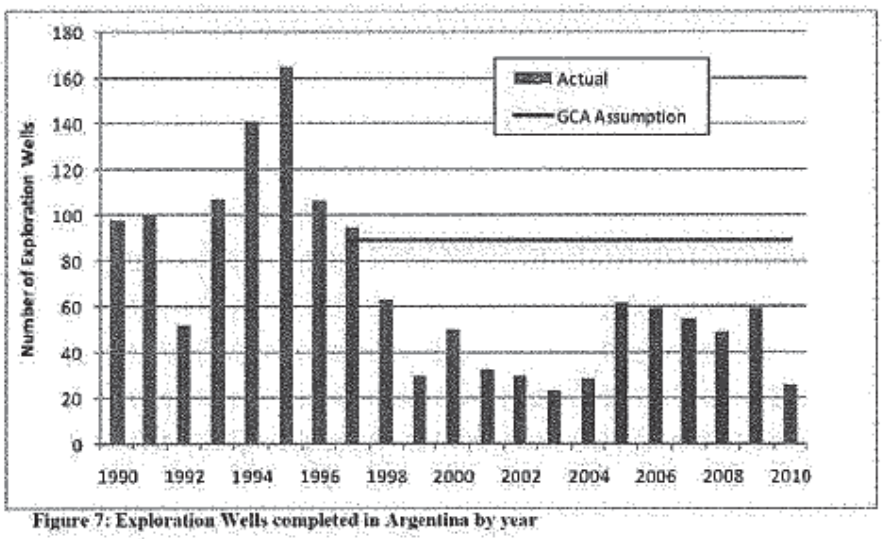


Figure 7: Exploration Wells completed in Argentina by year

[192] Translation of the Tribunal. The original document states: "*in 1997, the results provided by GCA on behalf of the producers demonstrate that one cannot say that there will be sufficient gas to satisfy demand with reasonable certainty, whether before or after correcting for flaws in GCA analysis*". (First Report of Moore, ¶83, emphasis in the original)----------

1179. According to Mr. Moore, gas producers should have known that, if such level of exploration used as an assumption was not maintained, there would be problems of gas shortage and deliverability. Since 1998, it should have been clear for everybody in this industry (including YPF) that the level of activity was below the assumptions made by GCA so that there was sufficient number of reserves. Mr. Moore explains that: ----------

a. "From 1998, it was apparent that industry exploration activity was significantly lower than that assumed in the GCA case. Activity was consistent with only achieving a negative resource case (*Downside resources case*)." (Moore's First Report, ¶107).[193] ----------

b."The low levels of activity should have immediately suggested a potential future supply crisis. The *Downside resources case* […] was based on 89 wells per year, but a negative (P90) case for resources added per well. The same negative resources would be forecast by maintaining the base (P50) case resources added per well, but for a program reduced to 39 wells per year. The actual average over the period 1998-2004 was 37 wells per year. It should be recalled that the *Downside resources case* predicted that incremental demand could not be satisfied by incremental production as early as 2003 without borrowing from future commitments to existing customers. Activities rose in 2005-2009, but even so, the overall number of exploration wells drilled from 1999-2010 was only 53% of the number used in GCA's base case." (First Report of Moore, ¶¶88-89). [194] ----------

c. The requirements to maintain domestic demand and export were to increase deliverability by 50% for the *base case*, and about 188% for the *downside case*. To increase said deliverability, it was necessary to maintain a certain exploration activity. Mr. Moore explained during the hearing: "The exploration activity within the whole industry, not specifically in gas, showed a maximum peak in the mid 90s and then declined. In 1997, it reached a certain level, and the analysis at that time suggested –specifically, in the 1996-97 Gaffney & Cline report– that a certain exploration

---

[193] Translation of the Tribunal. The original document states: *"From 1998, it was apparent that industry exploration activity was significantly lower than that assumed in the GCA case. Activity was consistent with only achieving a Downside resource case."* (Moore's First Report, ¶107)----------

[194] Translation of the Tribunal. The original document states: *The low levels of activity should have immediately suggested a potential future supply crisis. The Downside resources case […] was based on 89 wells per year, but a downside (P90) case for resources added per well. The same downside resources would be forecast by maintaining the base (P50) case resources added per well, but for a program reduced to 39 wells per year. The actual average over the period 1998-2004 was 37 wells per year. It should be recalled that the Downside resources case predicted that incremental demand could not be satisfied by incremental production as early as 2003 without borrowing from future commitments to existing customers. Activities rose in 2005-2009, but even so, the overall number of exploratory wells drilled from 1999-2010 was only 53% of the number used in the GCA's base case."* (First Report of Moore, ¶¶88-89).----------

level was necessary in order to find sufficient resources to add to the existing reserve bases, to support the local supply for a reasonable period of time for allowing exports. ----------

From 1998, it should have been clear for everybody in this industry, including YPF, that the level of activity was below what was used as hypothesis that there would be sufficient reserves. That was the first warning sign. ----------

The second aspect of shortage, and perhaps the most important one, is not related to the general reserves, that could have been a problem in the future, but not necessarily at an early stage; it is related to deliverability. ----------

1997 report does not show an explicit discussion on the gas deliverability perspective. But taking into account the implications, the requirements to support the domestic demand and export were to increase deliverability by 50% for the "base case", and about 188% for the "downside case". ----------

And, on the other hand, we have dominant producers like YPF, which owns 50-60 per cent of the reserves having a significant proportion of deliverability, but its oilfield is old and mature, and its scope to increase deliverability is limited. ----------

If we consider the projections, and we have an official YPF projection from 2000, it is clear that after a peak there is a decline. And this is the case. ----------

The lack of significant gas discoveries, either by YPF or by the rest of the industry, could be due to a problem of YPF as it is the primary producer or the primary participant, and gas discoveries would decline facing a circumstance of increasing demand. And this should have been appreciated by everybody, specially YPF as the main producer during the 90s. And during the late 90s." ----------

(Tr., Day 3, pages 643-645 {Moore}). ----------

d. Mr. Moore adds: "From reserves reports dated December 31, 2002, it was apparent that the 2P EUR was not only not growing due to lack of exploration activity, but was indeed shrinking (potentially accelerationg a technical supply shortage). The actual supply shortage occurred in 2004, one year after the date suggested by a plausible scenario in 1997, and as could have been predicted, based on activity levels, as early as 1998. It may have been delayed from 2003 to 2004 by a temporary lack of demand growth in 2001-2002 due to the domestic economic situation which was not considered by GCA." (First Report of Moore, ¶¶108-109)[195]. ----------

[195] Translation of the Tribunal. The original document states: "*From reserves reports with an effective date of December 31, 2002, it was apparent that the 2P EUR was not only growing due to lack of exploration activity, but was indeed shrinking (potentially accelerationg a technical supply shortage). The actual supply*

1180. Mr. Moore rejected YPF's criticisms to his methodology and conclusions regarding these items, and confirmed these conclusions during the hearing. ----------

1181. AESU and Sulgás stated that Mr. Moore's conclusions are confirmed by similar conclusions reached in a 1998 report of Fundación Mediterránea (Annex A102/S102).[196] ----------

YPF's Position ----------

1182. YPF's arguments regarding unforeseeability refer to the unforeseeable nature of the measures adopted by the Argentine Government. As it was already mentioned, the Tribunal considers that the unforeseeable nature of the circumstances depends on the unforeseeable nature of the measures restricting exports within the scope of the laws applicable to the Gas Supply Agreement; and also depends on whether the shortage of gas supply affecting Argentina from 2004 was unforeseeable at that date or not. YPF has not yet addressed said items within the context of the unforeseeable nature requirement, but it has addressed them in other sections of its briefs. The Tribunal presents YPF's arguments relating to these points bellow. ----------

1183. YPF affirms that, before 2002, there were more than sufficient reserves in Argentina to meet the domestic demand and exports (Y-AF, ¶¶ 3, 192). In this sense, the expert Cesar Guzzetti from Gaffney & Cline explained that "in 2002, Argentina had an index of gas reserves {proved and probable} of 30 years, i.e. it had enough reserves to meet its demand of gas on the year 2002 and for other thirty years ahead without declining its gas production", which "means that any exploration manager proposing an ambitious exploratory project would be able to put that gas into production thirty years later". (Tr., Day 3, page 739 {Guzzeti}; Figures 1.e.2 of Guzzetti's First Report). [197] Mr. Guzzetti also stated that "just before 2002 there were no market signs that could have foreseen the problem that arose in 2004." (Tr., Day 3, page 752 {Guzzetti}). ----------

1184. According to YPF, all the experts appointed by the parties agree on that gas shortage problems did not arise from insufficient reserves but from insufficient deliverability (which is defined as production capacity). YPF states that the problem arose from the dramatic regulatory change in the domestic market, caused by the pesification and the electricity and natural gas rate

---

shortage occurred in 2004, one year after the date suggested by a plausible scenario in 1997, and as could have been predicted, based on activity levels, as early as 1998. It may have been delayed from 2003 to 2004 by a temporary lack of demand growth in 2001-2002 due to the domestic economic situation which was not considered by GCA." (First Report of Moore, ¶¶108-109)----------

[196] Juan J. Novara, *Reservas de Gas Natural Ante los Crecientes Requerimientos de los Mercados Internos y de Exportación, en Estudios*, IERAL Publication of Fundación Mediterránea, April/June 1998 (Annex A102/S102----------

[197] YPF refers to Mr. Guzzetti's reports as "Gaffney reports". To avoid confusions with the 1997 Gaffney, Cline & Associates' Report (the "GCA Report 1997"), the Tribunal will refer to Mr. Guzzeti's reports as "Guzzetti's reports". ----------

freezing in 2002, measures that were unforeseeable for gas producers in the late 90s. YPF mainly supports its arguments on expert Guzzeti's reports and FIEL reports. ----------

1185. As explained above (see paragraph 1055 and ss. above), YPF affirms that in 2002 the Argentine Government pesified gas prices, reducing them to one third of its previous value, and then froze those prices by means of several measures. Depressed prices caused an extraordinary increase in demand (20% between 2002 and 2004 and more than 37% between 2002 and 2007) as a consequence of a demand shift from more expensive alternative fuels to natural gas. The greater gas demand consumed the existing reserves faster, and the administered prices eliminated the price signs essential to make investments in exploration for the incorporation of new reserves. YPF affirms that AESU and Sulgás's expert, Francisco Mezzadri, acknowledged the great year-to-year increase of about 10% in the years 2003 and 2004. If instead of taking year 2002 as basis, criticized by Mezzadri, a comparison of the average production level of the period 1998-2001 is made, the result does not vary, as it was shown by FIEL expert: between such period and 2007, the gas domestic demand increased by 43%. ----------

1186. YPF states that the gap generated between the gas supply and demand as a consequence of a shift in consumption from alternative fuels to natural gas due to the administratively depressed prices, and the impact of said gap on gas domestic supply were events expressly recognized by the Energy Secretariat and its technical staff in several notes and administrative proceedings. The Government, in official documents, acknowledged that natural gas supply problems –caused by YPF, according to AESU and Sulgás– are a consequence of the Government's measures (basically, of pesification and frozen and intervened prices, which did not allow to recover investments costs or gas reserves). These measures not only affected YPF, but also all producers. YPF states that AESU and Sulgás could not counter this evidence, and its technical experts (for example, Francisco Mezzadri and Mr. Moore) acknowledged that they have not considered the acknowledgment of the government contained in these documents at the time of preparing their reports. YPF also points out that AESU and Sulgás, as well as TGM, have recognized in several instruments, and even during the hearing, that pesification and price freezing did not allow the generation of new investment and increased the domestic demand. -----

1187. YPF states that, as a consequence of these measures, from 2002 the gas reserves of producers decreased in a generalized and dramatic way. There were producers who suffered, in percentage terms, a greater decrease in reserves than YPF. According to YPF, the decrease in gas reserves was a generalized phenomenon affecting not only YPF, but all producers. It was also

proved that the period in which reserves mostly decreased in Argentina (34%) was between 2002 and 2005, when price freezing reached its lowest level. ----------

1188. Mr. Guzzeti criticizes Mr. Moore's conclusions, particularly, its interpretation of 1997 GCA Report. According to Mr. Guzzetti: ----------

"As of the date of the analysis performed by GCA in 1996, the conditions involved a deregulated regional gas market in Argentina, in which the difference between demand and supply was reflected in the price of the product. [...]. As of that date, it was unlikely to foresee the 2001 crisis and the subsequent pesification that reduced the gas price to about one third of its previous value, or the subsequent gas price freezing at those depressed levels until 2004. This caused, after an impasse of one year of recession in consumption, an exacerbated domestic demand (37% between 2002 and 2007) that was caused by a depressed intervened price. Among the hypothesis of {1997 GCA Report}, the demand expectation was included. Such information was obtained from the Energy Secretariat in 1996, which was also affected by said events occurring as from 2001. Therefore, to expect, as Moore does, to use 1997 GCA Report to critize the evolution of gas supply, considering the information available in 2011 constitutes a biased exercise contrary to practise. The hypothesis formulated in 1996 did not include and could not have included the economic and regulatory changes produced in Argentina in subsequent years […]. Finally, Moore concludes that 1997 GCA Report was not correct because it did not take into account a fall on reserve replenishment in Argentina, caused by the Government's intervention in domestic prices as from 2002 and the extinction of the regionally integrated market in 2004." (Complementary Report of Guzzetti, ¶¶43-47). ----------

1189. On the contrary, "the GCA Report is consistent with the interpretation of the definitions of reserves of its time, and its conclusions are correct within the framework of the hypothesis of continuity of the above-mentioned contextual conditions." (Complementary Report of C. Guzzetti's, ¶49). ----------

Discussion ----------

1190. Upon analyzing the parties' arguments and the experts' reports, the Tribunal concludes that YPF could have foreseen that a gas supply crisis would occur in Argentina. ----------

1191. According to the Tribunal, expert Moore for AESU and Sulgás has convincingly proved that, based on the information of 1997 GCA Report, from 1997 or 1998 YPF should have foreseen that a gas shortage could occur in the Argentine Republic if certain conditions were not met. As those

conditions were not met, YPF and other gas producers should have foreseen that a gas supply crisis could occur. ----------

1192. The Tribunal does not ignore the fact that the 1997 GCA Report was optimistic with regards to the existing reserves in Argentina, and the capacity of producers to satisfy the domestic demand, as well as exports.[198] GCA concludes that "there is no tangible evidence showing that Argentine natural gas export to neighboring countries would threaten the satisfaction of the increasing domestic demand that is foreseen in Argentina in a predictable future." (1997 GCA Report, page 2). However, the Tribunal considers that the results of the 1997 GCA Report were based on a questionable methodology, and required that certain conditions be met, which, at the time of the issuance of the report, should have been apparent to experienced operators within the gas market, including YPF. ----------

1193. Firstly, Mr. Moore established that, according to the international standards in effect as of that date, the methodology used by GCA for its "base case" was incorrect. Although Mr. Guzzeti rejects Mr. Moore's criticisms, stating that "it was as early as in 1997 when SPE and WPC established detailed definitions of reserves and, even in that case, discussions about their meanings took 10 years until the publication of new definitions by the SPE/WPC/AAPG/SPEE in 2007", and, for this reason, "the GCA report is consistent with the definitions of reserves at the time, and its conclusions are correct within the framework of the hypothesis of continuity of the above mentioned contextual conditions" (Complementary Report of Guzzetti, ¶ 49) Moore confirmed that his analysis about the estimation of reserves was based on the definitions issued by the SPE/WPC in March 1997 (Moore's Third Report, ¶20), whereas the 1997 GCA Report was issued in November 1997. ----------

1194. Therefore, GCA must have limited its future estimations to Most Probable Proved Reserves (2P) instead of having also included Possible Reserves (3P), not only for the case of existing reserves, but also for the projected additional resources. As a consequence of this incorrect methodology, GCA overestimated the size of the existing reserves and the projection of additional resources. By applying the appropriate base, the reserves decrease by 23 % and the

---

[198] The GCA Report drew the conclusions below regarding the sufficiency of reserves (GCA Report, page 13): ----------

"a) the value of R/P {reserve production ratio} for the base case 3P + resources has a time limit of 16 years as from the year 2010; this means that the base of "established reserves" and the resources currently defined are sufficient to: ----------

(i) Supply gas volumes that are required to satisfy the demand scenario until 2010----------

(ii) Have, still in that year, a 16-year time limit of reserves at the pace of production in that year". -----

reserve/production ratio (R/P ratio)[199] in 2010 decreases from 16 to 10 years. When limited to established reserves only, the R/P ratio in 2010 decreases to 4 years, and it would have been exhausted by 2013. ----------

1195. Mr. Moore accepts that "in the corrected base case of GCA there are sufficient reserves and resources through 2010", but he explains that, in spite of that "a further constraint on meeting demand is whether deliverability from the existing reserves base can be increased, and if so, sustainably, year after year; at the required rate." (First Report of Moore, ¶71)[200]. Mr. Moore has demonstrated, and YPF has not challenged it, that in order to satisfy demand, taking into account the amount of 2P reserves existing at the time, it would have been necessary that the production capacity (also known as "deliverability") had considerably increased in relation to the production capacity existing in 1997 (19% in 2001; 31% in 2004; and 52% in 2010). ----------

1196. The Tribunal is aware that Mr. Guzzetti affirmed that "[e]ven considering the 2P reserves, casting aside possible reserves, the conclusions of 1997 GCA Report would not have varied." However, in answer to that, Mr. Moore reasserted that his results using 2P were substantially lower, but recognized that he could not tell which conclusions would have been obtained by GCA report. (Third Report of Moore, ¶21). Based on the results obtained by Mr. Moore, the Tribunal finds it difficult to conclude that GCA conclusions would have been the same. ----------

1197. Therefore, the Tribunal agrees with Mr. Moore about the fact that in 1997, the results provided by GCA demonstrate that one cannot say that there will be sufficient gas to satisfy demand with reasonable certainty, whether before or after correcting for flaws of the GCA analysis (First Report of Moore, ¶ 83, emphasis in the original)[201]. The Tribunal also agrees with Mr. Moore about the fact that the flaw in the methodology used by GCA, as well as its implications for the estimations of reserves and the R/P ratio, should have been apparent for gas producers. In November 1997, GCA as well as gas producers in the Argentine Republic must have

---

[199] The Reserve/Production ratio indicates the relation between the remaining reserves divided by the annual production, showing the number of years in which the reserves would produce, assuming that the pace of production had been constant. ----------

[200] *Translation of the Tribunal. The original document reads: "Thus, although in the corrected GCA base case there are sufficient reserves and resources through 2010, a further constraint on meeting demand is whether deliverability from the existing reserves base can be increased, and if so, sustainably, year after year; at the required rate." (First Report of Moore, ¶71).* ----------

[201] Mr. Moore concludes that "in 1997, *the results provided by GCA on behalf of the producers demonstrate that one cannot say that there will be sufficient gas to satisfy demand with reasonable certainty, whether before or after correcting for flaws in the GCA analysis.*" (First Report of Moore, ¶ 83, emphasis in the original). ----------

realized that the standards used by GCA were inappropriate and would have led to incorrect conclusions. ----------

1198. Secondly, the Tribunal also shares Mr. Moore's opinion with regards to the fact that it would have been prudent to consider a *downside case*, just considering the proved and probable reserves plus the P90 resources (i.e., in the 90 percentile). According to this more conservative analysis, not only will the reserve/production ratio in 2010 decrease in six years, but also requires a sustained increase in deliverability, and this allows foreseeing that in 2003 the incremental production will satisfy the incremental demand. (First Report of Moore, ¶82, see also¶¶ 59-62).[202] Thus, the Tribunal is satisfied because the information used by GCA led to foresee in 1997 that, if a possible downside case was to occur, in 2003 a technical insufficiency in the gas supply would occur (insufficient reserves not committed for the supply of an incremental demand). -------

1199. Mr. Guzzeti criticizes Mr. Moore's *downside case* as too pessimistic (Complementary Report of Guzzetti, ¶51). Mr. Moore acknowledges that "*aggregating independent distributions yields a more pessimistic result than P90*." However, Mr. Moore, in his Third Report, highlights that the result obtained was very similar to that obtained by GCA Report, considering the P50 resources per well and using the actual number of wells drilled ("*the Plausible Downside resources outcome was very similar to that obtained by maintaining the P50 resources per well, but using the actual number of wells drilled, which was, whithing, and close to the low end of, the range of numbers of wells in the GCA Report*.") (Third Report of Moore, ¶¶24-28). The Tribunal is completely satisfied by this explanation. ----------

1200. Thirdly, even if the criticisms and corrections made by Mr. Moore to the 1997 GCA Report were ignored, the Tribunal observes that, even on its own terms, the estimation of future reserves made by GCA in 1997 would have demanded, to be satisfied, a certain level of exploration of new oilfields, or the exploitation of existing ones. According to the estimations used by GCA, the requirements to support the domestic demand and the export were to increase deliverability by 50% for the *base case*, and about 188% for the *downside case*. This required a substantial level of exploration activity. Particularly, in the GCA Report it was assumed that 1340 wells would be drilled during a term of 15 years, beginning in 1997 (1997 GCA Report, Annex

[202] More specifically, according to Mr. Moore, this more conservative analysis *"illustrates significant other issues. It requires a sustained increase in deliverability from the existing reserves base which must reach 188% of its starting production capacity by 2010 (i.e. it must nearly double). Moreover, if incremental production is always dedicated to twenty year demand, at some point incremental demand cannot be satisfied by incremental production without borrowing from future commitments to other customers (and this is not sustainable as the shortfall continues to rise thereafter). This was projected to occur as early as 2003."* (Moore's First Report, 11-82, see also 59-62).----------

A53/S53, Table 1, page 7), i.e., about 89 wells per year. The Tribunal must observe that gas producers could not have ignored the fact that, if such level of exploration was not maintained, a problem of gas shortage and deliverability would occur. ----------

1201. According to Mr. Moore (fact not controverted by YPF) the number of drilled wells in Argentina in 1997 (95) was consistent with the assumptions of GCA, but that figure markedly dropped on subsequent years, decreasing to about 60 in 1998, to about 50 in 2000 and 2004, and to less than 40 in 1999, 2001 and 2002 (see Figure 7 of First Report of Moore, transcribed in paragraph 1178 *supra*; First Report of Moore, ¶¶86-107). ----------

1202. Given the decrease in the exploration of wells from 1998, gas producers, including YPF, should have clearly known that the level of activity was insufficient to meet GCA estimations. Whereas GCA estimations required the exploration of 89 wells a year, the average of drilled wells over the period 1998-2004 was 37 wells per year. Although the exploratory activity slightly increased between 2004 and 2010, this was still insufficient (only 53% of the GCA *base case*, as explained by Mr. Moore with no replication made by YPF). ----------

1203. This low level of exploration activity was only consistent with a *downside resources case*, according to which it was foreseeable that a supply crisis would occur in 2003, when incremental demand could not be satisfied without borrowing from future commitments to existing customers ("*incremental demand could not be satisfied by incremental production as early as 2003 without borrowing from future commitments to existing customers*." (First Report of Moore, ¶88). ----------

1204. YPF, backed by Mr. Guzzetti's Report, states that the gas shortage was caused by the pesification measures and the gas price freezing imposed by the government due to the 2002 economic crisis. This argument is not grounded on proven facts. The fact that pesification and price freezing could have had an effect on the business of exploration of wells is true (as recognized by Mr. Moore); but the facts show that 2004 shortage was not a consequence of the measures adopted in 2002, because it was too late: the material cause for 2004 shortage must be traced before. Especifically, Mr. Moore clarified during the hearing: ----------

"I think that the important point is that 2004 shortage is not, in my opinion, a consequence of 2002 pesification, because it was too late to constitute the material cause of 2004 shortage. --------

My report intends to suggest that the possibility of a domestic gas supply shortage has always existed since the 90s, when authorizations to export were implemented. ----------

It was probable that a deliverability shortage and a reserves shortage would occur, unless certain things took place. And they did not occur. ----------
They included a wide range of exploration programs. They included the capability of substantially increasing the production of existing oilfields. And as a result, none of these occurred sufficiently, and I think that shortage is already a foreseeable result from 96-97. ----------
(Tr., Day 3, pages 641-642). ----------

1205. Considering the time that it takes to explore and develop hydrocarbon fields, the Tribunal cannot do anything but agree on this conclusion. The 2004 shortage could not have been caused by the lack of exploration that took place after 2002. Considering the nature of the gas business, the causes of said shortage must be necessarily found in the 90s. ----------

1206. The Tribunal does not accept YPF's arguments stating that shortage occurred as a consequence of a sudden and unforeseen increase in the domestic demand. Mr. Mezzadri has proven that the increase in demand was not sudden, because between 1993-2001 and 2001-2009 the demand increased by a very similar percentage (about 32%, see paragraph 996 above). In any case, the real increase of demand was below the assumptions used by 1997 GCA Report, so that, as high as the demand was, it could not have been unforeseeable. Therefore, the Tribunal agrees with Mr. Moore when he stated during the hearing that "saying that it was an unforeseeable increase that could not have been foreseen [...] is wrong, because in 1996 it was said that in 2005 the gas demand plus exports would be much higher than it actually was in 2005 [...]" (Tr., Day 4, page 926 {Moore}). Under these circumstances, the Tribunal agrees with Mr. Moore's conclusion when he states that demand in 2004 was less than that assumed in the 1997 GCA Report, and that the shortfall may be traced back to a lack of sufficient exploration from 1998 onwards, and a foreseeable inability to increase production from the existing reserves to satisfy forecast demand. (Second Report of Moore's, ¶7). [203] ----------

1207. The Tribunal has not ignored Mr. Guzzetti's critizisms to Mr. Moore's report but it considers that Mr. Moore's refutations are well grounded on the facts introduced in the file. Particularly: ----------

a. Mr. Guzzeti criticizes Mr. Moore's conclusions explaining that Mr. Moore uses information that was not available to GCA. Mr. Moore denies this, and points out that his conclusions regarding

[203] Mr. Moore textually says: *"Demand in 2004 was less than that assumed in the GCA Report in 1997 based on government demand projections. The shortfall may be traced back to a lack of sufficient exploration success from 1998 onwards, and a foreseeable inability to increase production from the existing reserves base to satisfy forecast demand."* (Second Report of Moore,¶ 7)----------

GCA Report in 1997 are exclusively grounded on the assumptions used by GCA in 1997 (especially, the use of an incorrect reserve base, the necessary exploration levels, and the fact that the GCA projections were their "median forecast case"). Mr. Moore emphasizes that none of these items are related to subsequent events (Third Report of Moore, ¶¶15, 17-19), and Tribunal agrees on it.----------

b.Mr. Guzzeti also states that “a more acceptable explanation about reserves decline may be found in the accelerated consumption as a consequence of the sudden increase in demand after 2002" (Complementary Report of Guzzetti, ¶ 59). Mr. Moore comments that this criticism confuses reserves with EUR: even though an increase in consumption and production may lead to a decline in reserves if these reserves are not replaced, it has no effect on EUR, which includes the cumulative production. If the wellhead price reduction in 2002 had been the primary cause of reduced reserves, an abrupt decline in reserves and EUR would have been observed by the end of 2002, but not a continuing decline. In this case, the impact by the end of 2002 was not dramatic, but it was the beginning of a five year trend. (Third Report of Moore, ¶¶32- 34).[204] The Tribunal also agrees with this explanation. ----------

c.Mr. Guzzeti also affirms that "there is no direct relation between the exploration activity, the hydrocarbons found, the ones that are developed and the ones that are produced." (Complementary Report of Guzzetti, ¶62). Mr. Guzzetti then clarifies that "exploration effort is not directly translated into an increase in 2P reserves. A great investment effort is necessary to drill developing wells, and this is an intermediate step that involves time and money. The relation that is intended to be established between exploration and reserves incorporation is neither linear nor necessarily proportional to time, due to the fact that this intermediate step can go through accelerations, delays, and modifications in the production expectations, which have a direct impact on the reserves." (*Id.,* ¶79). Mr. Moore agrees on the fact that time is a relevant factor, and points out that he adopted a short two-year period to be generous, because if he had

[204] Mr. Moore textually says: "*In general, any increase in consumption and production may indeed be responsible for declining reserves, if the reserves are not replaced, but it has no effect on EUR, which includes cumulative production. If, as Guzzetti suggests, a primary cause of reduced reserves is the abrupt and significant wellhead price reduction in 2002, then one should see an abrupt decline in reserves and therefore EUR at year end 2002, but not a continuing decline. The impact at year end 2002 on 2P EUR was not that dramatic. More importantly, it was the start of a five year trend. A price change that impacts year end reserves and EUR should have no effect on EUR for those fields in subsequent years.*" (Third Report of Moore,¶¶ 32-34).----------

taken a longer period, deliverability problems would have been exacerbated and shortfall would have even been more likely (Third Report of Moore, ¶37).[205] The Tribunal agrees on this. ----------

1208. Furthermore, the Tribunal observes that some of the problems identified by Mr. Moore had already been recognized in the late 90s by other experts in the gas industry in Argentina. In fact, a Fundación Mediterránea report from 1998 (Annex A102/S102)[206] explained: ----------

a. The projected exports growth as "a further volume to the levels of domestic demand does not seem sustainable due to the gross extraction capacity, on the basis of the reserves known today." (Fundación Mediterránea Report, page 76). ----------

b. "Although a very recent study (GC&A) states that there is 'no tangible evidence indicating that Argentine natural gas exports to neighboring countries pose a threat to the satisfactory supply of the growing domestic demand that is foreseen in Argentina for a foreseeable future (1997-2010)', this work shows that there are signs indicating instability of regional supply and problems for the allocation of the production between markets (domestic and foreign) if the analysis is conducted at a disaggregated level." (Id., page 81). ----------

c. "The use of traditional safety indicators of supply or guarantee of supply, such as the R/P ratio, is misleading and must be replaced by other criteria more related to reservoir depletion models. Showing and counting the adequate volumes of proved reserves is not sufficient to meet a certain demand. These must be developed, "producible" and "deliverable" (Id., page 81). ----------

d. "The levels of supply projected between 2005 and 2010, if reached, will not be maintained without a great exploration effort. However, if oil prices remain low, many companies will not be able to meet the costs of such exploration activity" (Id., page 81). ----------

1209. Fundación Mediterránea Report highlighted that the situation of Neuquén Basin was particularly worrying, being "the most committed in the medium and long term, because instead of reducing the pressure exerted over its reserves and the resources for a less unbalanced total extraction or the exploitation intensity index, the extraction requirements will be intensified, due to the expected growth of the domestic demand, as well as for the exports licenses already granted or about to be granted." (Id., page 80). The Report added that the SEyP had issued a

---

[205] Mr. Moore explains that "*[i]f the elapsed time between discoveries and ensuing production is longer, the deliverability problems I discussed in my first report are exacervated and a shortfall becomes even more likely*." (Third Report of Moore, ¶37). ----------

[206] Juan J. Novara, *Reservas de Gas Natural Ante los Crecientes Requerimientos de los Mercados Internos y de Exportación, en Estudios*, IERAL Publication of Fundación Mediterránea, April/June 1998 (Annex A102/S102). ----------

serious warning stating that "the planned extraction level in the first years of 2000s will only be sustainable if reserves are increased by more than 70 per cent than those estimated as proved reserves, such value would be within the superior limit of the area expectations." According to the estimation of reserves in 1-97 […] it would be necessary to incorporate 238 billion of m3 of proved reserves, presumably, before 2006/7. […] This would oblige producers who have entered into effective contracts to make a great exploratory effort (or to acquire reserves from third parties) within a few years term, looking for deeper goals (more than 4000 meters), which would modify replacement gas marginal costs of that basin." (Id., page 80-81). ----------

1210. Fundación Mediterránea Report was available in 1998, and gas producers in Argentina could not have ignored it. ----------

1211. Based on the foregoing, the Tribunal concludes that, at the time of entering into the Gas Supply Agreement, YPF must have considered that a gas supply crisis would be possible if gas producers (including YPF as the main producer in Argentina) did not maintain a certain level of exploration activity. This means that the shortfall was not unforeseeable for YPF. ----------

1212. The Tribunal conclusions in connection with the unpredictability requirement are in line with the interpretation of the legal experts with regard to that requirement. Mrs. Kemelmajer as well as Mr. García Lema and Mr. Bougain agree on the fact that the duty to foresee must be required on the basis of the obligation agreed upon, the environment in which it is originated and developed and the people involved (Kemelmajer, ¶¶12-21; García Lema/Bougain, A8/S8, ¶207). This is completely in line with the provisions of Section 902 of the Argentine Civil Code, according to which "the greater the duty of acting with prudence and full knowledge of matters, the greater the obligation resulting from the possible consequences of acts". In this case, YPF's primary obligation was the supply of gas, and YPF was the primary gas producer in Argentina (representing 44% of the market in 1998). For this reason, that, which might not have been apparent for the laymen, should have been apparent for someone under the same circumstances of YPF. Consequently, considering the nature of the obligation and the specific conditions of YPF, it was foreseeable for it, in the light of the information YPF had, that (i) a gas shortage was possible to occur in Argentina, and (ii) in the event of a gas shortage, the government could issue measures to satisfy the domestic market. ----------

(b) Were the facts presented by YPF inevitable? ----------

1213. In connection with the *unavoidability* requirement, the Tribunal observes that the experts appointed by the parties lay emphasis on the due diligence that the debtor must observe to

prevent an event. For instance, when talking about unavoidability, the expert for YPF, Mrs. Kemelmajer, explains that the event must be so strong that it cannot be counteracted by the debtor because he is impotent to prevent such occurrence. She adds that, according to some legal authors, unavoidability is an essentially relative concept that only exists when the accident to be prevented is compared with a set of measures and means of resistance. For this reason, it involves an insurmountable obstacle. The expert adds that, under Argentine law, an event is considered irresistible when, although it is effectively foreseen, it cannot be prevented, in spite of the due diligence exercised. However, she adds that, in order to evaluate this exercised due diligence, the law does not require that the debtor be a superman. Quoting the Argentine Supreme Court of Justice, the expert adds that the requirement of due diligence "can neither be taken to unreasonable terms, nor impose behaviors beyond the normal degree of care within the activity involved."[207] The expert concludes that unavoidability is, therefore, within the scope of reasonableness (Kemelmajer, ¶¶22-28). ----------

1214. On the other hand, the expert for AESU y Sulgás, Mr. Bueres, states that unavoidability is within the scope of force majeure when all of the palliative measures have been taken, not only ordinary due diligence, and inquires have to be made about whether the debtor has used and exhausted all of the possibilities he might have to remove the impediment. If debtor's lack of initiative is proved, even when it is not possible to certainly know whether the adoption of such measures would have avoided the obstacle derived from the action of a public authority, such lack of initiative will be attributed to the motionless debtor. (Bueres,¶ 4). ----------

1215. As a consequence, the Tribunal concludes that the analysis of unavoidability is focused on the due diligence the debtor is expected to exercise in order to avoid the occurrence of the event, or to avoid the consequences thereof; i.e., by means of actions that the debtor could have performed before the occurrence of such event, or after the event but before any consequence derived thereof. ----------

1216. However, the Tribunal observes that YPF has focused its arguments about unavoidability on the action taken after the occurrence of the event to overcome it or mitigate the consequences thereof. In fact, instead of qualifying the events as "inevitable", YPF qualifies the events as "irresistible" or "insurmountable" (see, for example, Y-AF, ¶¶139-152). As the experts for the parties also included the irresistible and insurmountable nature of the events once these have

[207] Judgement of the Argentine Supreme Court of Justice, dated February 11th, 2003 (Dr. Kemelmajer does not transcribe the complete quotation). ----------

occurred, in the analysis of unavoidability (when Mrs. Kemelmajer points out that the event must involve an "insurmountable obstacle", and when Mr. Bueres referres to the means used by the debtor to remove the impediment), the Tribunal will also address these items in the context of unavoidability. ----------

1217. Therefore, to determine whether the requirement of unavoidability has been met or not, the Tribunal must analyze (1) whether YPF could have avoided, by the exercise of due diligence, the occurrence of the events alleged as force majeure; and (2) whether YPF could have overcome or mitigated the effects of the restrictions to gas exports. ----------

(1) *Has YPF exercised the due diligence that is necessary to avoid the occurrence of the events alleged as force majeure, or the consequences thereof?* ----------

1218. First, the Tribunal will address AESU and Sulgás's Arguments, and then, YPF's. ----------

AESU and Sulgás Position ----------

1219. AESU and Sulgás allege that YPF could have avoided the breach of its obligations if it had explored and added new gas reserves, or if it had increased its declining deliverability. Considering the scope of the supply guaranty set forth in sections 2 and 3.4 of the Gas Supply Agreement, AESU and Sulgás state that YPF was forced to take all of the necessary measures to ensure the performance of that obligation. As it was already mentioned, they state that YPF not only "agreed" to supply gas, but also "guaranteed" such supply. In other words, AESU and Sulgás allege that YPF agreed to perform an obligation of result, and assumed all risks that YPF could foresee in its capacity as expert in the gas industry. ----------

1220. In this same line of thought, the expert for AESU and Sulgás, Mr. Bueres, states that the guaranties granted by YPF in sections 2 and 3.4 of the Gas Supply Agreement tighten the requirements of an act of God. Mr. Bueres states that, as YPF's obligation to supply is an obligation of result, the absence of fault does not release YPF from liability, and YPF is required to exercise a most thorough level of due diligence "when such fault arises from the attribution criteria of the fact that causes the inability to pay debts; such requirement […] was contractually assumed by YPF in the case herein". (Bueres, ¶9). But even when considering that YPF meets the regular standard of a good family man, Mr. Bueres explains that "a good businessman" must endeavor to satisfy the creditor's interests. Consequently, YPF should exercise the same due care as a "good manager for a large business who endeavors to satisfy the creditors' interests." (Bueres, ¶9). ----------

1221. As it was already mentioned, Mr. Bueres, states that unavoidability is within the scope of force majeure when all of the palliative measures have been taken, not only ordinary due diligence, and inquires have to be made about whether the debtor has used and exhausted all of the possibilities he has, or not, to remove the impediment (Bueres, ¶4). This expert adds that the debtor has to bear the risk in the event that the performance of the obligation requires a greater work or capital than that foreseen when entering into the contract (Bueres, ¶1.8). In particular, Mr. Bueres concludes that the restrictions imposed by the Government could have been avoided if YPF had explored as much as it was necessary to perform its obligation (Bueres, ¶4). ----------

1222. Mr. Garcia Lema and Mr. Bougain confirm that under section 3.4 of the Gas Supply Agreement, YPF agreed on a supply guaranty, in accordance to which it committed its best efforts to maintain its exploitation of hydrocarbon licenses and all that was necessary to export gas and maintain Gas Export Authorizations. Particularly, YPF had to continue meeting the conditions under which the Argentine government granted the Gas Export Authorization. ----------

1223. AESU and Sulgás allege that YPF did not proceed as it was necessary to fulfill this obligation. As it was already mentioned, they state that YPF did not take any of the measures that were necessary to avoid the breach of the Gas Supply Agreement and the gas shortage, and acted negligently, and even with fraud, when managing its reserves in Neuquén Basin. Particularly, AESU and Sulgás state that: ----------

a. When agreeing on the obligation to export natural gas to AESU and Sulgás, YPF must have made all the investments in exploration and exploitation as necessary to ensure that such export would not affect the domestic natural gas supply in Argentina. This required a continual exploration and exploitation policy, not implemented by YPF. Additionally, knowing that reserves were insufficient since 1998 and that deliverability would decrease, YPF should have taken the measures that were necessary to repair these situations, including greater investments in gas exploration and exploitation, but it chose not to do so. (See paragraph 959 *and ss. above*). ----------

b. YPF exploited its oilfields in an irregular and abusive way, risking its capability to fulfill the Gas Supply Agreement. (See paragraph 970 *and ss. supra*). ----------

c. Upon entering into the Gas Supply Agreement, YPF undertook obligations with other companies, some of them being affiliates, related or controlled companies. At the moment of undertaking these obligations, YPF knew that the natural gas it was producing would be insufficient to supply the domestic supply (now increased by these new undertakings) and the external undertakings. (See paragraph 979 *and ss.* above). ----------

d. YPF opted to remit the available funds to the parent corporation (Repsol) to be distributed as dividends, instead of using those funds for exploring and exploiting new reserves, or covering the costs to meet the requirements of the easing regimes contemplated by government resolutions. YPF could have also sought external financing to develop exploration activities, but did not do it. (See paragraph 974 *and ss.* below). ----------

1224. The experts, Garcia Lema and Bougain, confirm these conclusions. They affirm that YPF did not invest the resources that were essential for exploring and exploiting the reserves, in order to ensure the domestic market supply and natural gas exports. They observe that this lack of investments is embodied in Argentine regulations (Resolution SE 265/2004, Executive Order 181/2004 and Provision SSC 27/2004) and prevents the existence of a force majeure event in the case of YPF, which is the primary Argentine Company of the sector[208]. Considering YPF's situation as a privileged historical operator in said sector, the certification of its reserves at the time of applying for the Export Authorization, and the knowledge that YPF should have had with regard to the decrease of reserves in Argentina, the experts conclude that YPF, when operating, did not exercise the degree of due diligence and care that is reasonably and normally exercised by experienced gas industry operators. Particularly, it did not have the due consideration to follow practices that would have been appropriate for AESU's interests (Garcia Lema and Bougain, ¶¶224-232). ----------

1225. This opinion is shared by Mr. Bueres, who states that YPF should have foreseen that, unless exploration activity had incremented from the 90s, YPF would not have had sufficient reserves to satisfy the domestic market in the same proportion as it had been doing (Bueres, ¶3). ----------

YPF's Position ----------

1226. YPF does not expressly state that the events alleged as force majeure had been unavoidable in the sense that, if YPF had exercised due diligence, such event could not have been avoided. In fact, YPF affirms that it had performed its legal and contractual obligations, and that there is no causal connection either between its behavior and gas shortage, or gas shortage and the government measures. From the point of view of unavoidability, the Tribunal understands that YPF's argument is that, given this lack of causal connection, avoiding shortage or government measures was not within the scope of its power. ----------

[208] As expressly recognized by Resolution SE 265/2004 (in recitals 8, 10, 11 and 12). In the same line, Executive Order 181/2004 shows the need of permanent investments for compensating the natural decline of existing wells, as well as for incorporating new reserves replacing the ones that were consumed. Provision 27/2004 recognizes that all producers involved in the suspension of exports have, to a greater or lesser extent, breached their joint obligations to supply the domestic market. ----------

1227. However, in other parts of its briefs, YPF describes in detail its behavior prior the events constituting the alleged regulatory force majeure; particularly, when challenging AESU and Sulgás' arguments that make YPF liable for the lack of gas delivery. In fact, YPF affirms that it has performed the legal and contractual obligations, and that it has always acted as a reasonable and prudent operator, before and after the enforcement of the gas export restrictive measures. Particularly: [209] ----------

a. YPF states that it has always had such reserves and production capacity (*deliverability*) as necessary to perform its obligation under the Gas Supply Agreement, as well as other undertakings. According to YPF, this shows that the measures restricting gas exports imposed by the Argentine Government were the reason for the failure to deliver gas to AESU and Sulgás after 2004 (see paragraph 1038 and ss. above). ----------

b. YPF denies being the responsible for the shortage. It states that the true causes of the supply crisis derived from the measures imposed by the Argentine Government to tackle the economic crisis in 2002; particularly, the pesification and the wellhead price freezing, and the subsequent increase of domestic demand (see paragraph 1055 and ss. above). In any case, YPF affirms that it had performed its obligations as licensee, and reached good investment levels (see paragraph 1063 and ss. above). In fact, it affirms to have invested more than other gas producers in exploration. ----------

c. YPF denies having taken advantage of its exploitation licenses in an irregular way (see paragraph 1080 and ss. above). ----------

d. YPF denies having increased the domestic demand by means of agreements entered into with related companies (see paragraph 1087 and ss. above). ----------

e. YPF denies an existing correlation between YPF's levels of investments and the dividends it has paid to its shareholders (see paragraph 1077 and ss. above). ----------

1228. Then, the Tribunal shall refer to these arguments to carry out its analysis. ----------

Discussion ----------

1229. The question posed before the Tribunal is whether YPF could have avoided the occurrence or the consequences of the events alleged as force majeure. The Tribunal must also analyze the requirement of inevitability on the basis of its own conclusions on foreseeability, as section 514 of the Argentine Civil Code expressly states that "[a]n Act of God is that one that has not been foreseen, or if foreseen, it could not be avoided." Following this line of thought, the question is

[209] These arguments were shown in detail in previous sections, so in this part of the award, the Tribunal will only mention them in order to complete the context of YPF's arguments. ----------

whether having foreseen or having to foresee that a situation of gas shortage would occur in the Argentine Republic, and that under such circumstances the Argentine Government could take measures aiming at favoring the domestic supply, YPF could have taken the necessary measures to avoid the non-performance of its obligations. ----------

1230. As it has been anticipated, this question should be analyzed in the context of the gas supply obligation, and the complementary obligation to make the best efforts provided for in sections 2 and 3.4 of the Gas Supply Agreement. In the Tribunal's opinion, these sections impose on YPF a standard of performance stricter than that imposed on a "good family man" or a "reasonable person", who must act in "good faith and with due care", as provided for in paragraph 1 of section 1198 of the Argentine Civil Code. ----------

1231. On the contrary, the Tribunal does not consider relevant to these purposes YPF's obligation to act as a "Reasonable and Prudent Operator", established under sections 17.4 (d) and 1.1 of the Gas Supply Agreement. As explained above (see paragraph 470 and ss. above), the obligation to act as a Reasonable and Prudent Operator for YPF arises after the allegation of a force majeure event; therefore, this standard of conduct is enforceable only after the event alleged as force majeure has occurred. Consequently, the question about whether YPF could have taken measures aiming at avoiding the gas shortage is governed by the standard of due diligence agreed upon in sections 2 and 3.4 of the Gas Supply Agreement, and not by the standard of conduct of sections 17.4(d) and 1.1 of the Gas Supply Agreement, which refer to the standard of the Reasonable and Prudent Operator. ----------

1232. Before beginning the analysis, the Tribunal considers it appropriate to highlight some items related to causation. YPF has explained the inexistence of a causal connection between its exploration activity and gas shortage. YPF has also alleged the inexistence of a causal connection between gas shortage and the Argentine Government measures. The Tribunal understands that YPF argues that it was beyond its control avoiding gas shortage or the restrictions to exports imposed by the government. On the contrary, YPF states that it has always had the reserves and deliverability that were necessary to fulfill all its contractual undertakings, which, in YPF's sole discretion, will demonstrate that the reason for non delivery of gas to Sulgás were the measures adopted by the Argentine Government. ----------

1233. The Tribunal does not accept these arguments. To begin with, the Tribunal rejects the argument suggesting that the 2004 shortage was due to the fact that, as a consequence of pesification and price freezing imposed by the Argentine Government after the 2002 crisis, the

exploration activity fell abruptly. Setting aside for a while the economic effect of those measures on exploration, the exploration activity that was necessary to supply the domestic and external market in 2004 must have been carried out long before 2002. As Mr. Moore explains: ----------

"The important point, I think, is that 2004 shortage is not, in my opinion, a consequence of 2002 pesification, because it was too late to be a material cause for 2004 shortage. My report intends to suggest that the possibility of a domestic gas shortage has always existed since the 90s, when the export authorizations were implemented. It was probable that a deliverability shortage and a reserve shortage would occur, unless certain things occurred. And they did not occur. They included a wide range of exploration programs. They also included the ability to substantially increase the production of existing oilfields. And as a result, none of these sufficiently occurred, and I think that shortage is foreseeable as a result of what happened in 96-97" (Tr., Day 3, page 642 {Moore}). ----------

1234. As it was already explained, the Tribunal is not convinced of the fact that gas shortage could have been caused by an abrupt increase of the domestic demand. Experts Moore and Mezzadri demonstrated that there had not been a dramatic increase between the demand existing before 2001 and the demand in 2004 (see paragraph 1204 and ss. below). ----------

1235. Consequently, the causes for the 2004 gas supply crisis should be sought in the gas producers' activities during the 90s. Given the majority interest of YPF in the gas market, it is evident that YPF's behavior had a significant impact on the sufficiency of the gas reserves and deliverability throughout the country. ----------

1236. Secondly, the Tribunal considers that there is a direct causal connection between the restrictions on exports imposed by the Argentine government and the gas shortage. The Tribunal has already determined that legislation in effect allowed the government to impose measures to benefit the domestic market supply. There is irrefutable evidence that the cause for imposing restrictions on gas exports was the gas shortage; this arises from all of the normative and administrative acts regulating such restrictions. Even in the case that YPF was right about the fact that the government exceeded in its powers, the causation between gas shortage and the imposition of restrictions on exports is undeniable. ----------

1237. In this context, the question posed is: Did YPF make its best efforts to "do everything necessary" to avoid the events alleged as force majeure or its consequences? In other words, (i) did YPF make its best efforts to avoid a situation of gas shortage and the restrictive measures on gas exports? and (ii) did YPF make its best efforts to avoid the breach of a contractual obligation

in a situation of gas shortage in which the domestic market supply shall prevail? The Tribunal concludes that the answer to both questions is "no". ----------

1238. With regard to the first question, it is apparent that, having the possibility to foresee the gas shortage, YPF could have done what was necessary to avoid it. As it was already mentioned, the GCA Report in 1997 established as an assumption for its conclusions that gas producers had to maintain a certain level of exploration activity (approximately 89 wells per year during a period of 15 years) (see paragraph 1179 above). However, the file shows that the exploration activity decreased abruptly in Argentina as from 1998, decreasing to an average of 39 wells per year. ------

1239. It is not sufficient the fact that YPF shows that it behaved as the rest of the producers, or better, or that it acted as a Reasonable and Prudent Operator. The standard applicable to YPF's conduct before the occurrence of the force majeure event, as YPF's exploration conduct, is not the one that a Prudent and Reasonable Operator should observe, according to which YPF should exercise "the degree of diligence and prudence that are reasonably and normally exercised by experienced operators acting in the gas, oil, transportation of natural gas and electricity industries, under the same circumstances and conditions, having due consideration for carrying out appropriate practices for the other PARTIES' and/or PARTICIPANTS' and complying with their interests" (Section 1.1 of the Gas Supply Agreement.) In addition, it was not sufficient that YPF had performed its obligations in its capacity as licensee before the Argentine Authorities. The standard applicable to YPF before Sulgás, when it comes to the obligation of the former to explore oilfields with the aim of performing the obligation to deliver gas, consists of making its best efforts, as established by section 3.4 of the Gas Supply Agreement. ----------

1240. The Tribunal considers that it has been proved that YPF did not make its best efforts when it comes to exploration activities. Although experts do not state the amount of wells YPF should have drilled per year, considering YPF's interest in the market is 44%, the Tribunal concludes that YPF must have drilled 39 wells per year. Mr. Guzzetti affirms that over the period 1994-2009 YPF drilled 110.49 wells (YPF participated in a total of 182, but taking into account actual participation of YPF, the result decreases to 110.49). This shows a result of 7.37 wells per year over a period of 15 years, which is much less than the 39 wells per year expected from YPF. ----------

1241. It is true that in the late 90s, the oil price was low, which discouraged the exploration activity. But the Tribunal cannot accept this is a sufficient cause to release YPF from liability. YPF undertook the obligation to provide gas to Sulgás for twenty years, and committed its best efforts to have that gas available. YPF cannot later excuse itself stating that carrying out the exploration

necessary to have that gas was not profitable. In other words: YPF was capable of carrying out the exploration activity that was necessary to avoid a gas shortage in Argentina, and to have sufficient reserves and deliverability, but it took the economic decision of not doing so. This does not release YPF from its liability before Sulgás. ----------

1242. In fact, YPF is liable for non-performance if the act of God occurred due to its negligence (section 513 of the Argentine Civil Code). If YPF was negligent when making the necessary investments to be able to produce enough gas, it "placed itself" in a force majeure situation. In its capacity as primary gas producer of the country, with the obligation to foresee the possibilities of gas shortage in the domestic market, as well as the government measures –measures that were legally possible and foreseeable- YPF's omission to undertake the pertinent exploration activities was the cause of the alleged force majeure, or, at least, YPF contributed to its own impossibility to perform the obligation to deliver gas to Sulgás. ----------

1243. Requiring YPF to make all the necessary investments to maintain the projections of the 1997 GCA Report does not imply requiring YPF to be a "superman", in the terms of Mrs. Kemelmajer. The 1997 GCA Report used as an assumption a certain number of explorations to conclude that "[t]here is no tangible evidence showing that Argentine Natural gas export to neighboring countries threatens the satisfaction of the increasing domestic demand that is foreseen in Argentina in a foreseeable future. (GCA Report, 1997, page 2). As YPF and other gas producers used the 1997 GCA Report (report that was ordered by themselves) to obtain the authorization to export gas granted by the Argentine government, it was completely reasonable to demand that they performed all of the assumptions identified in said report to ensure that said projections became true. In the words of the Argentine Supreme Court, quoted by Mrs. Kemelmajer, such does not imply imposing a behavior beyond the normal degree of foresight within the activity involved (Kemelmajer, ¶28, quoting the judgment of the Federal Court, dated February 11, 2003). On the contrary, the required behavior falls directly within the scope of foreseeability of experienced gas producers, like YPF. ----------

1244. The Tribunal cannot conclude its analysis about unavoidability without referring to YPF's argument that it has always had the reserves and the deliverability that were necessary to perform all its contractual obligations (which is related to the second question asked by the Tribunal in paragraph 1237 above). In the context of unavoidability, the Tribunal understands that YPF's argument states that the sufficiency of reserves and deliverability would show that it

acted with due diligence to perform its contractual obligations and that, if the restrictions on exports had not existed, YPF could have been able to deliver the gas to Sulgás. ----------

1245. The Tribunal also rejects this argument. In fact, the Tribunal has drawn the conclusion that YPF did not have the reserves or the deliverability that were necessary to perform its contractual obligations. ----------

1246. Before presenting its opinion, the Tribunal will clarify two items connected to the methodology and the information used by the experts. ----------

1247. First, the Tribunal considers that the methodology used by Mr. Moore to calculate the relation between delivery obligations (of YPF against its reserves) is more reliable than Mr. Guzzetti's. Mr. Moore only used proved reserves (1P), whereas expert Guzzetti used proved reserves plus 50 % of the probable reserves (50% of 2P). Mr. Guzzetti explained that such is the standard used by the Argentine Government to approve the authorizations to export (and, in any case, it was more conservative than the criteria admitted by expert Moore as "*base case"* or last recovery indicator, which includes the total probable reserves). However, Mr. Moore explained in a more convincing way that the standard of the industry to negotiate sales agreements (the standard that YPF should have taken into account when negotiating the Gas Supply Agreement) was the standard of reserves proved *with reasonable certainty* (1P). In fact: ----------

a. Mr. Moore explained that there was a difference between the criteria used for public policies, such as granting an authorization to export, and the criteria to determine the guaranteed obligations of delivery: in the last case, it is industry practice to consider only the proved reserves, since the obligation agreed upon requires that the volumes committed will be available with reasonable certainty. (First Report of Moore, ¶127, Tr., Day 3, pages 635-639 {Moore}). [210] ---

[210] See First Report Moore's, ¶127: "The Argentine Government's calculations used the 2P reserves, which is appropriate for this exercise. This is different from the situation concerning contractual sales commitments, where the producer effectively guarantees delivery of some specific volume. In these cases, it is the industry practice to consider only Proved reserves for the purposes of gas sales agreements or transportation service agreements, since the guarantee requires that the volumes committed will be available with reasonable certainty". (Translation of the Tribunal. The original document states: (*"The Argentine Government's calculations used the 2P reserves, which is appropriate for this exercise. This is different from the situation concerning contractual sales commitments, where the producer effectively guarantees delivery of some specific volume. In these cases, it is industry practice to consider only Proved reserves for the purposes of gas sales agreements or transportation Service agreements, since the guarantee requires that the volumes committed will be available with reasonable certainty"*). See also Tr., Day 3, page 635-639 (Moore): ["The Argentine Government uses the criteria at its own discretion to determine whether the exports have to be authorized. I am talking about the industry practice in the gas sales agreements, where one does not guarantee to supply reserves, except those that one has reasonable certainty that is capable to produce. […] there is a distinction, a difference between the criteria used in public policies, for instance, regarding the appropriate index reserves to produce after a certain number of

b. As AESU and Sulgás explain, this criterion is consistent with the one of the SPE/WPC/AAPG in 1997. The 2001 version, which, according to AESU and Sulgás does not modify the definitions of 1997, points out that gas contracts are typically based in proved reserves ("*[g]as contracts are typically based on proved reserves, which adds a strong business incentive to the accurate determination (and addition) of proved reserves*").[211] ----------

1248. On the other hand, although Mr. Guzzetti has used for his analysis in this arbitration the proved reserves plus 50% of the probable reserves, his explanation is not satisfactory and it is contradictory to other statements within and outside this arbitration: ----------

a. Mr. Guzzetti affirms that using the proved reserves plus 50% of the probable reserves is a "more conservative criterion than the one recommended by the SPE (Society of Petroleum Engineers), the APG (American Association of Petroleum Geologists), and lastly, the WPC (World Petroleum Congress); but then he adds that "[a]ll of them in their publications for the year 2007 consider that the most probable case for the development of a reservoir are the proved reserves plus a hundred per cent of the probable reserves." (Tr., Day 3, page 711 {Guzzetti}). However, Mr. Guzzetti does not say whether this is the appropriate standard to negotiate sales agreements. -----

b. Outside this arbitration Mr. Guzzetti has confirmed that the standard of the industry is to use proved reserves to negotiate sales agreements. In fact, in a previous report not related to this arbitration, he stated that although the historical practice of the industry had been to limit the commitments to proved reserves, the opening of gas markets and certain flexibility in the regulatory controls led some companies to commit volumes that are superior to proved reserves, which constitutes an individual decision.[212] ----------

---

years, and the criteria to determine exports. That is one thing. This is not what must be applied in the case the guaranteed commitments to delivery (…) I make a difference between what is appropriate to use in gas sales agreements where there are guaranties that are express or implied, and what is used for assessment issues of public policies." […] what I say in the table is that YPF did not have sufficient proved reserves to satisfy its commitments. (Tribunal's note: reference to the "table" seems to be slide 4 of the new direct evidence discussed during the hearing)----------

[211] [211] Guidelines for the Evaluation of Petroleum Reserves and Resources -A Supplement to the [1997] SPE/WPC Petroleum Reserves Definitions and the SPE/WPC/AAPG Petroleum Resources Definitions, SPE, 2001, p. 56 available at www.spe.orglindustry/docs/GuidelinesEvaluationReservesResources 2001.pdf. -----

[212] In a report denominated ""Reserve and Resource Statement, Camisea Project Fields Block 88 (Peru), Gaffney, Cline and Associates, May 2009", enclosed to Second Report of Moore as annex, Mr. Guzzetti stated: "*While historical industry practice has been to limit firm commitments to Proved Reserves, the opening up of gas markets and some lessening of regulatory controls has led to the willingness of some companies to commit to volumes beyond Proved.* The scope of this commitment is an individual corporate decision and there is no standarized general rule." (Translation of the Tribunal. The original document states: "*While historical industry practice has been to limit firm commitments to Proved Reserves, the opening up of gas markets and some lessening of regulatory controls has led to the willingness of some*

c. In this case, Mr. Guzzetti has confirmed that YPF's production projections were made on the basis of proved reserves, and that "YPF did not sign gas sales agreements for which it had to resort to non proved reserves or exploratory resources." (First Report of Guzzetti,¶ 114, note 26).

1249. For the above-mentioned reasons, the Tribunal will make its analysis on the basis of YPF's proved (1P) reserves. ----------

1250. Secondly, the Tribunal is aware that Mr. Guzzetti rejected the conclusions drawn by Mr. Moore in his first and second reports due to a lack of sufficient information. Particularly, he affirmed that the First Report of Moore "is based on insufficient, unfinished and mistaken data, and on an assumption without factual evidence, which led him to wrong conclusions with no technical criterion, which deprives the report of scientific value" (Complementary Report of Guzzetti, page IV), and he made similar observations with regard to the Second Report of Moore (Second Complementary Report of Guzzetti, page IV). Mr. Guzzetti explained that this criticism was mainly based on the lack of complete information with regard to the gas sales commitment and YPF's interests in oilfields operated by third parties (Tr., day 4, page 866 {Guzzetti}).[213] However, it was proved by the parties communications and by Mr. Moore that, when preparing his first report, he did not have sufficient information on these matters, information that had been provided by YPF to Mr. Guzzetti (Third Report of Moore, ¶8, Tr., Day 4, page 865 {Moore}).[214] Afterwards, Mr. Moore received this information and was able to correct his conclusions, first in his Third Report and later in the direct examination during the hearing; and affirmed that, consequentially, he considered that Mr. Guzzetti's criticisms were not valid (Tr., Day 4, page 865 {Moore}). During the hearing, Mr. Guzzetti first denied that this new information would be sufficient and reiterated his initial conclusion (Tr., Day 4, page 865 {Guzzetti}), but then he rectified his position and affirmed that it was likely that Mr. Moore had corrected his conclusions after his second report (Tr., Day 4, page 866 {Guzzetti}). After analyzing the evidence submitted by both experts during the second hearing, the Tribunal concludes that Mr. Moore effectively corrected his conclusions, so that Mr. Guzzetti's criticisms on the basis of lack of

---

companies to commit to volumes beyond Proved. The extent of such a commitment is an individual corporate decision, and there is no standard or 'rule of thumb'."). ----------

[213] AESU and Sulgás claim that they had requested this information at the stage of document production, and it was not provided. ----------

[214] Mr. Moore explains: "*Guzzetti argues that my analyses should be disregarded because I did not use certain data. The reason that I had to use an incomplete data set was that YPF failed to provide a more complete data set to AESU, despite being required to do so by the Tribunal. It appears that YPF did provide some of this data to Guzzetti. I have not reviewed these discrepancies in detail, but would be happy to provide the Tribunal with an extensive review of these if required."* (Third Report of Moore, ¶8).----------

information are not well grounded. In fact, during the hearing, Mr. Moore was based exclusively on information submitted by Mr. Guzzetti, and the differences between the results of both experts are connected with their methodology and presumptions, not with the information submitted. ----------

1251. The Tribunal, having clarified on these methodological questions, goes on to express its opinion. ----------

---

1252. Regarding YPF original sales agreements (original CDCs), the submitted evidence shows that, at the moment of entering into the Gas Supply Agreement or at least in 2000, YPF did not have enough proven reserves to perform its original sale agreements, assuming that YPF had to renew its contracts with distributors of the domestic market (see figure 3 (wrongly titled 2) of the Second Report of Moore, transcribed in ¶942.b).[215] The Tribunal agrees with AESU and Sulgás based on that domestic supply priority principle as well as on its role in the Argentine market, YPF had to renew these contracts. As YPF is the most important natural gas producer in Argentina, the Tribunal considers that, even without a domestic shortage crisis, it was reasonable to expect to demand YPF to continue assuming said commitments. In fact, said renewal was one of the assumptions considered by the Energy Secretariat when granting the Exports Authorization.[216] ------

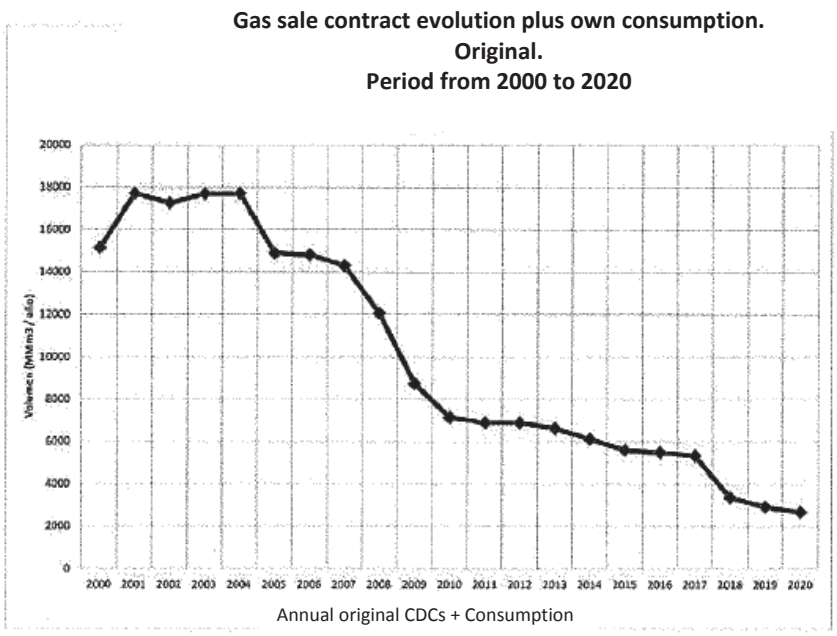
1253. About its production capacity or deliverability, the Tribunal agrees with Mr. Moore that the information given by Mr. Guzzetti suggests that in 2000 YPF knew that it may have a deliverability shortage in the long term. In particular, 2.a.1 chart from the First Report of Guzzetti shows a "picture" of YPF gas sale commitments until 2020, representing the situation in 2000. This chart demonstrates that after a peak between 2001 and 2004, there is an abrupt drop, such as if it was anticipating a lower production. ----------

2.a.1 chart. Gas sale agreements executed by YPF plus its own consumptions in 2000 -2020 period. Neuquén Basin in MMm^3/Year. ----------

Source: YPF CDCs until 2010. Projection source 2010-2020: YPF. ----------

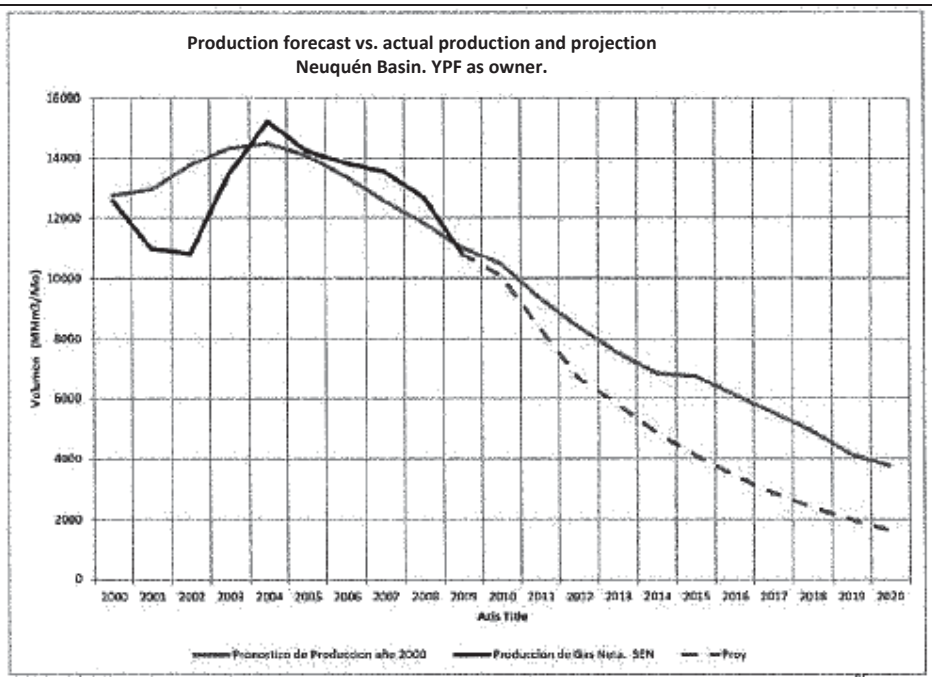
[215] The Tribunal sees that Mr. Moore acknowledge during the hearing that, at the moment of executing the Gas Agreement, "technically [YPF] had [] enough reserves." But after it explains that "the problem with it is that they were supposed to get rid of every internal commitment. But if we have the requirements to satisfy the domestic market where the agreements were executed, obviously they did not have enough reserves to cover [...] Government expectations." (Tr., Day 3, page. 658 (Moore)). ----------

[216] The Exports Authorization (Annex A18/S18) states: "Given that YPF SA does not mention due dates of domestic market commitments, several estimates have been done, to consider that said commitments continue during the whole period of exports, resulting a remaining gas reserves value of 94, 418.9 billions of m3, which would indicate that it is feasible to grant the requested authorization."----------



1254. And in fact, YPF production forecast in 2000 for years 2000 to 2020 provided by Mr. Guzzetti (2.b.1 chart from First Report of Guzzetti, below) suggests that YPF knew that its deliverability was dropping: ----------

2.b.1 chart. YPF production forecast (owner) reported to SEN, in Neuquén Basin. ----------



Source: SEN – YPF. Production forecast data for the Energy Secretariat. Developed by author --------.

1255. Based on these charts, which overlap the chart mentioned in paragraph 941, Mr. Moore states that "YPF position seems to be that it completely knew it would have a deliverability shortage in the long term" (Tr. Day 3, pages 645-647), and concludes that YPF was liquidating its business. The Tribunal agrees that the charts are disturbing because they strongly suggest that in 2000 YPF already knew that its deliverability would abruptly drop after 2004, which coincides with the gas shortage crisis. Although Mr. Guzzetti explained that YPF production forecasts are prepared based on existing agreements and not forecasting a potential future demand, it is difficult for the Tribunal to accept this explanation. It is unthinkable that a reasonable businessman (and even more if it is the main gas producer) prepares demand forecasts for 20 years, but does not include in said forecasts a projection of future potential commitments. ---------

1256. In fact, the Tribunal also concludes that YPF did not have sufficient deliverability to fulfill its original sale commitments (original CDCs). All expert charts show that YPF deliverability related to adjusted sale commitments (adjusted CDC) (in particular, Mr. Guzzetti's chart mentioned in paragraph 1048 above, Mr. Moore's chart mentioned in paragraph 954 above, and the corrections made by YPF to such chart mentioned in paragraph 1050 above) clearly demonstrate that deliverability would not have been sufficient to satisfy the original sale commitments. In particular, it is clear that YPF would not have had sufficient deliverability either to provide gas to AESU and Sulgás during the winter period or when said period finished after the Conflict Resolution Agreement termination on December 31, 2009. ----------

1257. The Tribunal does not consider it appropriate to perform the analysis based on YPF adjusted sale commitments (adjusted CDC), as YPF suggests. These adjustments are reductions in deliverability that YPF negotiated with its different buyers once restrictions were applied to gas exports, which (at least) might be considered mitigation measures adopted by YPF, but not preventive measures. When executing the Agreement, YPF did not know that it would be negotiating these reductions, so it is not appropriate to apply retroactive effects to these adjustments in the inevitability analysis. Furthermore, if YPF's argument is that it has always had the reserves to fulfill its obligations and that the only reason that prevented YPF from complying with said obligations was the redirection orders, that fact anticipates that YPF would have reserves to fulfill all its original contractual obligations at all times, but that reserves would be redirected to other users. But Mr. Guzzetti's original chart (mentioned in paragraph 1048 above)

suggests that, on the contrary, even after these readjustments, YPF did not have sufficient production capacity to fulfill with its adjusted CDCs and also with the redirections. ----------

1258. The Tribunal considers that, even taking into account the adjusted CDCs, YPF did not have sufficient reserves or deliverability. During the hearing and using the final information provided by Mr. Guzzetti, Mr. Moore proved that in 2005, 2006, y 2007 approved reserves (1P) were not sufficient to fulfill its adjusted sale commitments (see ¶952 above). ----------

1259. YPF had alleged that "this 'gap', following Moore's criterion, does not mean that YPF would not have had sufficient gas to fulfill its contractual obligations from 2005 to 2007, but a future potential issue if this deficiency was not corrected in the following years." (Y-AF, ¶175). In this sense, Mr. Guzzetti explained that: ----------

"This does not mean that in 2006 and 2007 YPF was not able to fulfill its gas sale agreement of 2006 or 2007. It means that there was a potential imbalance that may occur in 2014 or 2015, where, had YPF not have corrected its reserves imbalance, in this case proved,-in relation to gas sale agreements for 2014 and 2015, YPF would have had a potential unbalanced situation […] We are not here to submit the gas volume that YPF would have to deliver year after year. That is to say, this column does not represent the gas that YPF had to deliver in 2006. It represents the accumulated [amount] of gas delivery obligations that YPF had until 2020. In 2006, YPF only had to deliver a fourteenth part of this volume of gas. [...] The same happens with reserves. […] It was a smaller portion of this reserves volume, a fourteenth part of this reserves volume that YPF was going to use in 2006 to comply with the deliveries of gas. ----------

[...] ----------

Then, there was a future potential imbalance beyond 2009 and that was solved before 2008. Already in 2008, through renegotiations, YPF restored the balance between its confirmed reserves and gas sale obligations accumulated until 2020."----------

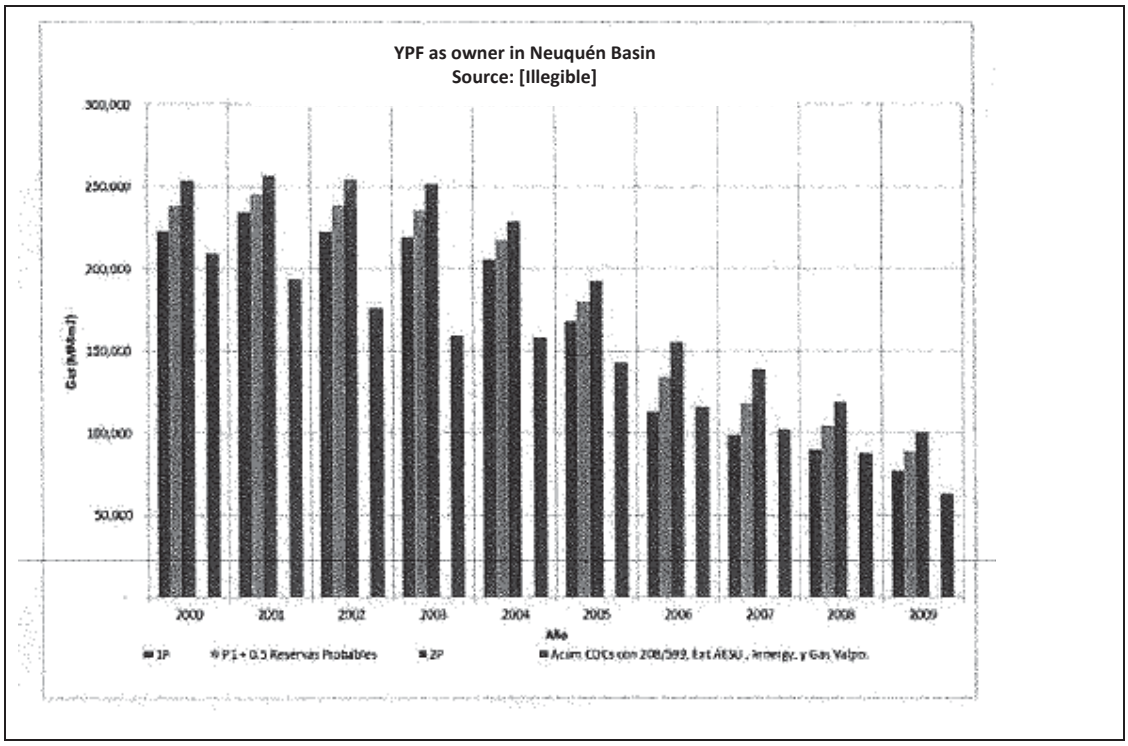
(Tr., Day 3, page. 712-714 (Guzzetti)). ----------

1260. This explanation is not concluding. Mr. Guzzetti did not provide annual data about every agreement so that the Tribunal could confirm his testimony. It is true that Mr. Moore confirmed that the balance would be restored in 2008 (Tr., Day 3, page 640 (Moore)), but when the Tribunal asked he could not explain the implication that it would have in relation to the available reserves for the Gas Supply Agreement, because that would depend on due amounts and terms under each agreement (Tr., Day 3, pages 679-681). In absence of confirmation, the Tribunal concludes

that there is a gap between YPF proved reserves and its adjusted sale commitments in 2005, 2006, and 2007.----------

1261. But even based on the chart provided by Mr. Guzzetti during the hearing (slide 4 of his presentation during the hearing, Annex Y-234), that shows a difference between adjustments calculation date with Gas Valpo and Innergy, there are not sufficient reserves to fulfill the adjusted CDCs in 2006 and 2007: ----------

Proved Reserves (P1), P1 reserves [Illegible] vs. CDCs according to Moore with [illegible] Innergy and Gas Valpo. ----------



Gaffney, Cline & Associates. ----------

1262. The Tribunal observes that during the hearing Mr. Moore did not give his opinion about the validity of the interpretation made by Mr. Guzzetti about the effect of YPF renegotiations with Gas Valpo and Innergy. In fact, Mr. Moore refrained from saying whether Mr. Guzzetti's interpretation was correct or not, considering that it was about a judicial topic not included in the report (Tr. Day. 3, pages. 628-632). However, even accepting Mr. Guzzetti's figures, Mr. Moore highlighted that in 2006 and 2007 there was an insufficiency between proved reserves (reflected in the dark red bar on the left of each year) and adjusted CDCs (reflected in the lighter and

brighter red bar on the right). According to Mr. Moore, this difference is of 4 billion cubic meters of gas (Tr., Day 4, pages 848-.852 (Moore)). ----------

1263. In all respects, even if the Tribunal would have concluded that YPF had sufficient reserves, it has been demonstrated that YPF did not have sufficient deliverability. The parties have recognized that the absence of deliverability is a determining factor for gas shortage. Mr. Moore said during the hearing that "it is not enough saying that there will be sufficient reserves. We shall say there will be sufficient reserves and deliverability during the following 15 to 20 years." (Tr., Day 3, page. 673). YPF has not argued about this point, on the contrary, in several occasions it has stated that shortage crisis was originated by a lack of deliverability, but not by the lack of reserves.[217] ----------

1264. In particular, Mr. Moore has established during the hearing, using Mr. Guzzetti's data, that YPF did not have sufficient deliverability to fulfill its adjusted CDCs (and *a fortiori* with original CDCs) (see chart in ¶954). YPF sustains that some commitments shall be eliminated to reflect the adjustments with Innergy and Gas Valpo, and to eliminate the winter period in 2004 and the period subsequent to the Gas Supply Agreement termination. As pointed out before, YPF analysis is inappropriate, because the fact that YPF had just the deliverability needed to fulfill its adjusted obligations only confirms it did not have sufficient deliverability to comply with those obligations before its reduction. It is evident based on the chart that, if the Gas Supply Agreement had not been terminated in March 2009 (YPF did not have how to foresee that before that date, unless it would have had the intention to terminate the Agreement before AESU and Sulgás did it), YPF would not have had the deliverability to fulfill the gas delivery to Sulgás before the winter period stated in the Conflict Resolution Agreement, whose term ended on December 31, 2009.----------

1265. But following YPF thinking, i.e. considering only the deliverability needed to fulfill adjusted commitments (shown in blue), without taking into account YPF additional export obligations before the Gas Supply Agreement termination in 2009 (see chart in ¶1050 above), YPF did not have enough deliverability either. The chart shows that there are some blue peaks (that represent adjusted CDCs according to YPF) above the maximum deliverability red line that, although they could be smaller, represent YPF deliverability insufficiency. ----------

---

---

[217] Although YPF has sustained this, the Tribunal observes that it also has recognized the drop in reserves, see for example ¶1187 *supra*.----------

1266. The Tribunal considers that this insufficiency refers only to YPF adjusted CDC, readjusted according to YPF criteria. That confirms that, a *fortiori*, YPF did not have sufficient deliverability to comply with its original CDCs and with the redirectioning imposed by the Government[218].----------

1267. For the abovementioned reasons, the Tribunal considers that YPF could have avoided the facts invoked as force majeure. On the one hand, it could have avoided gas shortage making more explorations. But even accepting, *arguing*, that YPF could not have avoided exports restrictive measures imposed by the Government of Argentina, the Tribunal concludes that YPF did not have sufficient reserves and deliverability that would have allowed it to comply with its obligation of delivering gas to Sulgás, even before the enforcement of redirectioning measures by the Government of Argentina. ----------

(2) Could YPF have overcome or mitigated the restrictions effects on gas exports?----------

1268. Given its relationship with impossibility to comply with its obligations, the Tribunal shall also refer to the parties' arguments related to this requirement, regarding the efforts made by YPF to alleviate the effects of the events that prevented the performance of its obligation. ----------

AESU and Sulgás Position----------

1269. AESU and Sulgás allege that the measures adopted by the Government of Argentina never made the obligation fulfillment impossible, and that in any case YPF could have overcome or mitigated their effects. ----------

1270. In particular, AESU and Sulgás state that YPF could have exercised available administrative and judicial actions to challenge Government measures that it alleged that prevented gas exports, and those that imposed taxes on gas exports, considering that YPF has stated that all these measures were invalid, unconstitutional and illegal. ----------

1271. In this regard, AESU and Sulgás state that the obligation to act as a reasonable and prudent operator set forth in section 17.4(d) of the Gas Supply Agreement required, first, that YPF administratively challenged the Government's measures, in particular, by the means provided in Act 19,549 about administrative proceedings. If administrative contests were not successful, YPF had to file an action or judicially contest. YPF could have also acted directly through legal means, for example through an amparo proceeding [*legal action brought for the protection of a*

[218] In fact, Mr. Guzzetti confirmed during the hearing that they did not consider the consequences of redirectioning order as YPF obligations for the purposes of its assessment in this arbitration (Tr., Day 4, page 855 (Guzzetti)). Figure 2.e.1 of the First Report of Guzzetti, which separates adjusted CDCs and redirected sales (mentioned in ¶ 1048 *supra*), also confirms this point. ----------

Constitutional right]. In all cases, it could have also requested precautionary measures that would have permitted it to export gas while processing the administrative or legal contest. ----------

1272. AESU and Sulgás allege that YPF did not make great efforts to contest the rules that were supposedly causing the force majeure alleged by YPF. In the action analysis performed by YPF, the pace on said actions and, above all, the multiple procedural paths that YPF did not even try to take, show that there existed a YPF business decision that may be summarized as follows: (a) from the formal point of view, YPF filed administrative remedies against several administrative acts adopted by the Government of Argentina, thus showing a formal disagreement with these acts, but (b) from the material point of view, YPF did not seriously advance in the contest of said acts, and YPF agreed with them in relation to the facts. ----------

1273. According to AESU and Sulgás, YPF behavior regarding the administrative contest of the Government measures may be summarized as follows: ----------

a. As per rules of general scope (resolutions): ----------

i. Until January 2005, when acting against resolution SE 1681/04, generally YPF promptly filed inappropriate claims[219]. ----------

ii. As from January 2005, YPF took, in general, much more time to file its administrative claims from the sanction of the respective resolutions. For example, the contest of SE 752/05 resolution -of great importance for the case- was made with a delay of almost six (6) months. ----------

iii. On February 7, 2007, YPF filed expedite procedure motions of some of the inappropriate claims that it had filed. Regarding the claims filed against the most important rules in the crisis, it was made with a delay of a year (in the case of Resolution SE 752/05) and two years and four months (in the case of Resolution SE 659/04) in relation to the moment from which it was legally authorized to file said motions. ----------

IV. Although from March 21, 2007 YPF could finally considered exhausted the administrative remedies about the inappropriate claims in relation to which it had filed expedite procedure and thus, it could file an ordinary motion for annulment of the administrative acts subject matter of said claims, it never filed any complaint. ----------

b.At the same time, the contest from YPF regarding administrative acts of particular scope that applied mechanisms created by general scope rules (including, in particular, the requirements of

[219] Dr. Bielsa explains that the inappropriate claim is the one filed before the same body that ruled the contested act, and that it is set forth in section 24 of Act of Administrative Procedures (Act 19.549, Annex AL7/SL7).----------

additional injection provided in Resolution SE 659/04 resolution and permanent additional injections indicated in Resolution SE 752/05), also began diligently during 2004 but then turned into a procedural strategy that included, among other things, gathering in one action all offenses caused by many acts notified during a long period of time, or the existence, year-to-date, of applicable acts that were not appealed although more than five (5) years have passed since they were issued. ----------

1274. In relation to legal actions that YPF could have filed regarding the acts that YPF alleged that constituted force majeure, AESU and Sulgás state that: ----------

a. YPF did not file any *amparo proceeding* against such acts. ----------

b. YPF did not file any declaratory action trying to establish the alleged unlawfulness of such acts. -

c. YPF did not file any ordinary motion for annulment against such acts.----------

d. YPF did not require any precautionary measures, independent or not, canceling the effects of said acts. ----------

e. YPF did not file any *amparo proceeding* for the delay of the Administration due to the failure to solve remedies and claims filed, or for the omission to analyze the case as requested. ----------

f. YPF did not file, due to the weak points mentioned in the previous item, any motion in error in administrative venue. ----------

g. Surprisingly late, YPF did file expedite procedure motions to only some of the inappropriate claims that it had filed. ----------

h. Surprisingly late, YPF did file great part of the motions for reconsideration that it filed against acts of application of the regulations in question. ----------

1275. AESU and Sulgás are based on the legal opinions of Dr. Bueres, Dr. Bielsa and Dr. García Lema and Dr. Bougain. Experts Garcia Lema and Bougain state that force majeure invoked by YPF shall be analyzed in the light of its obligations under the Gas Supply Agreement, in particular its obligation to act as reasonable and prudent operator once a force majeure act is invoked (section 17.4(d) of Gas Supply Agreement in connection with section 1.1), and its gas supply obligation under section 3.4 of the Gas Supply Agreement. According to these experts' opinion, section 17.4(d) places YPF under the contractual obligation to carry out a "reasonable and prudent act" to mitigate the consequences of the act invoked as force majeure in the reasonably shortest term. Furthermore, the definition of "reasonable and prudent act" included in section 1.1 of the Gas Supply Agreement sets forth that debtor shall "duly consider […] the interests of other parties and/or participants." (García Lema and Bougain, ¶¶219-222). ----------

1276. Dr. García Lema and Dr. Bougain understand that, as YPF invoked the force majeure situation (whether it is accepted or not), it should have made its best efforts to defend the contractual obligation of supply, legally and judicially questioning the lawfulness of the emergency rules. In accordance with these experts, YPF did not act consistently with this obligation by notifying AESU about the event of force majeure and not defending gas exports by means of judicial contest of the restrictive measures adopted by the Government of Argentina, especially when YPF considered them unlawful. On the contrary, YPF accepted to validate said restrictive measures when executing the agreements entered into with natural gas producers with the Government of Argentina. The experts point out that in the constitutional regime of Argentina, the authorities cannot establish restrictions or arbitrary orders, and that, in any case, there are applicable legal resources to compensate said abuses (García Lema and Bougain, ¶220-222). ----------

1277. On the other hand, Rafael Bielsa states that the right to do a reasonable and prudent act imposed to YPF by the Gas Supply Agreement needed a more proactive contest behavior, such as requesting precautionary measures that allow to deliver the supply, suggesting unconstitutional issues, defending before justice the firm and unchangeable condition of its authorization to exports, or even denying to sign the Agreements with Gas Producers promoted by the Government. (Second Report of Bielsa, p. 9). ----------

1278. Dr. Bueres also considers that YPF should have legally contested the rules enacted by the Government, qualified as unlawful and unconstitutional, and it could have requested precautionary measures regarding said rules. The expert states that if debtor's lack of initiative is proved, even when it is not possible to certainly know whether the adoption of such measures would have avoided the obstacle derived from the action of a public authority, such lack of initiative will be attributed to the motionless debtor. Dr. Bueres stresses that in this case YPF lack of initiative was complete.(Bueres, ¶4)----------

1279. Dr. Bueres rejects YPF's allegation that the judicial remedy would have been useless, because the request of a precautionary measure is made in a few days, and precautionary measures are neither limited nor prevented if the Government is the defendant. In relation to YPF allegation that administrative acts have presumption of legality, this does not imply that they cannot be rendered unenforceable if they are "unlawful", as typically advised in administrative and legal practice. (Bueres, A98/S98, ¶4). ----------

1280. AESU and Sulgás state that YPF not only used the available measures to overcome the alleged impediment to fulfill its obligation, but also, on the contrary, contributed to the existence of said obstacle when executing two agreements promoted by the Government with gas producers in 2004 and 2007, which were authorized by SE 208/04 and 599/07 Resolutions. As these agreements imposed restrictions on gas exports based on the administrative rules that prioritized the domestic market supply; by subscribing them, YPF validated said rules. According to Mr. Bielsa, by the application of the Principle of Estoppel ("*venire contra factum proprium non valet*") an obstacle was created for YPF to successfully contests said rules. (Bielsa, First Report, pages 32-37). ----------

1281. AESU and Sulgás reject YPF's allegation arguing that AESU and Sulgas could have contested the Government's measures. First, they deny that they would have had legal standing to file actions in Argentina. But in any case, they allege that YPF was the most suitable party to contest the measures, because it was the most affected party, it was in Argentina, it had all the backgrounds, it knew the law, and the regulations mostly affected its obligation to deliver gas. Therefore, even when AESU and/or Sulgás had any legal standing to act in Argentina (which they did not), that does not mean it was not YPF the one which should have promptly and effectively used all administrative and legal measures. ----------

1282. Finally, AESU and Sulgás state that YPF could have followed flexibility rules (Energy Substitution Operations) that allow the exports if, for example, alternative fuels or other sources of energy were supplied to domestic market in lieu of the gas which was exported, and YPF did not do it. Additionally, as already explained, AESU and Sulgás allege that YPF conditioned the gas delivery through energy substitution operations to the fact that AESU and Sulgás pay its higher cost. ----------

1283. AESU and Sulgás reject YPF's allegation that it could not follow these flexibility regimes because under section 17.4(e) of the Gas Supply Agreement, YPF was not forced to deliver substitute gas. AESU and Sulgás point out that the Energy Substitution Operations did not require YPF to deliver substitute gas to Sulgás, but allowed the export of gas if new sources of energy were given to the Argentinean domestic system. Nothing prevented YPF from incorporating substitute energy to the Argentine system, thus allowing YPF to export gas. ----------

<u>YPF's Position</u>----------

1284. YPF sustains that it has acted as a Reasonable and Prudent Operator under the terms of sections 17.4(d) and 1.1 of the Gas Supply Agreement (i.e., under the reasonable and prudent

standard of the other producers in the natural gas sector in Argentina), both before and after 2004, when the Government imposed the first restrictive measures on gas exports. The Tribunal has already addressed YPF behavior prior to the facts that it invoked as force majeure. Below, the Tribunal shall address YPF's allegations about its behavior after the facts that it invoked as force majeure. ----------

1285. Regarding its behavior after the restrictive measures on exports, YPF states to have acted at all times with caution and diligence as allowed by circumstances (Y-MC, ¶¶251-254). As stated before, in the light of the worsening of the regulatory context, YPF states that YPF not only kept investing in exploration but also was the producer in Neuquén Basin that most invested in the development of its reserves with the purpose of solving, to the greatest possible extent, the domestic market problems, reducing the impact of such problems on exports agreements with its clients from abroad (see paragraphs 1063 and ss. above; First Report of Guzzetti, Chapter 3). -------

1286. Furthermore, to mitigate the consequences of governmental measures which were external to YPF, the latter attempted to negotiate all its export agreements to adjust them to the new regulatory framework. Besides the Conflict Resolution Agreements, YPF renegotiated several of its firm export agreements, reducing the maximum amounts per day committed by YPF in firm condition.[220] YPF explains that in many cases it had a supply obligation, but it agreed a period of null nomination or, alternatively, it agreed to limit the resulting sanction for failure to provide (deliver or pay). Through these negotiations and other modifications to YPF original contractual obligations, YPF, in fact, could reduce its firm delivery obligations, and compensate, to a great extent, the additional delivery obligations resulting from the Resolutions of the Government of Argentina MINPLAN 208/2004 and SE 599/2007, so they could have the sufficient reserves and production capacity to fulfill all its firm obligations of gas sale, including the Gas Supply Agreement.(Y-MC, ¶¶253, 329-331).----------

1287. On the other hand, YPF states that, together with the other gas producers from Argentina, it entered into agreements with the government to increase the flexibility of domestic natural gas price freezing to return to the legal regime of the regional gas wholesale market existing until 2004. According to YPF, this flexibility in prices was fundamental to invest in exploitation and development to cover the gap in growing domestic demand, and to mitigate the restrictions on

[220] YPF states that in Neuquén Basin, the Gas Supply Agreement with AESU, the agreement with the Chilean power generator Compañía Eléctrica San Isidro SA, the agreement with Chilean power generator Colbum SA, the agreement with Chilean distributor Innergy Soluciones Energéticas SA and the agreement with the Chilean power generator Gas Valpo SA were renegotiated.----------

gas exports. According to YPF, if the Government of Argentina would have fulfilled its market flexibility obligations (which it did not do), YPF would have returned to the previous system in 2004. In any case, YPF alleges that the execution of this agreement constituted a requirement from the government to the producers, who would have chosen other solution. If YPF had not have executed said agreements, the Government of Argentina would have interrupted and subordinated even more the Gas Supply Agreement. (Y-MC, ¶¶254, FIEL Report, ¶¶170¬172, 203-204). ----------

1288. According to YPF, these efforts were not sufficient to change the shortage tendency that was worsening due to persistence in time and deepening of Government's measures, as well as the Government's policy of prioritizing the local demand at any cost, placing exports as last priority (Y-MC, ¶¶256-257; FIEL Report; Chapter V, Section C). As explained by FIEL: ----------

"In the case of its exports agreement, this difficulty is actually an impossibility. This is because as from year 2004, the existence of additional production capacity to supply natural gas amounts contractually committed should be considered by the authorities as a "system surplus", that could be reallocated by the Government into the domestic market, according to the supply priorities that the Government considered appropriate and, in particular, for the users defined as "prioritized", at the price defined by the Government (that, not coincidently, is the lowest of all the prices received by the natural gas producers). Thus, besides imposing artificially reduced regulated prices, the dominant rules as from 2004 in Argentina that "redirected" any exceeding production to certain domestic clients defined as prioritized, also turn the fulfillment of exports obligations assumed under absolutely different previous rules practically non-viable, given the shortage magnitude, for any individual producer,." ----------

[...] ----------

"In other words, by deepening the intervention on exports agreements, thus broadening the definition of prioritized users and increasing gas export taxes to prohibitive levels, among other measures, the Government of Argentina sent a clear sign to all domestic producers that any increase in the production they might achieve even with the purpose of sustaining its exports would be "captured" for the local market due to the delay in restoring signs and corrections in prices that mitigated the domestic imbalance." (FIEL Report, ¶¶173, 227). ----------

1289. Despite the foregoing, YPF states that it made its best efforts to aleviate the Government measure consequences, which it qualifies as irresistible and insurmountable. ----------

1290. YPF alleges that the new regulatory framework was irresistible, because the export rationalization programs and carrier services related to exports, created and implemented through administrative acts, were binding and were supported by the purpose of presumption of legitimacy and enforcement of administrative acts. ----------

1291. Additionally, the lack of awareness of these measures meant serious penalties. On the basis of Hugo Martelli's report, YPF alleges that the breach of the Permanent Additional Injections [IAP, for its acronym in Spanish] that YPF also calls redirectioning measures, would have caused the suspension of authorizations to exports and even the expiration of hydrocarbon exploitation licenses. Also, YPF states that it would have been useless trying to do it, because in any case TGN was forced to redirection any natural gas allocation by the producers aimed at avoiding the fulfillment of domestic market supply as a condition to be able to export. YPF quotes points 6.2 and 6.3 of the Complementary Program of Natural Gas Supply to the Domestic Market set forth in Resolution No. 659/04 of the Energy Secretariat (Annex YL-87), as amended by Resolution No. 752/05 (Annex YL-89). ----------

1292. YPF adds that, as from 2007, the irresistibility was even greater because the Government of Argentina began to terminate exports agreements in a dysfunctional way by means of orders to carriers and not to producers (Martelli, ¶120, Bastos, ¶¶218-219). From said year, the officers of Secretariat of Domestic Commerce and Ministry of Federal Planning, Public Invest and Services started to impose the allocation of natural gas volumes of national production and their related carrier capacity directly on carriers. As an example, YPF names the Instructions from the National Secretariat of Domestic Commerce regarding the delivery of natural gas expected for the periods over September 17 to 23 and October 1 to 15, 2007 (Annex Y-75). ----------

1293. Notwithstanding the foregoing, YPF states that the latter contested each one of the restrictions to exports imposed by the Government (Y-Replication, Annex 1, page xv). For example, YPF declares that it filed administrative claims against Provision SSC No. 27/2004, Resolution SE No. 503/2004, Resolution SE No. 659/2004, Resolution SE No. 1681/2004, Resolution SE No. 752/2005, Resolution No. 2020/2005, Resolution SE No. 275/2006, Resolution SE No. 534/2006, Resolution SE No. 939/2005 and 1329/2006 and Resolution SE No. 599/2007 and its specific acts of application (Annexes Y-114, Y-115, Y-116, Y-117, Y-126, Y-128, Y-129, Y-130, Y-131, Y-132, Y-135, Y-140 and a list of challenges included in Annex Y-170). According to YPF, these challenges were not solved by the authorities. ----------

1294. YPF alleges that the challenging mechanism used was totally correct pursuant to the legal requirements and it does not show a passive attitude on its side. YPF is based on section 24(a) of the Administrative Procedures Act No. 19,549 (Annex Y-126); Complementary Legal Opinion of Tomas Hutchinson, ¶¶1-17, and opinions of AESU and Sulgás expert, Alberto García Lema during the hearing (Tr. Day 5, page 1244, 1251-1252). ----------

1295. Additionally, YPF affirms that its contest behavior was in line with reasonableness standard required by its obligation to act as a "reasonable and prudent operator" set forth in section 17.4 of the Gas Supply Agreement. In this sense, YPF alleges that it cannot be construed that the reasonableness standard in the Gas Supply Agreement requires the filing of a legal action or a precautionary measure or a protective action against each administrative act. As YPF expert Tomas Hutchinson explains, "in matters of contest of administrative acts [...] it is necessary to previously use the administrative procedures by filing pertinent remedies or claims. […] Thus, with the purpose of protecting the individual right, and avoiding the statute of limitations or expiration of the legal action, it is adequate and sufficient to file remedies and /or inappropriate claim whether it is an act of particular scope or general scope, respectively." (Hutchinson, ¶¶15-17). ----------

1296. YPF also observes that the definition of "Prudent and Reasonable Operation" under section 1.1 of the Gas Supply Agreement means "the degree of caution and diligence that, reasonably and typically, used by experienced operators that act in oil, gas, natural gas transportation and energy sectors under the same circumstances and conditions (...)." YPF stated that it complied with this standard, because its contest behavior was consistent with the behavior of the rest of the sector producers that were under similar conditions. Within this context, YPF states that none of the main Argentine gas producers has judicially contested the restrictive export measures. ------

1297. YPF also states that the definition of prudent and reasonable operation required YPF to have "duly considered the performance of adequate practices and other PARTIES and/or PARTICIPANTS interests." According to YPF, a more aggressive attitude towards the Government of Argentina could have caused more damages than benefits, as occurred with companies that opposed to SE Resolution No. 599/07 (Tecpretrol and Mobil, among others), whose authorizations to export were suspended by the Energy Secretariat. ----------

1298. Additionally, YPF alleges that it would have been useless to contest the resolutions through legal procedures, given the time needed to do so. For example, Mobil had to wait five years for a protective action to be solved in its favor. In any case, the fact of having filed a protective action

and that this was sustained did not allow Mobil to overcome the impossibility to firmly export or apply retroactive effects to the redirectioning orders that had affected the compliance with its exports. ----------

1299. It also states that none of the legal experts of AESU and Sulgás could name before or during the hearing a case law example contrary to what was stated by YPF (Tr. Day 6, pages. 1442-1443 (Bueres)). On the contrary, AESU and Sulgás expert, Daniel Marx, confirmed during the hearing that the behavior adopted by YPF had been the behavior of a reasonable company (Tr. Day 4, pages 998-1001). ----------

1300. In any case, YPF accuses AESU and Sulgás of acting in a contradictory way. While YPF contested the measures from the Government of Argentina which set forth from 2004 the interruption and subordination of the Gas Supply Agreement and other exports agreements to the current supply needs of the Argentine domestic market, AESU and Sulgás did absolutely nothing. In this regard, YPF and its experts state that AESU and Sulgás have its full legal standing to challenge the measures, under the law of Argentina and under the contest mechanisms from Mercosur and they did not exercise said right (Complementary Legal Opinion of Tomas Hutchinson ¶¶39-46; Complementary Legal Opinion of Antonio Boggiano ¶¶59-77, 97-108). -------

1301. Finally, YPF alleges that YPF execution of the First and Second Gas Supply Agreement cannot be construed as an acceptance of the measures or as a waiver of the right to contest said measures using the procedures established in the applicable law. According to Dr. Martelli, "the fact that YPF would have (i) contested said measures through the applicable resources and its application acts, (ii) expressly stated that the execution of said agreements did not imply a consent or waiver, (iii) reserved its rights to contests the measures; and, (iv) ratified the contests already made, constitutes an unambiguous demonstration of YPF intention not to express its consent to said measures." (Supplementary Opinion of Martelli ¶76). ----------

1302. Besides stating that the measures were irresistible, YPF alleges that the export restrictive measures were insurmountable. First, YPF alleges that, given the magnitude of gas supply-demand imbalance created by government measures, plus the policy of submitting gas exports to fully supply the domestic demand, any increase in YPF production or in any other producer production would not cause a reduction in redirectioning orders that affected exports agreements, because that surplus production would be redirected to additional usage of the domestic market at reduced prices or would served to reduce imports, that have been growing without interruptions. YPF supports the report from experts Daniel Artana and Santiago

Urbiztondo from FIEL, who AESU and Sulgás preferred not to call to the hearing (FIEL Report, ¶¶226-227; 7-8, 57). ----------

1303. Secondly, YPF observes that, in accordance with section 17.4 of the Gas Supply Agreement, it was not obliged to supply substitute gas in force majeure events. Notwithstanding this express contractual provision, YPF declares, contrary to what was alleged by AESU and Sulgás, that it collaborated with AESU and accepted to perform the OSEs (Energy Substitution Operations) requested by AESU. In fact, on three OSEs requested by AESU from the beginning of the gas exports restrictive measures in March, 2004, to the termination of the Gas Supply Agreement in March 2009, YPF accepted those three OSEs and collaborated with part of their cost, notwithstanding the fact that the Government frustrated one of them. Specifically, YPF declares that: ----------

a.On March 18, 2005, AESU requested YPF the performance of an OSE through which it would supply a thermal plant from Grupo The AES Corporation *fuel oil* in a volume equal to 1,000,000 m3/day of natural gas as from the approval by the Energy Secretariat until April 30, 2005. The substitute liquid fuel would replace the energy equal to gas volumes required to YPF for the domestic market as per the regulatory restrictions. The OSE was only in effect between March 23, 2005 and April 15, 2005 (Annexes Y-120 and Y-121). ----------

b.On May 20, 2005, although it was taking place the winter period during which AESU had committed not to nominate gas, YPF accepted to execute an OSE at AESU's request through which it would supply to certain thermal plants the *fuel oil* volumes that represent energy equal to 2,000,000 m3/day of natural gas, as from the approval by the Energy Secretariat until May 31, 2005, in exchange of a reduction of AESU's *make up* right under the Gas Supply Agreement for a total volume of 58,488,362 m3/day. YPF states that on May 20, 2005 it requested the authorization of OSE to the Energy Secretariat, but it was never granted. (Annex Y-124). ----------

c. Finally, simultaneously to the execution of the Supplementary Agreement, YPF accepted to perform another OSE at AESU's request. YPF would supply *fuel oil* to Central Puerto thermal plant to "release" export gas to AESU, and YPF would afford part of such cost through a discharge of US$7,500,000 from AESU's debt for *take or pay* of US$29,996,473.13 provided in the First Conflict Resolution Agreement, although respecting the *make up* right under the Gas Supply Agreement (of approximately 170,438,653 m3/day). ----------

1304. According to YPF, AESU and Sulgás have not disputed these circumstances. The foregoing proves that AESU and Sulgás statements about YPF's alleged denial of implementing these

mechanisms are not true. Furthermore, YPF pointed out that, despite having given its opinion on the subject, AESU and Sulgás experts, Daniel Marx and Juan Bruno, acknowledged that they did not duly verified their statements about YPF's lack of collaboration in the performance of OSEs when preparing their report. (Tr., Day 4, pages 969-979). ----------

1305. In any case, YPF alleges that OSEs were inappropriate for the performance of a long-term agreement with significant volumes. ----------

1306. In supporting its allegation that supports that the measures of the Government of Argentina were irresistible and insurmountable, YPF is based on the legal opinion of Dr. Aida Kemelmajer de Carlucci. According to Dr. Kemelmajer, the efforts a debtor shall make to overcome the force majeure event are reasonable and proportional in relation to the assumed contractual obligation. In this regard, she points out that the required efforts cannot alter the purpose of the obligation. The experts considers that, as YPF had committed to deliver gas from its Neuquén Basin licenses (recitals and sections 1.1, 3.7(c) and 16.11 of the Gas Supply Agreement) it was a limited genus obligation, and that YPF could not be forced to deliver gas to some other place at any price whatsoever. She adds that, according to section 17.4(e) of the Gas Supply Agreement, YPF did not have the obligation to provide other gas in substitution of the gas that it could not have delivered due to a force majeure event. (Kemelmajer, ¶163). ----------

1307. In this regard, Dr. Kemelmajer acknowledges that, under the classic theory, force majeure cannot be invoked when there is a genus obligation, because the genus never perishes (Argentine Civil Code, section 893) However, she states that this is not applied when the obligation is a limited genus obligation (for example, when the obligation is related to debtors production). She explains that "regarding exports restrictions, the rigorous thesis says that there is not force majeure because debtor can always be supplied from other countries, even if it is at a higher cost. The flexibility position, by contrast, considers that the possibility to obtain gas from other source cannot be invoked if the judge understands that the parties assumed a commitment stating the place where the sold amount comes from. Thus, for example, if due fruit harvest is Korean, of a certain year, there shall exist force majeure if the government of said country bans exports. (Kemelmajer, ¶¶82-86). ----------

1308. Additionally, Dr. Kemelmajer says that the parties to an agreement cannot be obliged to adopt superior means to those required in the agreement, that are not proportional in relation to the importance of the damage they are trying to prevent or to oblige them to act as "supermen." Kemelmajer considers that YPF guaranty of supply shall be construed in the light of section 17.4

of the Gas Supply Agreement, and section 1.1 of the Gas Supply Agreement. Thus, Dr. Kemelmajer concludes that section 17.4 of the Agreement coincides with the legal principles and case law that assumes that the company will make its best efforts, but always within the scope of the principle of proportionality, so it is not obliged to a result that causes extraordinary loses. (Kemelmajer, ¶¶162-168)----------

1309. Regarding whether or not the burden to contest the act of state exists, Dr. Kemelmajer explains that, while some authors state that the authority's passive activity towards the fact excludes force majeure and, consequently, requires trying the legal possibilities to remove the problem (filing of administrative remedies, protective actions, etc.), others understand that such remedy cannot be requested; not only because nobody is forced to appeal to a court but also because typically administrative times or legal times are inadequate to find a reasonable solution. According to the expert, in this particular case, the burden to contest was not a presumption of exemption, for several reasons: the chances to succeed are non-existing, there are no precedents that a tribunal had efficiently sustained a motion to reestablish exports; and once the restriction is in force, the parties to the Agreement could expect, at most, a compensation for damages, but could not expect to remove the restriction. On the other hand, administrative and legal times are not those of international businesses of the level of what is in dispute, so the possible response would always be inappropriate. (Kemelmajer, ¶¶169-174). ----------

Debate----------

1310. The question for the Tribunal is whether the facts invoked by YPF as force majeure events were insurmountable and, as a consequence, unavoidable (regarding that, once they occurred, YPF could not avoid its consequences). This question is relevant to determine if there exists a force majeure event invoked by YPF. In this context, the Tribunal considers that YPF behavior shall be analyzed considering the behavior standard set forth in sections 2 and 3.4 under the Gas Supply Agreement, i.e. the best efforts standard. Before deciding if there exists a force majeure event, the reasonable and prudent operator standard provided in section 17.4(d) and defined in section 1.1 under the Gas Supply Agreement is not relevant. ----------

1311. After analyzing the allegations and the evidence submitted by the parties, the Tribunal concludes that, although YPF could not prevent the application of exports restrictive measures, YPF could have made better efforts to mitigate its consequences, which would have permitted YPF to fulfill its obligation to deliver. ----------

1312. The Tribunal agrees with YPF that export restrictive measures adopted by the Government were an obligation and were supported by the presumption of legitimacy and enforcement of administrative acts. The Tribunal also analyzes that the ignorance of these measures would have implied to be exposed to serious penalties, so that YPF was forced to comply with said measures. In particular, the Tribunal considers that the orders of Additional Permanent Injections (at least the three IAP mentioned by YPF) indicated that, if said order was not complied with, item 6.3 of Chapter I of the Complementary Program of Natural Gas Supply to the Domestic Market should be applied, according to which said breach would result in the suspension of the authorization to export and should be considered a material breach of the license (Resolution No. 659/04 of the Energy Secretariat, Annex YL-87) with the risk of its expiration (Section 80 under Act No. 17,319, Annex Y-124). ----------

1313. The Tribunal also observes that in Item 6.2 of the Complementary Program of Natural Gas Supply to the Domestic Market approved by Resolution No. 659/04 from the Energy Secretariat, as amended by Resolution No. 752/05 sets forth: ----------

"The licensees or operators of gas pipelines, no matters their regulatory condition or authorization regime, shall not be able under any circumstance to transport natural gas for export that would have been injected, directly or indirectly, by a producer-exporter when: (i) it would not have comply with its obligation of additional injection for the domestic market, pursuant to this PROGRAM, and/or (ii) there are unsatisfied natural gas volumes requested through the mechanism of standardized Irrevocable Offers, and/or (iii) there is a total or partial breach of said producer of any Permanent Additional Injection order, and/or (iv) said producer does not duly comply with its prior obligations assumed with any user or consumer from the domestic market." (Annex YL-89). ----------

1314. The Tribunal also acknowledges that YPF could not resist nor surmount the interruptions on export agreements imposed by orders to carriers and not to the producers because, by definition, they were not under its control. ----------

1315. Similarly, the Tribunal accepts that it was not reasonable to expect that YPF refrains from executing the Gas Supply Agreements with the Government of Argentina. ----------

1316. Regarding the energy substitution operations (OSEs), the Tribunal agrees with AESU and Sulgás that YPF could have stuck to these flexibility mechanisms and, through the supply of substitutive energy to the domestic market, exporting gas to Sulgás. In this regard, the Tribunal observes that, although section 17.4(e) of the Gas Supply Agreement expressly provides that in

an event of force majeure, YPF "shall not be forced to substitute the GAS with other natural gas," the energy substitution operations required that YPF injected substitute energy into the domestic market, thus releasing gas for its export, so that there was not contractual restriction that prevented the use of these mechanisms. ----------

1317. Having said this, YPF has stated in this proceeding that it accepted to collaborate with AESU only in these three opportunities in which AESU requested YPF to perform the OSEs. AESU has not argued these facts. Thus, the Tribunal concludes that, regarding this issue, YPF did try to mitigate the export restrictive measures effects. ----------

1318. However, the Tribunal considers that YPF did not make its best efforts in its strategy of contesting administrative acts. There is not a dispute between the parties about the fact that YPF limited itself to contest the Government acts by administrative means, and that it did not do it through a legal procedure regarding any of the measures. YPF did not request precautionary measures either. In section 3.4 under the Gas Supply Agreement, YPF committed to do "everything necessary" to comply with its obligation of delivering gas. Considering that YPF stated that it could not comply with its gas delivery obligation as a consequence of gas export restrictions imposed by the Government of Argentina, the Tribunal considers that, in accordance with the standard set forth in section 3.4 of the Gas Supply Agreement, YPF should have done everything necessary to overcome the effects of said measures. This included to seriously contest (i.e. through a legal procedure) the resolutions or administrative acts that prevented it from complying with its obligations. Especially considering that YPF stated before AESU and Sulgás (and continues stating in this arbitration) that it thinks that export restrictive measures from Government are illegal or unconstitutional. ----------

1319. This better efforts obligation is not mitigated by the fact that there were few chances of succeeding with the legal contest or the fact that the proceeding had been slow. YPF could have filed precautionary measures, which according to Dr. Bueres, require a short proceeding and are not limited to whether the Government is the defendant or not. ----------

1320. Additionally, its obligation of acting as prudent and reasonable producer required that YPF had duly considered the interest of other Parties and Participants. The maximum interest of AESU and Sulgás was to receive the gas that YPF agreed to deliver. Thus, YPF could not simply adopt a passive attitude and a certain contest strategy regarding the measures invoked as force majeure that would have exempted it from complying with its obligation. ----------

1321. Now, therefore, the Tribunal concludes that YPF could have made better efforts to overcome the gas export restrictive measures effects. In particular, YPF could have contested the gas export restrictive measures that invoked as force majeure seriously before the courts. Consequently, the Tribunal concludes that the inevitability requirement is not complied with. ------

(c)Conclusions about force majeure----------

1322. The Tribunal has concluded that the legal requirements of unforeseeable nature and inevitability necessary to constitute a force majeure event were not complied with under section 513 of the Civil Code of Argentina. Consequently, the Tribunal does not need to analyze the parties' allegations about the other requirements, and the Tribunal concludes that there was not force majeure that exempted YPF from the liability of the lack of gas delivery. ----------

1323. Notwithstanding the foregoing, in the context of this analysis about inevitability, the Tribunal has also concluded that the external requirement is not complied with as well, which is also needed to constitute a force majeure event according to Argentinean legal principles. Thus, the Tribunal has decided that YPF contributed with its behavior to the gas shortage, which, in turn, caused the export restrictive measures (see paragraphs 1233 and ss.). Therefore, even if the facts invoked by YPF would have been unforeseeable and/or unavoidable, YPF would not be released from its liability for the breach because said breach would have occurred due to its own fault (section 513 of the Civil Code of Argentina). ----------

(v) Conclusion regarding YPF failure to comply with its gas delivery obligation ----------

1324. There is no argument between the parties about the fact that YPF did not deliver gas on the dates identified by AESU and Sulgás in their claims for DOP penalties. There is no argument either about the fact that YPF failed to comply with its obligation to deliver gas in other non-specified dates between 2004 and 2008, but AESU and Sulgás do not claim a compensation as DOP penalties for these breaches (possibly because said penalties were discharged or because they exceeded the maximum annual limit per DOP). ----------

1325. The Tribunal has concluded that the facts invoked by YPF do not constitute force majeure. Therefore, the Tribunal concludes that YPF is not released from its liability because it did not deliver gas during the period between February 13, 2004 (date when the Executive Order 180/2004 was enacted on February 13, 2004, first restrictive measure identified by the parties, and March 20, 2009 date of termination of the Gas Supply Agreement), and it is responsible for

the breach of the obligation set forth in section 3.4 under the Gas Supply Agreement during such period. ----------

1326. When analyzing the force majeure, the Tribunal has also concluded that YPF did not make its best efforts under section 3.4 (i) of the Gas Supply Agreement. Although YPF kept its hydrocarbon exploitation licenses, it did not make its best efforts to do "everything necessary to comply with the provisions of Section 2" of the Gas Supply Agreement (section 3.4(i) from the Gas Supply Agreement). In particular, YPF did not do the necessary explorations to ensure it would have enough reserves and deliverability to fulfill its contractual obligations. ----------

1327. The Tribunal also considers that YPF did not thoroughly comply with section 3.4(ii) of the Gas Supply Agreement, when YPF undertook to "maintain, as it depends on YPF, the authorization to export needed to export gas under the conditions set forth in this AGREEMENT." The Tribunal considers that, through this commitment, YPF agreed to maintain the conditions needed to keep the authorization to export. Considering that section 3 of the Gas Act allowed the granting of gas authorizations "as long as domestic supply is not affected," and considering that, to grant said authorization, YPF certified that it had certain amount of reserves, the Tribunal considers that said obligation implied that YPF should maintain a level of reverses that allows the authority to conclude that the authorization to export for Uruguayana power station would not affect the domestic supply. ----------

1328. When YPF requested the Authorization to Export for Uruguayana Power Plant, it reported to the authority that the proved and probable reserves in Neuquén Basin by December 10, 1997 were of 227,764,700.000 m3, under circumstances where YPF domestic commitments amounted to 36,152.7 million of m3 and the scheduled export represented 18,300 million of m3. This implied a total of remaining (proved and probable) reserves of 173,312 million of m3, so even analyzing the whole export period (20 years) the technical bodies estimated "a remaining gas value of 94,418.9 million of m3, which would indicate that it is feasible to grant the requested authorization" (See pages 92/94 of the File MEYOSP No. 750-001345-96, Report dated December 10, 1997 of the Division of Exploration and Exploitation to the attention of the Deputy Secretary of Fuels, Annex A51/S51, pages 126-127; García Lema/Bougain, ¶¶ 41-43, 223). ----------

1329. The Tribunal understands that, in 2006, YPF had to make a *write off* of its reserves, whose effects were experienced in 2005 (according to YPF) or in 2003 (according to AESU and Sulgás).[221]

[221] According to Mezzadri, "[t]he figures used until that moment [the reference seems to be 2006] in the market in connection with the write off made by YPF, exposed again its proved reserves especially in 2004 and 2005. However, the information that arises from the Financial Statements notes provided to the

This review implied the loss of 25% of YPF hydrocarbon proved reserves worldwide, which in Argentina were mainly focused in Neuquén Basin. The Tribunal understands that this implied a loss of 59.2 billion of m3 {in Neuquén Basin} (see paragraph 936 above). In other words, approximately 34% of proved reserved informed by YPF to the authority when YPF obtained its Authorization of Export for the Gas Supply Agreement were actually non-existent. ----------

1330. The Tribunal will not judge the reasons why YPF made that *write off*, or if YPF was to be blamed for the certification of non-existing reserves. However, if YPF suddenly suffered a reduction of gas proved reserves by 34%, the Tribunal considers that its obligations under section 3.4 and the behavior specified and agreed upon in paragraph (ii) of said section required that YPF made additional exploration efforts to ensure that it would have sufficient reserves to comply with the provisions of section 3 under the Gas Supply Agreement to maintain its authorization to export and to comply with its delivery obligations. Although its Authorization of Exports continuous formally in effect, YPF's lack of efforts to maintain an adequate and sufficient level of reserves constitutes, according to this Tribunal, a breach of its contractual obligation under section 3.4(ii) of the Gas Supply Agreement, to the extent that -in fact- YPF has been prevented from exporting. ----------

1331. Additionally, AESU and Sulgás have convincingly demonstrated that YPF provided the authorities with incomplete information when applying for the authorization to export. The Tribunal agrees with YPF on the fact that the Tribunal has neither jurisdiction to declare the Authorization to Export void, nor to enter a determinant judgment over its validity. However, that does not prevent from judging that YPF's conduct when applying for the Authorization to Export, constituted a breach of the contractual obligation arising from section 3.4 (ii) of the Gas Supply Agreement. ----------

1332. Having determined that YPF breached the contractual obligations under section 3.4 of the Gas Supply Agreement, the Tribunal does not need to address the other AESU and Sulgás arguments in connection with obligations related to YPF's obligation to deliver gas. ----------

---

regulatory authorities from the United States and informed to the National Securities Commission in Argentina [CVN for its acronym in Spanish], revels that the actual write off was made in 2003 and it was equal to 43 months of YPF production in the year when the agreement was signed". (First Report of Mezzadri, page60).----------

2. Did YPF comply with the obligation to act as Prudent and Reasonable Operator? ----------

1333. AESU and Sulgás state that YPF did not comply with its obligation to act as a Prudent and Reasonable Operator under the terms of section 17.4(d) and 1.1 of the Gas Supply Agreement. Although the Tribunal dismissed the fact that the breach of this obligation could have been a legitimate ground for termination of the Gas Supply Agreement (see paragraph 503 above), now the Tribunal has to determine whether, in fact, YPF breached this obligation. ----------

1334. The Tribunal has determined that YPF breached its obligation to deliver gas, and there was not any force majeure event to release YPF from the liability for that breach. As a consequence, the Tribunal considers that the matter as to whether YPF complied with the obligation to act as a Reasonable and Prudent Operator lacks sense. In fact, under Part VII.A.2 above, the Tribunal determined that the obligation to act as a Prudent and Reasonable Operator, as defined under section 1.1 of the Gas Supply Agreement, arises from any alleged Act of God or force majeure event invoked by any Party or Participant to justify the breach of its obligations, and establishes a standard of conduct for the party invoking the force majeure event, to repair the fault or mitigate the consequences of said event. As The Tribunal determined that the force majeure event alleged by YPF did not take place, the obligation to act as a Prudent and Reasonable Operator does not arise. This obligation would only arise (and could be breached) insofar as there is a force majeure event, whose consequences could be mitigated or attenuated. ----------

1335. In any case, the Tribunal highlights that it has addressed the arguments of the parties concerning this alleged breach in the context of the analysis of the requirement of unavoidability or insurmountable. ----------

3. Breach of the obligation to pay what is due under DOP regime----------

1336. AESU and Sulgás affirm that YPF breached its obligation to pay DOP (Deliver or Pay) penalties arising out of the failure to deliver gas during the years 2006, 2007 and 2008. Specifically, AESU and Sulgás have claimed YPF the payment of the two allegedly owed amounts. -

a. US$ 28,089,320.50 from DOP penalties arising from the failure to deliver gas between September 9, 2007, and June 25, 2008, for a total gas volume of 136,323,198 m3, according to AESU's written notification to YPF by mail on June 25, 2008 (Annex Y-80, A15/S15). There is no controversy over the fact that AESU did not issue a debit note for this amount. ----------

b. US$ 2,711,424 from DOP penalties arising from the failure to deliver gas between January 18 and December 1, 2006, for a total gas volume of 12,127,808 m3, according to AESU's written notification to YPF by mail on July 16, 2008 (Annex Y-81, A15/S15). AESU issued the Debit Note No. COM/001/2008 for this amount. ----------

1337. As already mentioned, to justify the termination of the Agreement, AESU and Sulgás invoked the alleged DOP debt corresponding to the year 2006, but not the DOP debt corresponding to the years 2007 and 2008. In the context of the discussion on liability for termination of the Agreement, the Tribunal determined that the invoked amount was not sufficient to justify the termination of the Agreement. The Tribunal also determined that, as the alleged DOP debt corresponding to the years 2007 and 2008 was not invoked at the time of termination, said DOP debt could not be considered as a ground for termination (see Part VII.A.3 above). ----------

1338. The previous decision does not prevents the Tribunal from addressing the matter of whether the debts claimed by AESU and Sulgás were accrued and are owed by YPF. The Tribunal has determined that 90% of the failure to deliver gas that caused the claimed DOP for the year 2006 was never accrued (see Part VII.A.3 above), therefore the discussion is focused on the non-deliveries that caused the DOP claimed but not billed for the years 2007 and 2008, and on the non-deliveries that caused 10% of DOP billed for the year 2006. ----------

1339. Although this is about AESU and Sulgás' claim, the Tribunal will continue to present YPF's position first, as there are objections madeby the latter, which are later refuted by AESU and Sulgás. ----------

a. YPF Position ----------

1340. As it was already mentioned, YPF alleges that 10% of the debt originated in the DOP penalties, billed by AESU and Sulgás, due to failures to deliver for the year 2006 was never accrued because YPF was undergoing a force majeure event. YPF states that all the days in which gas was not delivered alleged by AESU and Sulgás were outside the winter period, and, for that reason, in accordance with section 14.1.2.1 of the Gas Supply Agreement, no DOP was accrued as a consequence of those non-deliveries (Y-MC, ¶¶453-464; Y-Replication, ¶¶215¬251).[222] ----------

1341. YPF acknowledges that AESU and Sulgás also claimed the payment of a DOP penalty for the years 2007 and 2008 for the amount of US$ 28,089,320.50, but it rejects the origin and relevance thereof to justify the suspension and subsequent termination of the Gas Supply Agreement. -------

[222] Detailed YPF's arguments on the billed penalty for the year 2006 were presented in part VII.A.3 *supra*. --

1342. To begin with, and as it was explained in the previous section, YPF states that this alleged debt was never accrued, because, during the computed days, YPF was undergoing a regulatory force majeure event. In fact, YPF affirms that since the year 2007 the operational control of gas delivery has been under the control of the Secretariat of Domestic Commerce, which, in fact and informally, audited the natural gas market and the agreements that were freely entered into by producers, users and carriers. The carriers, including TGN and TGM, were the ones that, under the directions of the Argentine Government, determined who would receive the natural gas injected every day in Argentine gas pipelines. Particularly, YPF states that from September 16, to November 16, 2007, the Secretariat of Domestic Commerce ordered that TGN cut to zero (0) m3/day the hired carrier destined to Uruguayana, in spite of the fact that each of those days YPF had confirmed to AESU the availability of the total nominated gas (2,800,000 m3/day) and had petitioned the carrier for the rendering of transportation services for that volume. ----------

1343. Secondly, YPF states that even if the debt had been accrued, it was never billed according to the requirements of section 15.2.2 of the Gas Supply Agreement, so it was never due as it never became a due and payable debt. As a consequence of this, YPF did not incur in default payment as a consequence of nonpayment (which, according to YPF, could only be accrued 15 days after the penalty has been billed), or 180 days did not pass as required under section 14.2.2 (ii) of the Gas Supply Agreement in order for AESU and Sulgás to terminate the Agreement. YPF affirms that the provisions requiring the issuance of a bill as a pre condition so the amounts became payable were in accordance with trade customary uses and practices (Section 218 of the Argentine Commercial Code) and with the practice existing among the parties, which had only intended to collect (penalties or the agreement price) on the basis of billing said amounts. YPF adds that AESU's actions confirm this understanding, as in their letter dated March 20, 2009, AESU and Sulgás did not invoke this alleged debt to justify the termination of the Gas Supply Agreement. ----------

1344. YPF rejects AESU and Sulgás' argument that DOP for the amount of US$ 28,089,320.50 was not billed so as not to increase its damages, and affirms that YPF itself had to bill approximately US$ 34 million to be able to claim the payment of the amount due by AESU and Sulgás for TOP (take or pay) for the years 2003/2004. ----------

1345. Thirdly, YPF states that AESU did not provide YPF (neither then, nor in the course of this arbitration) with a daily detail of the volumes claimed for the DOP accrued between January and May 2007, according to the provisions of section 15.2.2 of the Gas Supply Agreement that

provide for claiming a DOP debt. YPF states that this detail is an essential condition for YPF to control and contrast data with its records and to prove whether failure to deliver gas for the volumes detailed existed or not on the determined days that were not excused for being under a force majeure event. Furthermore, in accordance with the Gas Supply Agreement, said detail should have been presented in the month that followed the one under consideration, i.e., during February to June 2007, which it did not occur. YPF claims that AESU and Sulgás have not even provided that detail in the course of this arbitration, and they just enclosed as an annex to Ricardo Cirino's Testimony a table with alleged monthly volumes without any daily detail. ----------

1346. Finally, YPF alleges that part of the debt is based on bad faith nominations of AESU, which AESU nominated over its capacity to generate. YPF alleges that on those dates AESU could not nominate 2,800,000 m3/day, as the capacity to generate of the Uruguayana power station had been reduced by 50% after a technical incident on October 13, 2007. YPF alleges that, as a result, the maximum capacity of AESU's nomination was of 1,400,000 m3/day. In spite of that, from March 26 to April 20, 2008, and from April 25 to May 20, 2008, AESU again "exaggerated" its orders over-nominating a volume of 2.800.000 m3/day, knowing that it far exceeded what it could use to generate energy and what the Argentine Government authorized by means of the Temporary Energetic Agreement. According to YPF, this demonstrates AESU and Sulgás' bad faith (Y¬Replication, 268). Annex Y-157 confirms these nominations. ----------

1347. YPF alleges that AESU and Sulgás contradict themselves when trying to explain this situation. First, AESU and Sulgás deny by means of their letter dated June 25, 2008 that DOP penalties had been claimed between October 13 and December 31, 2007. However, YPF highlights that the detail enclosed to the letter dated June 25, 2008 (Annex Y-80) included dates of failure to deliver between said dates. It also rejects the explanation of the witness for AESU, Cyrino, in the sense that AESU would be proving the gas availability, because AESU not only was not able to use that gas volume due to the technical incident, but also because under the Temporary Energetic Agreement entered into with Brazil, the maximum volume for the Uruguayana Power Station authorized by the Argentine Government was 1.2 million m3/day. Therefore, according to YPF, these over-nominations were contradictory with the parties' practices and good faith principle. ----------

b. AESU and Sulgás Position----------

1348. For the reasons abovementioned, AESU and Sulgás deny that failure to deliver by YPF during the years 2006, 2007 and 2008 was a consequence of a force majeure event. Therefore,

they alleged that the billed penalty corresponding to the year 2006,[223] and the claimed but not billed penalty for the years 2007 and 2008 were accrued. They add that there would be default payment since YPF stopped paying the debit note corresponding to the term granted for that purpose under section 15.2.2 of the Gas Supply Agreement (A/S-AF, ¶291). ----------

1349. AESU and Sulgás reject the YPF additional challenges to the claimed penalty for the years 2007 and 2008 (A/S-MD, ¶¶573-575; A/S-MC, ¶¶642-656, NS-Rejoinder, ¶¶449-459; A/S-AF, ¶¶1014-1023). ----------

1350. AESU and Sulgás acknowledge that they never issued a debit note corresponding to this alleged DOP penalty for the years 2007 and 2008, and they provide different reasons. In their Opening Brief, they affirmed that "if the remaining liquidation {referring to the penalty for the years 2007 and 2008} did not result in the issuance of a Debit Note, it was only to the effect of mitigating AESU's damages, given the tax impact that such an issuance involves". (A/S-MD, ¶574). In their Closing Arguments they explain that, as YPF openly declared that it would not pay said debt amounting to US$ 28,089,320, and it also rejected the payment for the Debit Note amounting to US$ 2,711,424, it was pointless to issue a debit note for higher amounts. However, they affirm that "[s]aid higher amounts, in any case, will be part of the damages claimed in this arbitration." (A/S-MD,¶ 201). ----------

1351. In connection with the formalities required by section 15.2.2 of the Gas Supply Agreement, AESU and Sulgás state that the breach of the obligation that triggered the *deliver or pay* payment was the failure to deliver gas, and that section 15.2.2 of the Gas Supply Agreement only regulates how it is credited and when it has to be paid. They allege that YPF's noncompliance was produced by non-delivering gas at the point of delivery, and the failure to issue a debit note does not alter the enforcement of the debt. Quoting two sentences of Argentine Courts, they add that the repudiation of the Agreement by YPF rendered declaring YPF in arrears useless[224]; for this reason,

---

[223] Detailed AESU and Sulgás' arguments on the billed penalty for the year 2006 were presented in part VII.A.3 *supra*.----------

[224] The National Court of Appeals in Commercial Matters, Division C, August 28, 1978, in the case *Herrero, Dionisio vs. Luva S.A.* (Annex AL37/SL37) ("Demanding a claim aimed at obtaining payment when the debtor {expressly or implicitly} has denied it means to abdicate in favor of sterile formalisms. In these cases, the only possible thing for the creditor is to plainly and simply consider that the debtor has fallen in arrears and to have all the creditor's resources available to declare the agreement terminated); and the National Court of Appeals in Civil Matters, DIvision A, April 22, 1994, in the *Caso Central Corporation SA vs Comisión Municipal de la Vivienda* (Annex A38/S38) ("The attitude of the debtor, which anticipates his intention to breach the obligation agreed, makes a hypothesis of automatic default, which renders useless any subsequent claim, because, given that unilateral decision, the claim would turn into something formal and void"). ----------

YPF's argument stating that it would be in default 15 days upon submission of the debit note became meaningless. ----------

1352. With regard to the daily detail required by YPF, AESU and Sulgás state that the certification of what YPF owes should be treated in the second stage of this arbitration. ----------

1353. Regarding YPF's argument suggesting that part of the claimed DOP penalty for the years 2007 and 2008 corresponded to nominations exceeding its generation capacity, AESU and Sulgás do not deny the technical incident or the reduction of the generation capacity of the power station, but they explain that said nominations (made between September and December 2007) were made to prove the real gas availability and to plan its future operation (Testimony of Ricardo Cyrino, ¶ 6). Specifically, witness Ricardo de Abreu Sampaio Cyrino stated that ""[s]ince AES Uruguaiana remained obliged to comply with the PPAs and was subject to penalties if it did not do so, it nominated 2,700,000 m3/day from September 16, 2007, to December 11, 2007, and 2,800,000 m3/day from December 12, 2007, to the next winter period, in 2008, in order to test the real availability of the gas and, consequently, plan its future operation." (Testimony of Ricardo Abreu Sampaio Cyrino, ¶6). ----------

1354. In any case, they deny that said alleged exceeding nomination affected the claimed amounts for penalties for the year 2007, because YPF had already reached the maximum established by the Supplementary Agreement between January and May 2007. In this sense, witness Cyrino affirms that the amounts claimed by means of AESU and Sulgás' letter dated June 25, 2008, correspond to: ----------

a. US$ 12,089,320 corresponding to the DOP accrued as of March, 2007, and ----------

b. US$ 16,000,000 corresponding to the DOP accrued during 2008. ----------

1355. Witness Cyrino explains that, for the year 2007, YPF also incurred in failures to deliver between September 16 and December 31, 2007, which amounted to US$ 40,858,730.81. However, he affirms that AESU did not claim that amount to YPF because on March 2007 YPF had already reached its annual DOP limit. In fact, in the Supplementary Agreement, the parties agreed that the maximum DOP limit payable by YPF would amount to US$ 12,000,000, and in March 2007 YPF had already reached US$ 16,788,465.62 (Testimony Ricardo de Abreu Sampaio Cyrino, ¶¶ 7-13). ----------

1356. According to AESU and Sulgás, the letter dated June 25, 2008, details two circumstances: ---

a. On the one hand, by means of the daily detail enclosed to that letter, AESU and Sulgás reminded YPF of the breaches of gas delivery incurred by YPF from September 2007 and May 2008, including the period from October 13 to December 11, 2007, and----------

b. On the other hand, they calculated the corresponding DOP penalty to be paid, and such amount did not include the period from October 13 to December 11, 2007. ----------

1357. Therefore, AESU and Sulgás deny having acted in bad faith in the nominations for that period. ----------

c. Analysis ----------

1358. The Tribunal has already determined that the failures to deliver for all of the days which DOP is claimed are not excused by force majeure. Therefore, the Tribunal concludes that 10% of the penalty claimed for the year 2006, as well as the total DOP penalty claimed for the years 2007 and 2008 was accrued. ----------

1359. DOP penalty corresponding to the year 2006 was billed by means of the Debit Note No. COM/001/2008. For this reason, there is no doubt that 10% of that debt that was accrued was due and payable, and YPF incurred in default payment. As a consequence, the Tribunal concludes that YPF owes AESU and Sulgás the payment of 10% of that debt, which amounts to US$ 271,142.40. The Tribunal has also determined that YPF breached its obligation to pay the controversial amount subject to reimbursement or deposit in an escrow account, in accordance with section 15.5 of the Gas Supply Agreement. (see paragraph 565 above*)*. ----------

1360. The situation concerning the DOP penalty corresponding to the years 2007 and 2008 is more complex. The Tribunal observes that, actually, AESU did not comply with the formalities set forth in section 15.2.2 of the Gas Supply Agreement[225]. This section provides the following: ---------

"15.2.2) PENALTIES REPORT AND COLLECTION ----------

In any MONTH following a MONTH UNDER CONSIDERATION with regard to which any of the PARTIES has, by virtue of this AGREEMENT, the right to collect any payment for penalties, said PARTY shall prepare a report containing a daily detail for the other PARTY, providing the grounds for such penalty collection claim and the claimed amount, enclosing supporting documentation. --

In any MONTH, whenever any of the PARTIES submits to the other PARTY a debit note applicable to the immediately preceding MONTH UNDER CONSIDERATION, together with the report provided for in this Section before the fifteenth day of the MONTH, such debit note shall be

[225]The Tribunal understands that AESU made the nominations on behalf of Sulgás, in accordance with the AESU-Sulgás Agreement, so the Tribunal will only refer to AESU's conduct. ----------

payable on the last DAY of the MONTH concerned. If presented afterwards, the debit note will be payable fifteen days upon submission thereof." ----------

1361. In this case, AESU did not issue the daily detail required by this section. Although it is true that the letter dated June 25, 2008, has a detail of daily nominations and deliveries enclosed thereto (Annex A15/S15, Annex Y-80), this daily detail does not cover all the periods in which AESU affirms to have liquidated the penalty. In fact, the letter itself, as well as the provided detail, refers to the periods from September 2007 to May 2008, when AESU affirms that the penalty liquidated corresponds to the period from January to March 2007, and from January to May 2008. Specifically: ----------

a. In relation to DOP for the year 2008, AESU's letter dated June 25, 2008 and the daily detail enclosed thereto refer to the period from January to May 2008, so the Tribunal understands that the requirement to provide the daily detail has been complied with. ----------

b. However, when referring to DOP for the year 2007, Mr. Cyrino has affirmed that as of March 2007, the DOP penalty had already amounted to US$ 16,788,465.62, but, as the maximum DOP for that year was of US$ 12,000,000, AESU only claimed YPF the amount of US$ 12,089,320 (Testimony of Ricardo Cyrino, ¶¶ 7-13). However, the letter dated June 25, 2008 does not enclose a daily detail for these months, and that detail has not been provided during the course of this arbitration.[226] On the other hand, the witness denies that the calculated and claimed penalty included the days in which gas was not delivered, from September 16 to December 11, 2007, (Idem), so the detail provided by AESU for those dates is not relevant to determine whether AESU complied with the necessary formalities to collect such penalty. Thus, the Tribunal has to conclude that the requirement to provide a daily detail with regard to the penalty claimed for 2007 was not complied with. ----------

1362. But what the Tribunal is most concerned about is that AESU did not issue the debit note required under section 15.2.2 of the Agreement. Under these circumstances, the Tribunal cannot consider that the DOP penalty has become enforceable for YPF. If the parties agreed specific procedures to regulate payment of penalties, for AESU to claim the payment of those penalties, such procedures must necessarily be followed. The Tribunal does not consider that AESU and Sulgás explanations regarding why they did not issue the pertinent debit note could be capable of justifying noncompliance with the contractual payment regime. In the light of the foregoing, the

[226] A monthly detail is enclosed to the Testimony of Ricardo Cyrino, but not a daily detail. ----------

Tribunal rejects AESU and Sulgás claim in connection with DOP penalty corresponding to the years 2007 and 2008.----------

1363. Having rejected the validity of the penalty, the Tribunal does not need to address YPF's arguments regarding the alleged over-nomination made by AESU from October to December 2007. ----------

4. Noncompliance with the scheme set forth in the Gas Supply Agreement for new taxes----------

1364. AESU and Sulgás allege that YPF did not comply with the procedure provided for in section 13.1 of the Gas Supply Agreement with regard to the transfer of new taxes on natural gas export to Sulgás. The Tribunal has already addressed this issue under Part VII.A.6 above; for this reason, the Tribunal refers to that part. ----------

1365. In order to clear any doubt, the Tribunal found that YPF breached the obligation provided for in section 13.1 of the Gas Supply Agreement, consisting in carrying out a consultation procedure before transferring new taxes on natural gas export to Sulgás. That does not change the Tribunal's conclusion that Sulgás was anyway contractually obliged to assume the cost of these new taxes. ----------

C. AESU AND SULGÁS ALLEGATION REGARDING THE FRAUDULET CHARACTER OF YPF'S BREACHES ----------

1. AESU and Sulgás Position----------

1366. AESU and Sulgás allege that "all YPF breaches were fraudulent" (A/S-AF, ¶289; A/S-MD, ¶¶ 917-928). In other parts of their briefs, AESU and Sulgás affirm that YPF acted with "gross negligence or fraud" (see, for example, A/S-MD, ¶¶ 297, 336, 339, 391. 394, 439, 469, 895. On the other hand, AESU and Sulgás have pointed out that "[e]ven when YPF's fraud is not considered, negligence in the breach of the agreement is presumed" and YPF has the burden to prove the lack of negligence (A/S-Complaint, ¶ 997). Therefore, the Tribunal understands that AESU and Sulgás have requested that YPF be declared as having acted fraudulently or, alternatively, having acted with negligence. ----------

1367. AESU and Sulgás define fraud as the voluntary breach of obligation by the debtor, and they state the following requirements: (i) the debtor, having the possibility to comply with the agreement, chooses not to do it; (ii) the debtor knows that his actions will result in the breach of an obligation that was enforceable, and which he was not authorized to breach or to comply with

in a partial, defective or belated way. They add that, under Argentine law, whereas negligence in a breach of contract is presumed, the existence of fraud must be proved by the party alleging it. --
1368. AESU and Sulgás state that YPF acted fraudulently and maliciously when breaching its obligations under the Gas Supply Agreement, and also when repudiating the contract and the obligations arising therefrom. Specifically, they point out that: ----------

a. YPF has always known that under Argentine Law domestic gas consumption prevails over exports. There was no change under Argentine Law, which has always provided for said priority----------
b. YPF knew that the Uruguaiana thermoelectric plant could only operate with natural gas, and also knew about the existence of the PPAs, and that by breaching its obligations and repudiating the Gas Supply agreement, YPF would cause AESU and Sulgás tremendous losses. ----------
c. At all times YPF could have complied with its obligations under the Agreement. The regulations invoked by YPF to support the argument that it had not been able to comply with the Agreement provided for flexibility measures that allowed gas exports.YPF chose not to apply such measures, with knowledge of the damages it would cause. ----------
d. Subsequent to the Agreement, YPF increased the aggregate demand of natural gas in Argentina, creating a demand towards itself or towards related companies, without taking any measure to satisfy this new demand together with the existing demand, knowing that said action would undermine its possibility to comply with legal and contractual commitments. YPF chose to satisfy said demand instead of complying with its commitments under the Agreement. ----------
e. As from 2001, YPF substantially increased the payment of dividends to its shareholders, depriving itself of the funds that were necessary to make investments to comply with the Agreement. ----------
f. YPF, intentionally, did not perform the necessary exploration and exploitation to comply with its legal and contractual commitments to deliver gas, when other operators actually did so. ----------
g. YPF has carried out acts, such as the signing of the “Agreement with Natural Gas Producers 2007-2011”, which undermined the possibility to comply with the Agreement. -
h. There is no force majeure to excuse YPF’s breaches or repudiation to the Agreement. ------

1369. AESU and Sulgás concluded that "Then, YPF breached its obligations fraudulently in all cases. And under those breaches Repsol figure can be found, which needed YPF's funds to satisfy its own interests" (A/S-AF, ¶ 290). ----------

1370. Although AESU and Sulgás allege that YPF acted with fraud, they do not submit arguments regarding the consequences of said fraud. ----------

2. YPF's Position ----------

1371. YPF does not make any reference to AESU and Sulgás' arguments in connection with fraud. YPF just denies being responsible for the Gas Supply Agreement termination, alleging that it has not breached the agreement and its breaches are excused on account of force majeure (Y-Rejoinder, ¶¶ 320-325). ----------

3. Analysis ----------

1372. The Tribunal observes that, although AESU and Sulgás allege that YPF breaches were fraudulent, they do not refer to the consequences of said fraudulent behavior. On the other hand, YPF has not submitted any argument regarding the existence of fraud or its possible consequences. According to the current file status, the Tribunal considers that the arguments submitted by the parties are insufficient to make a decision with regard to the existence of fraud, as well as its consequences. Besides, for the reasons mentioned in the paragraph below, the Tribunal cannot set aside the fact that the parties have omitted to pronounce with regard to the existence of fraud or the consequences thereof, as they consider that those issues should be addressed in the calculation phase of this arbitration. ----------

1373. Additionally, the Tribunal considers that the question about whether YPF's breaches are fraudulent is not relevant to determine "whether there was any breach attributable to any of the Parties {in this case, to YPF}, which affects its liability", subject matter of this procedural phase (paragraph 2.2 of the Procedural Order No. 2). The existence of fraud could be relevant for the "calculation of damages to be borne by the breaching Party[227]", subject matter of the next procedural phase (*idem*). ----------

1374. For these reasons, the Tribunal postpones the discussion and decision on the existence of fraud and its consequences in the calculation of damages that YPF shall compensate to AESU and Sulgás for the next phase of this arbitration. For these purposes, during the calculation of

[227] See, for example sections 521 and 596 of the Argentine Civil Code.----------

damages phase, the parties will be able to submit all of the arguments and evidence as they may deem necessary, including arguments and evidence concerning the new facts alleged by AESU and Sulgás by means of the letters dated April 19, April 24 and June 14, 2012, which could be included to the file as from submission thereof during that procedural phase. ----------

VIII. DISPUTE BETWEEN YPF ADN TMG UNDER THE FIRM TRANSPORTATION SERVICE AGREEMENT AND THE MEMORANDUM OF AGREEMENT ----------

A. TGM'S CLAIM FOR THE PAYMENT OF THE INVOICES FOR SEGMENT B AND IRREVOCABLE CONTRIBUTIONS FROM SEPTEMBER 1, 2008, TO MARCH 23, 2009. ----------

1. TGM Position----------

1375. TMG filed a complaint against YPF for the payment of certain invoices corresponding to the firm transportation service rendered pursuant to the Firm Transportation Service Agreement, and the non-capitalized irrevocable contributions pursuant to the Memorandum of Agreement, accrued during the period from September 1, 2008 to March 23, 2009 (the "Relevant Period", ending on the date of termination of the Transportation Service Agreement and the Memorandum of Agreement due to YPF's noncompliance). (T-MD, ¶¶ 10-35,198-205; T-MC, ¶¶ 184-185; T-Replication, ¶¶ 190-193,251-259). ----------

1376. Specifically, TMG demands the payment of: ----------

a.The invoices identified under the numbers 0001-000000292, 0001-000000294, 0001-000000296, 0001-000000298, 0001-000000299, 0001-000000300 y 0001¬000000301 (the latter shall be paid in its proportional part), according to the detail set forth in the following table, for the services rendered by TMG to YPF under the Firm Transportation Service Agreement during the months between September 2008 and February 2009 and from March 1 to March 23, 2009, plus interest as from the due date of each obligation until the date of actual payment, plus a compensation for other damages (to the extent that said damages are not repaired by the required interest). ----------

Firm Transportation Service Agreement----------

INVOICE	DATE [dd/mm/yy]		AMOUNT
	INVOICE	DUE DATE	
0001-00000292	30/09/08	04/11/08	USD 2,263,922.43
0001-00000294	31/10/08	02/12/08	USD 2,263,922.43
0001-00000296	30/11/08	02/01/09	USD 2,263,922.43
0001-00000298	31/12/08	03/02/09	USD 2,263,922.43
0001-00000299	31/01/09	03/03/09	USD 2,468,020.41
0001-00000300	28/02/09	02/04/09	USD 2,468,020.41
0001-00000301	31/03/09	04/05/09	USD 1,809,881.63

---

b. The non-capitalized irrevocable contributions owed by YPF to TGM under the Memorandum of Agreement corresponding to the months from September to December 2008 (Invoices No. 0001-000000293, 0001-000000295 and invoice No. 0001¬000000297), January and February and the first 23 days of March, 2009[228] under the Memorandum of Agreement, according to the details in the table below, plus interest as from the date of payment in arrears of each obligation, until the date of actual payment and other damages (to the extent that said damages are not repaired by the required interest).----------

Memorandum of Agreement ----------

Period	Due Date [dd/mm/yy]	Amount
September/08	15/10/08	USD 286,122.32
October/08	17/11/08	USD 286.122.32
November/08	13/12/08	USD 286,122,32
December/08	13/01/09	USD 286,122.32
January/09	16/02/09	USD 312,875.12
February/09	16/03/09	USD 312,875.12
March/09	13/04/09	USD 239,870.93

a. TMG and YPF's obligations under the Transportation Service Agreement and the Memorandum of Agreement ----------

[228] The Tribunal observes that TGM does not provide the number of the last three invoices.----------

(i) The Transportation Service Agreement ----------

1377. TGM explains that in 1998 it entered into the Transportation Service Agreement with YPF (Annex T-I-5 and Y-2) and the Memorandum of Agreement (Annex T-I-6, Y-22). They were both bilateral contracts and the only parties thereof where TGM, as the carrier, and YPF, as the shipper (T-MD, ¶¶ 10-19,102-195). ----------

1378. Under these agreements, which were never modified, TMG agreed to build the "New Gas Pipeline"[229], exclusively aimed at rendering a firm service of transportation capacity reserve to YPF under the Transportation Service Agreement. TGM states that there is no dispute in relation to the fact that the "New Gas Pipeline" was built at the appropriate time and under the conditions agreed. ----------

1379 Once the New Gas Pipeline was built, TGM affirms that it assumed two basic obligations under the Transportation Service Agreement:----------

a. A permanent obligation consisting in making a daily reserved transportation capacity of up to 2,800,000 m3 available to YPF and----------

b.A contingent obligation, consisting in transporting, from the Point of Reception to the Point of Delivery (pursuant to the definitions of the Gas Supply Agreement), the amounts of natural gas daily required by YPF. ----------

1380. TGM affirms that it complied with the Transportation Service Agreement, as long as it complied with the permanent obligation to make available the reserved capacity (section 2.1 of the Transportation Service Agreement). ----------

1381. On the other hand, under the Transportation Service Agreement, YPF agreed to pay the monthly fixed price for the firm reserve capacity hired, whether YPF took advantage of said capacity or not (section 2.1 of the Transportation Service Agreement), section that has been qualified by TGM as "*ship or pay*". Therefore, whether YPF took advantage or not of that reserve capacity was a risk expressly assumed by YPF, which, in all cases, had the obligation to pay the corresponding price as long as TMG had the reserved transportation capacity available (Report of Engineer Raul Bertero, pages 5-6). TGM alleges that this condition has always been essential to the agreement entered into between YPF and TMG, as it allowed TMG to ensure the recovery of

[229] "New Gas Pipeline", is the term that TGM uses to refer to the "GAS PIPELINE", which is defined under section 1.1 of the Gas Supply Agreement as the "at least 18 inches gas pipeline" (referring to the diameter) to be built by TGM, for the purposes of complying with TGM TRANSPORTATION SERVICE AGREEMENT, from Aldea Brasilera (in Argentina) to the shared border located in the international bridge connecting the cities of Paso de los Libres (ARGENTINA) and Uruguaiana (BRAZIL)". ----------

the expensive initial investment in the construction of the gas pipeline, and the generation of a reasonable profitability, regardless of the contingencies that could arise from using the transport capacity. ----------

1382. TGM highlights that YPF was responsible for gas transportation under the Gas Supply Agreement, in accordance with section 16.1.1 of said agreement[230]. To comply with these obligations, YPF agreed with TGN the transportation capacity reserve that was necessary for Segment A of Transportation (from YPF oilfield in Loma La Lata to 'Zona Litoral´) and agreed with TGM the transportation capacity reserve for Segment B of Transportation (from Zona Litoral to the Point of Delivery). ----------

1383. TGM adds that it was YPF's responsibility to ensure that the delivered natural gas to be transported was under physical and legal conditions to be exported to Brazil. ----------

(ii) The Memorandum of Agreement ----------

1384. TGM explains that, in order to comply with the capacity reserve agreed upon under the Transportation Service Agreement, the New Gas Pipeline should have a maximum diameter of eighteen inches (section 1.1 of the Transportation Service Agreement). Notwithstanding the foregoing, TGM affirms that YPF encouraged and required from TGM the construction of the New Gas Pipeline in a greater diameter, because YPF intended that TGM shared the expected future growth of natural gas demand in Brazil (T-MD, ¶¶ 389-400). For this reason, on October 2, 1998, YPF and TGM entered into a memorandum of agreement (the "Memorandum of Agreement") (Annex T-I-6) pursuant to which TGM agreed to build the New Gas Pipeline with a capacity that was higher than the capacity that was necessary to comply with the Firm Transportation Service Agreement (for which TGM should increase the investments required to build said pipeline). In consideration thereof, YPF firmly and irrevocably agreed the monthly payment of certain amounts of money to TGM. ----------

1385. According to TMG, under the Memorandum of Agreement, it assumed two obligations: -----

[230] TGM affirms that in the 1996 Master Agreement it clearly stands out that YPF was responsible for the gas transportation from the oilfield to the point of delivery, and would be hired by YPF as a firm transportation service with the available transportation suppliers. This was confirmed under section 16.1.1 of the Gas Supply Agreement, which provides the following: "YPF shall be responsible before PETROBRAS [then SULGÁS] for the GAS transportation, subject matter of this AGREEMENT, from NEUQUEN BASIN to the POINT OF DELIVERY, having, for said purpose, to execute and/or keep in force the FIRM TRANSPORTATION SERVICE AGREEMENTS as from the DATE OF THE FIRST NOMINATION and to the termination of the AGREEMENT".----------

a. The firm obligation to build the New Gas Pipeline in a diameter superior to the 18 inches that were necessary for TMG to comply with the obligations under the Transportation Service Agreement. Finally, the diameter of the New Gas Pipeline was of 24 inches. ----------

b. A contingent obligation under which, in case YPF entered into new agreements to export natural gas to Brazil, TGM would share the future demands of firm capacity that would be required by YPF under the conditions agreed between YPF and TGM. ----------

1386. TGM adds that, in consideration of this, YPF agreed to make a monthly payment to TGM for non-capitalized irrevocable contributions (the "Irrevocable Contributions") for the amount of one hundred sixty three thousand five hundred and twenty seven American Dollars (US$ 163,527) (section 1 of the Memorandum of Agreement). According to TGM, the Irrevocable Contributions were the highest initial investment payment method that TGM had to pay *up-front* to build the 24-inch-diameter New Gas Pipeline, as required by YPF. TGM stated that, after the adjustments made for PPI (parts per inch), provided for under section 2 of this Memorandum of Agreement, the Irrevocable Contributions amount to the sums claimed by TMG in this arbitration. ----------

(iii) TGM's comments about YPF's description of the denominated "Uruguayana Project" ----------

1387. TGM rejects YPF's description of what YPF's denominates the "Uruguayana Project" (T-MC, ¶¶ 3-65). According to TGM, that description conveys the false impression that said "Uruguayana Project" consisted in a kind of business association, within the framework of which, each participant was responsible for different contributions and all of them were jointly depending on the success of a common project, where all of the participants thereof had assumed, globally and indistinctly, all of the risks of the project. ----------

1388. On the contrary, TGM affirms that: ----------

a. YPF, as shipper and producer, has always been the only counterparty to TGM under the Firm Transportation Service Agreement and the Memorandum of Agreement. YPF has been the only owner of the transportation capacity reserve and the debtor of the price owed to TGM for that reserve. ----------

b. The Firm Transportation Service Agreement and the other instruments entered into by and between TGM and YPF contain a clear and express distribution of the risks involved in YPF's "Uruguayana Project", risks that has always existed or that has been assumed by YPF. On the basis of this distribution of risks (that can only be changed with TGM's consent) TGM agreed to participate as a supplier of YPF in its "Uruguayana Project". Particularly, YPF assumed the following risks: ----------

i. Any risk in connection with the development of YPF's activity and of the "business areas in which YPF develops its activities" (Numeral 1.6 of the Basis of the Call for the Hiring of the Firm Transportation Capacity Service in Paso de los Libres, and Note V.E.P. 3.3. No. 170/98, September 1, 1998, subscribed by YPF). ----------

ii. Any risk in connection with the "general macroeconomic conditions" (idem). ----------

iii. Any risk concerning any event or circumstance that may prevent YPF from delivering gas, even when that fact or circumstance constitutes an act of God or a force majeure event for YPF (sections 6.2 § 1, 1.1. and related sections of the Transportation Service Agreement). ----------

iv. Any risk concerning the use or misuse of the transportation capacity reserve available thanks to the New Gas Pipeline (section 2.1 *in fine* of the Transportation Service Agreement). ----------

c. All of the references given by YPF in relation to changes that were allegedly unforeseeable for YPF (1) in the Argentine gas market in the late 90s about an alleged oversupply of gas surplus capable of being exported, (2) in the alleged regional integration agreed between Argentina and the Republic of Brazil, (3) in the alleged regimen of free disposal of gas production obtained by means of licenses granted by the Argentine Goverment, (4) in the alleged regimen of free selling gas price setting by the producers obtained from said licenses, or (5)in the alleged absolute rights of YPF under the authorization to export gas granted to YPF for YPF to comply with the Gas Supply Agreement, which among other circumstances, are risks inherent to YPF as far as TGM is concerned. The effects of invoking these rights on the part of YPF in its relation with AESU and Sulgás do not affect the risk distribution agreed with TGM. ----------

1389. TGM rejects YPF's arguments by means of which YPF intends to minimize its role as shipper under the Transportation Service Agreement, and its obligations in relation to TGM under said agreement, stating that Petrobras had requested YPF to act as shipper with the purpose of "avoiding charging the value added tax to the price of transportation, which could not be used by the importer as tax credit in Argentina." According to TGM these arguments are irrelevant for releasing YPF from its liability in relation to TGM as the only shipper, or to distort the contractual guarantees that YPF granted to TGM with the purpose of inducing TMG to build the New Gas Pipeline and to enter into the Transportation Service Agreement and the Memorandum of Agreement. TGM adds that it agreed to enter into the Transportation Service Agreement and the Memorandum of Agreement (assuming enormous investments) on the basis of the assurances granted by the shipper (i.e., YPF) and the guarantees granted by YPF under the agreements subscribed. ----------

b. YPF did not comply with its obligations under the Transportation Service Agreement during the Relevant Period ----------

1390. TGM states that it complied with its obligations under the Transportation Service Agreement. Specifically, it affirms that during the Relevant Period it complied with the obligation of making the reserved daily transportation capacity in the New Gas Pipeline available for YPF. Therefore, although during this period YPF has never requested TGM the transportation of any volume of gas, TGM right to collect the price provided for in the Transportation Service Agreement was accrued (Legal Opinion of Dr. Trigo Represas, pages 5-6). However, YPF rejected all the invoices issued by TGM for the price of transportation during the Relevant Period, except for the one corresponding to September 2008, which YPF agreed to a partial payment, but it never paid[231]. (T-MD, ¶¶ 196-210) ----------

1391. TGM rejects YPF's allegations used as grounds for nonpayment of the invoices. Firstly, TGM denies that its transportation capacity has not been available, as YPF alleges (Part (a)). Secondly, TGM denies that YPF's obligation to pay the price of the Transportation Service Agreement has been suspended (Part (b)). Finally, TGM alleges that YPF cannot invoke force majeure in relation to TGM (Part (c)). ----------

(i) It is false that the transportation capacity was not available ----------

1392. TGM observes that YPF tried to base its denial to pay on the allegation that the reserved transportation capacity had not been available, which is false, according to TGM. (T-MD ¶¶ 196-205; T-MC, ¶¶ 184-264; T-Replication, ¶¶ 183-245; T-Rejoinder, ¶¶ 40-41). ----------

1393. Firstly, TGM states that during that period, YPF had never requested the use of the transportation capacity. Whether YPF used that capacity or not is irrelevant to determine that TGM's obligation under the Transportation Service Agreement has been complied with. ----------

1394. Secondly, TGM denies having been legally incapable of complying with the Transportation Service Agreement during the Relevant Period. Pursuant to section 2.1 of the Transportation Service Agreement, TGM affirms that its obligation consisted in making the hired daily capacity in the New Gas Pipeline available for YPF. TGM affirms that, during the Relevant Period, 100% of the transportation capacity agreed upon under the Transportation Service Agreement was available for YPF, and it was confirmed by Raul Bertero's Report. TGM highlights that YPF acknowledged that said capacity had been "physically" available, and denies that the reference made to an

[231] TGM states that, with regard to the partial payment of the invoice No. 0001-000000292 (Annex T-IV-1) YPF expressly recognized and agreed to pay, and no defense by YPF should be considered. ----------

alleged "legal" unavailability is relevant. Such “legal” unavailability has been created by YPF to conceal the fact that YPF was not able to use that capacity. TGM adds that the distinction between “physical” and “legal” availability is absurd, because if the "physical" availability already exists, at the same time, the "legal" availability of the agreed capacity exists. ([Second] R. Bertero's Report, Annex T-22, ¶ 3.2.2). As a consequence, at the time of entering into the Transportation Service Agreement, TGM made the transportation capacity physically and legally available. ----------

1395. In relation to the five regulations invoked by YPF as grounds for its allegation of legal impossibility, TGM emphasizes that three of them were not valid during the Relevant Period (Resolution SE No. 265/2004, as the purpose of said regulation was exhausted; Provision SSC No. 27/2004, as it was annulled, and ENARGAS Resolution No. 1/1410, as it had not been rendered yet). With regard to the two regulations then in effect (Resolution SE 659/2004, as amended by Resolution SE 752/2005, and Note No. 1011 from the Energy Secretariat), TGM states that these did not provide for any prohibition in relation to gas transportation with the purposes of exporting. As long as YPF was authorized to export gas, upon having complying with the injection of gas volumes required by the authorities for domestic market supply, the export transportation could be performed, and was performed by TGM without limitation. Quoting the legal opinions of experts Mezzadri, Bertero and Barra, in certain notes sent by ENARGAS to the Energy Secretariat,[232] TGM explains the following: ----------

a. The energetic crisis suffered by Argentina as from 2004 was due to the shortage of gas production by Argentine gas producers, as shown by the regulation issued by the Argentine Government[233]. YPF was primary responsible for its role in the Argentine market. The crisis was not provoked by a shortage or lack of transportation capacity; on the contrary, there was an unused transportation capacity as gas producers could not comply with the full injection. ----------

b. The restrictions to exports were imposed over gas producers-exporters, to which the orders of injections were directed, for the purposes of instructing them to redirect the gas volumes reached by the restrictions to the domestic market. (Numeral 11 of Annex I of the Provision SSC 27/2004 numeral 3 and 79 of Annex I of the Resolution SE 659/2004). But as the gas pipeline system was the means through which a producer could infringe or attempt to evade the

[232] Note ENRG/GDyE/GAL/GT/GD N° 14.901 dated October 28 2009 to the Energy Secretariat (Annex TL-3) and Note of ENARGAS ENRG/GDyE/GAL/GT/GD/I N°1498 dated February 8, 2010 (Annex TL-4).----------

[233] TGM quoted recitals of Resolution SE 265/2004 (Annex YL-82), Provision SCC 27/2004 (Annex YL-83), Resolution SE 659/2004 (Annex YL-87) the Resolution MINPLAN 208/2004.----------

application of said restrictions, the State ordered gas pipeline operators to control producers' compliance with said restrictions (Numeral 6.1 of Annex I of Resolution SE 659/2004). In fact, it was a practice of producers to confirm the gas availability to be exported, which was false in the opinion of competent authorities. To prevent producers from evading their obligations, the Government established the duty of denying gas transportation to producers that had failed to comply with the orders of injection to the domestic market, so carriers were acting as guardians of the validity of the restriction system imposed on producers (Numeral 6.2 of Annex I of Resolution SE 659/2004, as amended by Resolution SE 752/2005). However, the passive subjects on whom said restrictions were imposed were gas producers-exporters. This was confirmed by the fact that the penalties provided to ensure compliance with said regimen were focused on producers and not on carriers. (Numeral 6.3 of Annex I of the Resolution SE 659/2004) Therefore, the role of carriers was merely instrumental: when the carrier participated, it acted as an enforcement arm of the government, in order to prevent producers-exporters from failing to comply with the restrictions imposed on them. ----------

c. This does not imply that there was an impossibility on the part of the carriers to render the agreed upon services, or that this has the potential to affect the rights and obligations of carriers under the transportation service agreements subscribed. On the contrary, if the producer-shipper had delivered gas to the carrier that, in the judgment of the Argentine authorities, had been in good conditions to be export, carriers would performed transportations thereof under the agreed upon conditions. Otherwise, the shipper would not be able to use the agreed upon capacity, which is a risk of the shipper and does not affect the carrier's right to collect the price for the capacity reserve (*ship or pay*). ----------

1396. TGM also rejects YPF's allegation that it would have confirmed the total gas volume nominated by the Importer, and therefore, required to use TGM transportation capacity, but TGN would have authorized inferior volumes and prevented the gas from reaching TGM gas pipeline. TGM observes that YPF does not specify the days in which this situation apparently occurred, but in any case it is false for the Relevant Period, because during that period YPF never required TGM transportation capacity. ----------

1397. TGM also rejects the importance of the internal report and the Regulatory Orders of ENARGAS quoted by YPF. TGM states that the internal report does not impose any measure, whereas the single Regulatory Order of ENARGAS valid during the Relevant Period did not affect the firm transportation capacity of TGM ([Second] Report of R. Bertero, Annex T-22). ----------

1398. Finally, TGM denies the fact that the government measures invoked by YPF as grounds for force majeure under the Gas Supply Agreement have destroyed the firm character of the Transportation Service Agreement: ----------

a. TGM alleges that the fact that YPF's Authorization to Export has stopped being "firm" since 2004, as alleged by YPF, does not affect the firm nature of the Transportation Service Agreement. According to TGM, the firm characteristic of the Transportation Service refers to the contractual modality agreed upon under the Transportation Service Agreement, pursuant to which, YPF agreed to pay the price for the capacity reserve made available by TGM, regardless whether or not YPF was able to use that available capacity (in accordance with the *ship-or-pay* clause provided for in section 2.1 of the Transportation Service Agreement). As the Transportation Service Agreement was never amended and YPF's obligation to pay for the reserve of the agreed upon capacity has always been unaltered, the Transportation Service Agreement has never ceased to be firm. ----------

b. The controlling burden imposed by the government on carriers did not mean a transformation of the firm condition of the subscribed agreements, so the shipper should pay for the capacity reserve, even when it had not been able to use it. In this sense, TGM affirms that ENARGAS has confirmed that carriers under firm condition, as they have a transportation capacity available that cannot be used by the shippers, they have in any case the full right to collect the price or the fee corresponding to the rendering of the service of capacity reserve[234].----------

c. At no time has TGM been affected in relation to its capacity to render the service of firm transportation to YPF agreed under the Transportation Service Agreement by the regulations issued by the Government that were quoted by YPF, or by any other reason. ----------

1399. In its Replication, TGM observes that in YPF Reply Brief it supports its defense related to the legal impossibility of TGM to render the transportation service, on the grounds of the

[234] TGM quotes the Note ENRG/GDyE/GAL/GT/GD No 14.901 dated October 28, 2009, to the Energy Secretariat (Annex TL-3), which states that "it has been concluded that the gas volumes injected in each of the productive basins in our country were not sufficient to cover the maximum transportation capacities hired, and for this reason, it is not possible to apply any mechanisms or regulations in effect when shortage occurs during the Transportation service, due to the fact that the demand was not restricted by the lack of capacity of the transportation system. For this reason, the cause of shortage was the lack of gas at the gas pipeline header. Only if the transportation capacity in injection had been full, the application of rules to administer the shortage of transportation service could have been considered (i.e. Enargas Resolution No. 716/98, etc.) […]For this reason, among others, Distributors and Carriers always bill the transportation service under agreements that imply the ship-or-pay obligation, bill the cargo and as long as they do not invoice the transportation service, they do not bill the cargo. For this reason, as in the mentioned case, restrictions began in the lack of full injection to the Systems of Transportation, Carriers must bill the firm transportation fee as well as the specific cargo on account of expansion […].” (Emphasis in the original).-----

exceptions for the payment of the price provided for in the second part of section 6.2 of the Transportation Service Agreement. TGM denies that the conditions excluding payment under section 6.2 of the Transportation Service Agreement have been met (T-Replication, ¶246 and ss.) TGM affirms that there are only two conditions: (i) That TGM was prevented from rendering the firm transportation service as a consequence of a TGM act of God or a force majeure event, or (ii) that TGN was prevented from rendering the firm transportation service as a consequence of a TGN act of God or force majeure event. T-Replication, ¶¶ 183-236. ----------

1400. In relation to the first condition (TGM act of God or force majeure event), TGM denies that the necessary requirements have occurred, which, according to TGM, are two: (a) that TGM has been prevented from rendering the firm transportation service, and (b) that the impediment was a consequence of a "TGM act of God or force majeure event". ----------

a. In relation to the first requirement, TGM denies having been prevented from rendering the firm transportation service during the Relevant Period, as explained above. ----------

b. In relation to the second requirement, TGM observes that YPF did not even allege that it had been met. In any case, TGM affirms that it was not met because YPF was never in conditions to comply with the Transportation Service Agreement; therefore, it never declared any Act Of God or Force Majeure Event. ----------

1401. TGM also denies that the requirements for the second condition have been met, which are three, according to TMG: (a) that YPF "is not been able to deliver gas to TGM at the Point of Reception"; (b) that such YPF impossibility is due to a TGN Act of God or Force Majeure Event; and (c) that the TGN Act of God or Force Majeure Event has been "declared by TGN under the TGN Firm Transportation Service Agreement." ----------

a. According to TGM, the first requirement was not met because, during the Relevant Period, YPF has never required legitimately the use of the transportation capacity reserved in the TGN gas pipeline under the TGN Transportation Service Agreement (Second Report of R. Bertero, Annex T-22). Therefore, YPF did not even try to deliver gas to TGN. ----------

b. The second requirement has neither been met, because TGN was never incapable of rendering the transportation service to YPF, for the same reasons applicable to TGM. In any case, that is what TGN alleges in its dispute with YPF (Annex T-16). ----------

c. Finally, the third requirement has not been met because TGN has never declared its own Act of God or Force Majeure Event under the TGN Transportation Service Agreement. As confirmed by TGN in its dispute with YPF (Annex T-16). ----------

1402. Additionally, TGM alleges that YPF acknowledged that the transportation service has been rendered, contradicting its position in relation to legal impossibility. In fact, TGM highlights that: --

a. During the whole Relevant Period, YPF invoiced and claimed payment of Segment B to the Importer, and then suspended the deliveries under the Gas Supply Agreement (December 4, 2008) on the grounds of AESU/Sulgás failure to comply with payment of Segment B, which confirms that YPF considered that the transportation service had been rendered. ----------

b. Among YPF's petitions in this arbitration, YPF requests the Tribunal to declare that the invoices issued by TMG, which are pending payment, "should be paid to TGM" (as long as it understands that the debtors of said invoices are AESU and Sulgás) (Y-MD, ¶ 588(ii)). According to TGN, this YPF petition implies that the service has been rendered by TGM under the Transportation Service Agreement, and that the price for the rendering of such service has been accrued, has become due and has not been paid. The controversy arises because YPF states that this debt cannot be collected from YPF because the "condition precedent provided for in section 5.10 of the Transportation Service Agreement" is in force, and for that reason, the debt should be paid by AESU and Sulgás. According to TGM, that confirms that YPF has acknowledged not only that TGM had rendered the agreed service during the whole period claimed, but also that TGM has the right to collect the invoices claimed during that period. ----------

(ii) The obligation to pay the Transportation Service Agreement price was not suspended----------

1403. TGM states that, once YPF had been served notice of the arbitration complaint filed by TGM and once the legal period to dispute the invoices issued by TGM pursuant to the provisions of section 474 of the Argentine Commercial Code had elapsed, YPF attempted to defend itself against TGM's claim that its obligation to pay the price to TGM under the Transportation Service Agreement was "suspended" due to an alleged "Importer's payment in arrears" (YPF identifies AESU and Sulgás jointly as Importer) of a certain obligation owed to YPF and that, in the judgment of YPF, it would constitute the condition precedent set forth in section 5.10 of the Transportation Service Agreement. ----------

1404. TGM rejects YPF's position, alleging that (a) YPF requirements are untimely; (b) there has never been no "Importer's payment in arrears" that could have suspended YPF's obligation to pay the price of the Transportation Service Agreement; (c) in any case, YPF could not allege this

suspension because it had failed to comply with its obligations under the Gas Supply Agreement, and (d) in any case, the conditionality provided for in section 5.10 of the Transportation Service Agreement was not applicable or operative during the validity of the Complementary Agreements. ----------

(a) YPF's requirements are untimely. ----------

1405. On a preliminary basis, TGM alleges that YPF allegations are untimely (T-MD, ¶¶ 340-350). TGM explains that, according to section 474 of the Argentine Commercial Code, the invoices that were issued and not disputed by the buyer within 10 days following their delivery and receipt are presumed to be liquidated accounts. TGM adds that said dispute must be precisely grounded. YPF complied with this legal obligation, because it disputed all of the invoices issued by TGM (except for the first one, which YPF accepted to make a partial payment)[235]. However, YPF did not ground said dispute on the alleged suspension of its obligation now claimed, but in the argument that the transportation capacity was not available. According to TGM, if YPF had believed in good faith that the due payment claimed by TGM was suspended because an "Importer's payment in arrears", it would have been reasonable that YPF so stated to TGM when rejecting the invoices. ---

(b) There has never been any "Importer's payment in arrears" that could suspend YPF's obligation to pay the price of the Transportation Service Agreement ----------

1406. Beyond the untimely allegations, TGM affirms that there was no payment in arrears on the part of AESU and Sulgás that could suspend YPF's obligation to pay the price for the service of capacity reserve rendered by TGM under the Transportation Service Agreement during the Relevant Period (T-MD, ¶¶ 226-386; T-MC, ¶¶265-292; Tr., Day 1, 248-252). TGM acknowledges that, under section 5.10 of the Transportation Service Agreement, YPF has the right to suspend the payment of the price of the transportation capacity to TGM in cases in which Sulgás delays the payment of Segment B of Transportation, when such payment in arrears is not attributable to YPF breaches[236]. However, TGM states that, from September 2008 to March 2009, Sulgás never

[235] TGM quotes the following YPF letters: (i) Letter dated October 20, 2008, in connection to TGM invoices for the services corresponding to September 2008 (Annex T-II-13); (ii) November 17, 2008, in connection with TGM invoice for the services corresponding to October 2008 (Annex T-II-16); (iii) December 18, 2008, in connection with TGM's invoice for the services corresponding to November 2008 (Annex T-II-20); (iv) letter dated December 23, 2008, reiterating the rejection of TGM invoices corresponding to September, October and November 2008 (Annex T-II-21), and (v) letter dated January 12, 2009, which reiterates the rejection of the invoices on the letters dated October 20, November 17, December 18 and December 23, 2008 (Annex T-II-24). ----------

[236] Section 5.10 of the Transportation Service Agreement has been quoted in paragraph 1492 *infra*.----------

incurred in arrears of payment of Segment B of Transportation in accordance with the provisions of the original Gas Supply Agreement (i.e., the Gas Supply Agreement subscribed by TGM, before the amendments thereof by means of the Complementary Agreements). This is due to the following reasons: (i) as there was no gas supply at the point of delivery during that period, there was no price; and (ii) during the whole Relevant Period YPF invoked and supported its own force majeure, and as a consequence, the obligation to pay the price of Segment B was suspended. ------

1407. Regarding the first reason, TGM states that based on the price definitions provided for in sections 13.1 and 13.4 of the Gas Supply Agreement, it could be said that, as there were no provision of gas at the point of delivery during this period, there was no obligation to pay the "price". The only obligation arising therefrom was the obligation to pay a penalty, acknowledged by YPF as a secondary obligation and different from the principal obligation to pay the price. As there was no obligation to pay the "Price for Segment B" as established under section 5.10 of the Transportation Service Agreement, YPF's obligation to pay the transportation price under the Transportation Service Agreement was not suspended. ----------

1408. Regarding the second reason, TGM states that during the whole period YPF invoked and supported its own force majeure under the Gas Supply Agreement, and, pursuant to the provisions of section 17.2 of the Gas Supply Agreement, the force majeure allegation by YPF had the effect of suspending the obligations of both parties, including the obligation to pay the transportation service[237]. This is confirmed by section 16.2.2.2 of the Gas Supply Agreement, according to which Sulgás was not under the obligation to pay Segment B of Transportation in cases of YPF force majeure[238]. In YPF's own words, YPF did not have the right to "*pass through*" Segment B of transportation by invoking its own force majeure. TGM concludes that, as default payment is a situation of delay attributable to the compliance with an obligation, as there was no Sulgás obligation to pay YPF Segment B of Transportation under the Gas Supply Agreement,

---

[237] Section 17.2 of the Gas Supply Agreement states that: "In the event of FORCE MAJEURE OR ACT OF GOD OF YPF, YPF shall not be liable before PETROBRAS for damages, being the compliance with the duties of the PARTIES suspended, which duties were made after the FORCE MAJEURE OR ACT OF GOD, as long as the cause that gave rise to it lasts, including the PRICE OF SEGMENT A OF TRANSPORTATION and the PRICE OF THE SECTOR B OF THE TRANSPORTATION."----------

[238] Section 16.2.2.2 of the Gas Supply Agreement (entitled EXEMPTIONS FROM PAYMENT OF SEGMENT B OF TRANSPORTATION PRICE) establishes the following: "PETROBRAS would not pay the SEGMENT B OF TRANSPORTATION PRICE exclusively under the following circumstances: ----------

(i) On the DAYS and for the firm transportation capacity in the unavailable SEGMENT B OF TRANSPORTATION, expressed in CUBIC METERS under SAID CONDITIONS as a consequence of an YPF ACT OF GOD or FORCE MAJEURE EVENT; ----------

(ii) On the DAYS and for the GAS AMOUNTS not made available to PETROBRAS for failure by YPF, or TGN, or TGM falling within any the situation provided for in Section 14.1.2.1."----------

Sulgás default payment was not possible. Therefore, YPF obligation to pay the price for the transportation capacity reserve to TGM under section 5.10 of the Transportation Service Agreement could not have been suspended, as alleged by YPF. ----------

1409. TGM rejects YPF allegations by means of which YPF intends to support that its force majeure allegation was not permanent during the Relevant Period. According to TGM, the following circumstances confirm that YPF invoked and supported such force majeure allegation during the whole Relevant Period (and even before)[239]: ----------

a. YPF formally invoked and constantly supported its own force majeure under the Gas Supply Agreement in its correspondence with AESU and/or Sulgás or TGM from April 2006 to February 2009[240]. ----------

b. In the Complementary Agreements YPF consistently confirmed its own force majeure under the Gas Supply Agreement[241]. ----------

c. YPF has pointed out that its force majeure under the Gas Supply Agreement was originated in the regulations and administrative acts issued by Argentine authorities, which would have, on YPF's judgment, the effect of preventing YPF from complying with the Gas Supply Agreement. Those regulations and administrative acts were valid until termination of the Gas Supply Agreement. ----------

d. At no time, during the Relevant Period YPF invalidated its Force Majeure allegation under the Gas Supply Agreement, or indicated that the causes originating it had ceased. On the contrary, YPF reaffirmed at all times its existence and its constant aggravation with the passage of time. -----

e. During the Relevant Period, YPF was consistent with its allegation and support of force majeure, to the extent that, whereas the obligation of Sulgás to pay the TOP penalty provided for under sections 4.1, 4.2 and 4.3 of the Gas Supply Agreement was reinstated, and Sulgás did not nominate any volume of gas as from September 15, 2008, YPF did not claim or invoice the TOP penalty it would have had the right to under said contractual provisions, if it had not been in a force majeure situation under the Gas Supply Agreement. ----------

f. YPF has stated that in this YPF Arbitration and in the consolidated arbitrations: ----------

---

[239] TGM adds that since the subscription of the first Complementary Agreements, YPF was confirming and consistently supporting its own force majeure under the Gas Supply Agreement. ----------

[240] TGM quotes YPF Letters dated April 15, 2006 (Annex T-II-2), February 7, 2007 (Annex T-II-4), April 10, 2007 (Annex T-II-5), June 5, 2008 (Annex T-II-6), July 18, 2008 (Annex T-II-7) August 1, 2008 (Annex T-II-8), August 25, 2008 (Annex T-II-9), September 5, 2008 (Annex T-II-10), September 12, 2008 (Annex T-II-11), October 21, 2008 (Annex T-II-14), November 17, 2008 (Annex T-II-17), December 4, 2008 (Annex T-II-19), January 7, 2009 (Annex T-II-22), February 17, 2009 (Annex T-II-28). ----------

[241] TGM quotes as an example section 9.1 of the Payment Agreement. ----------

i. As of the date of termination of the Gas Supply Agreement by AESU and Sulgás (i.e., March 20, 2009), YPF was under force majeure[242]: ----------

ii. As of April 6, 2009, the Authorization to Export was interrupted and subject to the needs of domestic demand[243]. ----------

iii. As of the date of the respective presentations (from April to June 2009) the alleged force majeure was contemporaneous[244]. ----------

1410. For all of these reasons, TGM concludes that YPF invoked and supported its own force majeure during the Relevant Period, and for that reason Sulgás was not obliged to pay Segment B of Transportation under the Gas Supply Agreement, and, therefore, it could not have been in arrears on account of that obligation. ----------

1411. According to TGM, the defensive YPF allegation is grounded on a fallacy, with which it intends to confuse the Tribunal. Said fallacy consists in presenting as Sulgás default payment of Segment B of Transportation under the Gas Supply Agreements what actually is an alleged "Importer's" default payment in relation to a reimbursement obligation assumed under the Payment Agreement entered into by and between YPF, AESU and Sulgás in February 2006, which has never been agreed upon by TGM[245]. ----------

a. TGM explains that in the Payment Agreement, Sulgás undertakes to reimburse YPF what YPF had to paid unconditionally to TGM due to the capacity reserve available under the Transportation Service Agreement, in all cases in which Sulgás owed nothing to YPF for Segment B of Transportation under the Gas Supply Agreement, including force majeure events of YPF (Section 4 of the Payment Agreement)[246]. But TGM claims that default from Sulgás in fulfilling this

---

[242] TGM quotes YPF's Petition dated April 6, 2009 in this Arbitration YPF, 108, and the Reply of YPF Arbitration Complaint and Counterclaim dated June 3, 2009 in AESU Arbitration (Annex T-V-4), 380.----------

[243] TGM quotes YPF's Petition dated April 6, 2009 in this Arbitration YPF, 3(ii) and 349(ii), and the Reply of TGM Arbitration Complaint and Counterclaim dated April 8, 2009 in TGM Arbitration (Annex T-V-1), pages 6-7 and 299 and 306(d) (ii). ----------

[244] TGM quotes YPF's Petition dated April 6, 2009 in this Arbitration YPF, 178, and the Reply of YPF Arbitration Complaint and Counterclaim dated April 8, 2009, in TGN Arbitration (Annex T-V-1), pages 6-7 and 124 and 144; and the YPF Reply to Arbitration Complaint and Counterclaim dated June 3, 2009 in AESU Arbitration (Annex T-V-4), 246.----------

[245] TGM notes that YPF expressly refers to the Payment Agreement, among others, in its Answer to the Arbitration Complaint and Counterclaim dated April 8, 2009 in TGM Arbitration (Annex T-V-1), ¶¶ 183, 185 and 186 and its corresponding footnotes. ----------

[246] Section 4 of the Payment Agreement provides: "Clauses 8.5 and 8.6 of the CR Agreement are eliminated of and clause 8.4 of CR Agreement is replaced by the following:----------

> '8.4. Every MONTH of 2006, 2007, 2008 and 2009, Sulgás shall pay YPF all Segment B of Transportation, even in an ACT OF GOD OR FORCE MAJEURE EVENT of any of the PARTIES, or any other reason,(unless AESU or Sulgás consider that they are not obliged to pay Segment B of Transportation for causes attributable to TGM or TGN, notifying YPF about their position and, as a consequence, YPF shall not pay

obligation of reimbursement under the Payment Agreement is a fact that cannot affect TGM, and has no potential to suspend payments owed by YPF to TGM under Section 5.10 of the Transportation Service Agreement, which was never modified. Indeed, according to TGM, Section 18.4 of the Gas Supply Agreement prohibited YPF, AESU and Sulgás to modify any provision therein without express written consent of TGM, as TGM may be affected by such change. Only Sulgás default in fulfilling its obligation under the Gas Supply Agreement entered into by TGM could have a suspensive effect of YPF obligation to pay the price to TGM under Section 5.10 of the Transportation Service Agreement (Legal Opinion of Dr. Trigo Represas, pages 15 and 16). That is the one and only risk that TGM accepted to undertake. ----------

b. Therefore, "the Importer's arrears" YPF claims, even if it exists, is a risk inherent to YPF, YPF has no right to transfer to TGM based on Section 5.10 of the Transportation Service Agreement, which does not refer to any default obligation under the Payment Agreement. This means that if, under the Payment Agreement, AESU or Sulgás should pay a reimbursement to YPF, YPF can claim or not said reimbursement by the means it considers more appropriate to its interests. But with respect to TGM, such reimbursement obligation "of the Importer", its compliance or noncompliance, possible default, the dispute that could arise between YPF, AESU And Sulgás and the termination, by any means, of this dispute cannot affect the right of TGM to charge the price for capacity reserve made available to YPF during the period between September 2008 and March 2009. ----------

1412. TGM rejects YPF argument in that the suspension of its payment obligation would occur even under the terms of the original Gas Supply Agreement because, during the Relevant Period, AESU nominated no gas, with the result that no obligation would arise that could be excused by force majeure: ----------

a. First, TGM asserts that the lack of nominations by AESU is irrelevant, because, as a result of YPF invoking its own force majeure, all obligations of the Parties were suspended, including the obligation to nominate (Section 17.2 of the Gas Supply Agreement). ----------

b. Second, TGM argues that the lack of nominations by AESU is a product of YPF own acts, whose constant plea for force majeure undermined the normal execution of the Gas Supply Agreement -

c. In addition, TGM has never undertaken the risk of lack of nominations by AESU/Sulgás. ----------

---

Segment B of Transportation to TGM) and regardless of whether YPF has confirmed the nominations and/or provided the Gas for any reason (notwithstanding the above mentioned provisions on the causes attributable to TGM or TGN).----------

1413. TGM adds, having YPF claimed force majeure, that it must accept the effects of such plea (in particular the suspension of the obligations of the Parties) and cannot choose only those that suit them. TGM alleges that YPF recognized that the suspensive effect of its statement of force majeure in their letters to AESU on September 5 and October 21, 2008 (Annex T-II-10 and T-II-14). Additionally, in its letter dated December 4, 2008 (Annex T-II-19), YPF subjected the restoration of AESU nominations to the overcoming of the "Force Majeure event affecting the supply". ----------

1414. Therefore, TGM concludes that the only source of YPF right to claim for Segment B of Transportation to Sulgás is the Payment Agreement, which is unenforceable to TGM. TGM adds that this was the position of YPF in AESU and TGM Arbitrations, which shows that, given the argument made by TGM in TGM Arbitration, YPF decided to change its position in this YPF Arbitration. ----------

(c) YPF could not allege the suspension of its obligation to pay the price of the Transportation Service Agreement as it failed to comply with its obligations under the Gas Supply Agreement. -----

1415. Even if it was understood that there was "Importer's arrears", TGM argues that the suspension of the enforcement of the obligation to pay the price for transportation capacity reserve under Section 5.10 of the Gas Supply Agreement would not apply, since YPF breached its obligations under the Gas Supply Agreement (T-MC, ¶¶293-314). ----------

1416. TGM emphasized in this regard that the second part of Section 5.10 states that "YPF remains unconditionally obliged to execute the payment obligations owed to TGM under the Firm Transportation Service Agreement, if Petrobras default (or AES default) regarding the payment of the Price of Segment B of Transportation 1, the Price of Segment B of Transportation 2 and the Price of Transportation 3 ***arises from YPF breaches under the Gas Supply Agreement*** that are not caused by breaches incurred by TGM under the Agreement. " (Emphasis added). ------

1417. TGM asserts that YPF has breached its obligations under the Gas Supply Agreement, as AESU and Sulgás argue in this procedure. In particular, when AESU and Sulgás reported the withholding of the obligations on September 15, 2008, YPF was in non-compliance with the following obligations: ----------

a. Its obligation to pay DOP penalties corresponding to 2006, 2007 and 2008. TGM claims that YPF cannot alleged against TGM the defense that those penalties were not accrued due to YPF's force majeure because, under Section 6.2 of the Transportation Service Agreement (and, as explained in more detail below), YPF waived to the right to plea for acts of God or force majeure

events to be exempted from payment of the Price of the Transportation Service Agreement, defense that could not be claimed "under any circumstances". According to TGM, it is not possible to isolate YPF's waive under Section 6.2 of the Transportation Service Agreement on conditional payment of the price under Section 5.10, as this would mean that YPF could raise his own act of God or force majeure against TGM. ----------

b. Its obligations under Section 15.5 of the Gas Supply Agreement because of the controversy generated with Sulgás by DOP penalties, YPF had to (i) pay the amounts claimed by Sulgás that had been invoiced subject to potential reimbursement or deposit in the "escrow " account "the amount in dispute", (ii) negotiate with Sulgás a solution to the dispute, and (iii) after 30 days without settlement by the parties of the dispute, have submitted it to arbitration. ----------

1418. For these reasons, TGM argues that AESU and Sulgás withholding of their obligations under the Gas Supply Agreement (which were only reduced to the reimbursement obligation under the Payment Agreement, as all other obligations were suspended due to the force majeure claimed by YPF) was caused by breaches of YPF. ----------

(d) In any event, the conditionality provided for in Section 5.10 of the Transportation Service Agreement was not applicable or operative during the validity of the Complementary Agreements -

1419. In any event, TGM asserts that, during the validity of the Complementary Agreements, the conditionality set forth in Section 5.10 of the Firm Transportation Service Agreement was not operative (T-MC, ¶¶ 315-349). ----------

1420. According to TGM, the conditional mechanism agreed upon between TGM and YPF in Section 5.10 of the Transportation Service Agreement defined, based on the Gas Supply Agreement, two of its critical elements, (1) the *conditioning fact* (i.e., Sulgás compliance with the obligation to pay Segment B of Transportation under the Gas Supply Agreement), and (2) *precluding or excluding events* of all conditionality (i.e., YPF breach of any obligation under the Gas Supply Agreement). ----------

1421. TGM argues that the Gas Supply Agreement referred to in Section 5.10 of the Transportation Service Agreement for the purpose of this conditional mechanism is the Gas Supply Agreement entered into with TGM or, occasionally, the Gas Supply Agreement modified with TGM consent given under the terms of Section 18.4 of the Gas Supply Agreement. Given the absence of such consent by TGM, despite having been required by YPF, for the purposes of Section 5.10 of the Transportation Service Agreement, the "Gas Supply Agreement" remains the Gas Supply Agreement signed with TGM in 1998. ----------

1422. During the term of the Complementary Agreements, the Gas Supply Agreement subscribed with TGM was substantially and systemically modified for the purpose of making that contract compatible with the alleged YPF permanent situation of Acts of God or force majeure that prevented it from delivering gas, to such an extent that, until December 31, 2009, the Gas Supply Agreement subscribed with TGM was virtually replaced between YPF and "Importer" for a new Gas Supply Agreement resulting from the Complementary Agreements. This was accomplished by YPF (in collusion with AESU and Sulgás) without the consent of TGM. ----------

1423. The substantial and systemic modification of the Gas Supply Agreement brought about the extinction of the "Gas Supply Agreement" mentioned in Section 5.10 of the Firm Transportation Service Agreement, sole agreement to which TGM accepted to condition the enforceability of its claims, regarding its compliance or breach under the conditions set forth therein. The indicated unilateral modification meant the disappearance of the possibility that, during the validity of the Complementary Agreements, the conditioning fact took place under the terms agreed upon with TGM and/or the precluding or excluding events of conditionality under the terms agreed upon with TGM. All this is attributable to YPF (in turn, in collusion with AESU and Sulgás). In any event, TGM asserts that, during the validity of the Complementary Agreements, the conditionality set forth in Section 5.10 of the Firm Transportation Service Agreement was not operative. ----------

1424. Additionally, TGM asserts that conditional debtor (in this case, YPF) should refrain from performing any act that may alter the likelihood of compliance with the condition or exclusion of conditionality. By subscribing the Complementary Agreements, YPF changed the reference through which it defined both the conditioning fact and the events excluding the condition under Section 5.10 of the Gas Supply Agreement and therefore violated the forbearance duty, and also breached Section 18.4 of the Gas Supply Agreement. According to TGM, the legal penalty imposed by the frustration of the fulfillment of the condition due to voluntary acts of debtor interested in that the conditioning fact is not met consists in having the condition met. ----------

1425. For all these reasons, TGM argues that YPF claim to declare that its obligation to pay the price of the Transportation Service Agreement was suspended, should be dismissed. ----------

(iii) YPF cannot claim force majeure regarding TGM ----------

1426. TGM also refers to two events used by YPF to support its argument: (i) the enactment of regulations by the Argentinean government due to the shortage of natural gas, especially in YPF relevant oilfields, and (ii) YPF invocation and maintenance of its own Acts of God or force majeure. According to TGM, these facts are unenforceable so as to exempt itself from paying the

price under the Transportation Service Agreement, since they are external to TGM and YPF has expressly waived to file them against TGM so as not to pay the price due under the Transportation Service Agreement (Sections 6.2 and 1.1 of the Transportation Service Agreement) (T-MD, ¶¶ 194-195, 211-225). ----------

1427. TGM argues that, to ensure that the funds flow owed by the carrier to the shipper shall not be affected by matters strange to the Transportation Service Agreement and typical of the gas supply, at the time of submitting to the bidding process for transportation of Segment B, YPF said that the risk linked to its production and the evolution of the macroeconomic general conditions are a hazard inherent to YPF that may not be transferred to TGM[247]. ----------

1428. Furthermore, in the Transportation Service Agreement YPF expressly waived to "excuse itself from paying the Price claiming Acts of God or Force Majeure events of YPF" (these are understood as an event that, qualifying under the terms of Sections 513 and ccs. of Argentinean Civil Code, ruled out "YPF total or partial possibility to make Gas available for TGM at the point of delivery") (Sections 6.2 and 1.1 of the Transportation Service Agreement)[248]. ----------

1429. According to TGM, this clause does not refer to impediments to pay the Price under the Transportation Service Agreement (since, because it is an obligation to pay a sum of money, it is not likely to be affected by Force Majeure), but YPF impairments to deliver gas to Sulgás under the Gas Supply Agreement. According to TGM, the meaning of Section 6.2 of the Transportation Service Agreement has been to isolate any contingency, and ensure with the utmost safety, the payment of the price for transportation capacity reserve owed to TGM by YPF under the Transportation Service Agreement, so that such price is owed by YPF even if, for whatever reason, YPF as shipper does not take advantage of available capacity (Such safety is already provided by the *ship or pay* clause set forth in Sections 2.1 and related sections of the Transportation Service Agreement), but YPF also owes, with complete abstraction of any event which prevents YPF from delivering gas under the Gas Supply Agreement, even if those events allow YPF to plead Acts of God or Force Majeure under the Gas Supply Agreement. ----------

1430. This means that, if YPF invoked its own Act of God or Force Majeure even under the Gas Supply Agreement, thereby losing the right to collect from Sulgás the payment for Segment B of Transportation (Sections 16.2.2.2 and 17.2 of the Gas Supply Agreement), YPF could not file that

[247] Numeral 1.6 of the Terms of the Call for Hiring a Firm Transportation Capacity in Paso de los Libres and YPF note V.E.P 3.3. No. 170/98 from September 1, 1998 (Annex T-lll).----------

[248] Section 6.2 of the Transportation Service Agreement establishes in its relevant part: "Under no circumstances may YPF be exempted from making the payment of the Price alleging an Act of God or Force Majeure event [...]".----------

same plea and its consequences against TGM “under no circumstance" (Section 6.2 of the Transportation Service Agreement) for not paying the price under the Transportation Service Agreement. ----------

1431. In any event, TGM also rejects YPF’s description of the scope of government regulations related to the production and transportation of gas. Based on the legal opinions of experts Francisco Mezzadri (Annex T-VII-3) and Rodolfo Barra (Annex T-9), TGM points out the following: -

- The activity of production and trade of natural gas developed by YPF and from which it firmly committed to export natural gas to Sulgás, is an activity of "public interest", subject to intense governmental regulation, intervention and control, dependent to a great extent on current regulations (essentially changeable and dependent on political and economic conditions prevailing in the country at a time), public interest regulations within which the goal of ensuring a sufficient supply of the domestic market needs has always been included. This has been so in the time of executing the Gas Supply Agreement and the Transportation Service Agreement. ----------
- The allegedly free availability of gas obtained from exploitation licenses granted under Act No. 17.319 was always subject to valid regulations at a given time. ----------
- The allegedly free pricing of gas obtained from exploitation licenses granted under Act No. 17.319 was always subject to the valid regulations at a given time. ----------
- The allegedly right to export has always been subject to first obtaining and maintaining a valid permit for that purpose and for supplying the domestic market each time it is intended to perform an export. ----------

*** ----------

1432. Therefore, TGM asserts that YPF is in default in payment of invoices corresponding to the provision of firm transportation service provided by TGM under the Transportation Service Agreement relating to the period September 1, 2008 – March, 23, 2009. TGM contends that in respect to a part of the invoice from September 2008, the debt has been recognized by YPF (Annex T-II-13), but it was never paid by YPF. ----------

(iv) YPF breaches were fraudulent ----------

1433. TGM alleges that YPF breach of its obligation to pay the invoices claimed has been carried out deliberately, that is, accomplished with the intention not to perform it properly. Therefore, YPF breach is "malicious" (or, in any case, fraudulent) under the terms of Sections 505, 506, 521 and related sections of the Civil Code. (T-MD, ¶386). ----------

c. YPF did not fulfill its obligations under the Memorandum of Agreement during the Relevant Period ----------

1434. TGM asserts that it fully complied with its obligations under the Memorandum of Agreement. Specifically, TGM states that it completed the building of the New Gas Pipeline in a timely manner with a diameter of twenty-four inches, an issue that is not in dispute. This work involved an investment from TGM for more than US$ 120,000,000 (one hundred twenty million American Dollars). TGM adds that YPF has never asked TGM to effectively fulfill its commitment to accompany future demands of additional firm capacity for export to the Federal Republic of Brazil, so that the contingent obligation undertaken by TGM under the Memorandum of Agreement has never become enforceable. ----------

1435. Despite the fulfillment of TGM obligations under the Memorandum of Agreement, YPF did not comply with the payment of Irrevocable Contributions for the month of September 2008 onwards[249] (T-MD, ¶¶ 401-421). While YPF did not challenge or object any of these invoices in the manner and time prescribed in Section 474 of the Commercial Code, so that the amounts invoiced should be presumed "settled accounts", YPF did not pay any of them. Indeed, in a letter dated December 23 (Annex T-II-21), YPF returned to TGM such invoices, along with invoices No. 0001-000000292/294 and 296 (for the transportation service), claiming that they had been "promptly rejected- due to wrong concept and amount invoiced." By letter dated January 8, 2009, TGM rejected the return of invoices made and the terms alleged by YPF "for being unfounded and deliberately vague" adding that "invoices No. 0001-000000293, 0001-000000295 and 0001-000000297 have not been objected by YPF SA in the period prescribed by Section 474 of the Argentinean Commercial Code, so that accounts are settled and payable "(Annex T-II-23). --

1436. Nevertheless, Irrevocable Contributions were never paid by YPF. Therefore, TGM argues that YPF owes the Irrevocable Contributions corresponding to the period as of September, 2008 to March 23, 2009 (Legal Opinion of Dr. Trigo Represas, page 16), plus interest accrued from the

---

[249] TGM states that they send the following invoices to YPF by way of Irrevocable Contributions: ----------

a. Invoice Nro. 0001-000000293 issued on September 30, 2008 (Annex T-IV-2) for the amount of U$S 236,464.73 plus VAT for non Capitalizable Irrevocable Contribution from that month, which was received by YPF on October 10, 2008. ----------

b. Invoice Nro. 0001-000000295 issued on October 31, 2008 (Annex T-IV-4) corresponding to the Irrevocable Contribution from that month, which was sent to YPF on November 12, 2008. ----------

c. Invoice Nro. 0001-000000297 issued on November 30, 2008 (Annex T-IV-6) corresponding to the Irrevocable Contribution from that month, which was sent to YPF on December 12, 2008 ----------

The Tribunal indicates that TGM does not identify invoices for the months from January to March, 2009.----

date of default of each of these obligations and until the date of actual payment plus other damages (to the extent of what has not been repaired by the interest demanded).1437. TGM rejects YPF arguments stating it does not owe the Irrevocable Contributions claimed. TGM recognizes that Section 4 of the 4 Memorandum of Agreement states that "[T]he acknowledgement by YPF of each of the CONTRIBUTIONS and the consequent obligation to pay each CONTRIBUTION are subject to the fact that YPF is obliged, under the FIRM TRANSPORTATION SERVICE AGREEMENT OF TGM AND the AGREEMENT, on the MONTH when CONTRIBUTIONS correspond, to pay TGM the price established in the aforementioned FIRM TRANSPORTATION SERVICE AGREEMENT OF TGM. However, TGM asserts that YPF has always been bound to pay the price for the services provided by TGM under the Transportation Service Agreement during the months that are the subject matter of the claim by TGM, so YPF is also obliged to pay irrevocable contributions claimed by TGM. ----------

2. YPF Position ----------

a. Obligation to pay Segment B of Transportation under the Gas Supply Agreement and Transportation Service Agreement ----------

1438. YPF holds that the Importer (as Sulgás and AESU are jointly defined) is principally liable to pay TGM the price of Segment B of Transportation under the Gas Supply Agreement (equivalent to the price of transportation under the Transportation Service Agreement). (Y-MD, ¶¶526-534; Y-MC, ¶¶618-626; Y-Replication, ¶¶288-298; Y-Rejoinder, ¶¶329, 344-349,401-405,432). ----------

1439. YPF indicates that it acted as shipper under the Transportation Service Agreement for reasons related to tax issues, but did not obtain economic benefits from such Agreement (as reflected in paragraph 9 of the Transportation Service Agreement). YPF states that the real beneficiary of the transportation was the Importer, but at that time "Petrobras asked YPF to act as signatory of the transportation service agreements and shipper against TGM and TGN, as Petrobras did not want to take risks associated with the possible assessment of value added tax ("VAT") by Argentine authorities." (Testimony of Luis Santos, ¶48). ----------

1440. YPF explains that, for this reason, the Gas Supply Agreement established a mechanism to transfer the transportation price to the gas price payable by the Importer (Sections 13, 15 and 16 of the Gas Supply Agreement)[250]. In particular, the price paid by Importer under the Gas Supply

[250] YPF claims that this transfer was also recognized in (i) paragraph recital 8 of the Transportation Service Agreement that says "YPF agreed to fully transfer the contractual conditions in which TGM was willing to

Agreement included a component for the price of gas and the other for the price of transportation. On the other hand, Section 14.1.1, 4th paragraph, of the Gas Supply Agreement set forth a direct collection action of TMG against the Importer in the event of Importer's delay in payment for Segment B. Therefore, YPF alleged that the Importer was the principal risk of collection of TGM, reflected in AESU's granting of letters of credit to TGM (which were a condition precedent for the Gas Supply Agreement to become enforceable, Section 3.7 (j) of the Gas Supply Agreement) and in the direct payment mechanism set out in Section 14.1.1 of the Gas Supply Agreement. YPF adds that the direct connection between TGM and the Importer is evidenced by the behavior of the parties, as, when in August 2002 AESU/Sulgás did not pay Segment B of Transportation, TGM directly demanded it to AESU/Sulgás (Annex Y-38) ----------

1441. YPF adds that the Importer held the obligation to pay the price of transportation even if gas was not nominated, in accordance with Sections 4.3.7, 4.3.8 and 4.3.9 of the Gas Supply Agreement, which provides for the *ship-or-pay* of transportation. YPF suspension of natural gas deliveries due to the Importer failure to comply with the payment of any invoice and/or debit note issued by YPF under the Agreement, did not exempt Importer from the obligation to pay Segment B of the Transportation (Section 14.1.1, Gas Supply Agreement). ----------

1442. YPF emphasizes that, correspondingly, in the Transportation Service Agreement it was agreed that YPF would pay the price of firm transportation services hired to TGM, only if YPF actually collected from Importer under the Gas Supply Agreement the part of the price that pursuant to the Gas Supply Agreement corresponded to Segment B of Transportation. Therefore, YPF claims that Section 5.10 of the Transportation Service Agreement conditions YPF payment for transportation to TGM to the fact that the Importer has previously paid for that component under the Gas Supply Agreement[251]. ----------

1443. Thus, YPF holds that, under Argentine law, YPF obligation to pay the price of the Transportation Service Agreement to TGM qualified as an obligation subject to a condition precedent: that Importer pays YPF the price under the Gas Supply Agreement. If this conditioning fact is not met, YPF obligation to pay TGM under the Transportation Service Agreement would not arise. YPF holds that TGM acknowledged this condition in its Financial Statements for the years 2001, 2002, 2003 and 2004 (Annex Y-40, Y-42 and Y-53). ----------

---

provide transportation services to Petrobras" and in (ii) the unified regime for distributing responsibilities provided in Sections 14.2.1, 14.2.2, 14.2.5, 14.2.6 and related sections under the Gas Supply Agreement in the event of default by one of its parties and / or Participants, which was also included in Section 13 of the Transportation Service Agreement.----------

[251] Section 5.10 of Transportation Service Agreement is transcribed in paragraph 1492 infra. ----------

1444. YPF explains that as a result of regulatory changes introduced by the Argentinean government since 2004, the Parties to the Gas Supply Agreement had to adapt such agreement to the new rules to allow its continuity. According to YPF, guaranteeing the payment of the transportation was one of the main concerns of the Parties that were included in the Complementary Agreements. Particularly: ----------

a. Section 8.4 of the First Conflict Resolution Agreement established that during the years 2005, 2006 and 2007 Importer would pay Segment B of Transportation in proportion to the actually nominated gas volume. However, Section 8.6 provided that, notwithstanding the provision in Section 8.4, if in a given year the Importer fails to comply with the commitment undertaken under Section 8.5 which consists in nominating in each month a natural gas volume for a minimum amount of 1.96 million of m3 multiplied by the number of days in the month in question, and/or nominating for an annual volume of more than 450 million of m3 per year, this would pay anyway all Segment B of Transportation for said year.----------

b. However, YPF said that, between May and August 2005, the Importer did not pay the price of Segment B of Transportation, which generated a debt of US$ 9,817,923.51. YPF explains that YPF and Importer entered into a Payment Agreement in 2006 essentially to regularize the debt. Additionally, pursuant to Section 4 of the Payment Agreement, the parties decided to eliminate the Sections 8.5 and 8.6 of the First Conflict Resolution Agreement, and replace Section 8.4 with the following: ----------

"8.4. Every MONTH of 2006, 2007, 2008 and 2009, Sulgás shall pay YPF the entire Segment B of Transportation, even in case of an ACT OF GOD OR FORCE MAJEURE EVENT of any of the PARTIES, or for any other reason,(unless AESU or Sulgás consider that they are not obliged to pay Segment B of Transportation for causes attributable to TGM or TGN, notifying YPF about their position and, as a consequence, YPF shall not pay Segment B of Transportation to TGM) and regardless of whether YPF has confirmed the nominations and/or provided the Gas for any reason (notwithstanding the above mentioned provisions on the causes attributable to TGM or TGN). -----

c. YPF points out that, in this way, the Importer assumed that it would pay YPF (in any case or under any circumstance) for Segment B of Transportation, even in case of a force majeure event which prevents YPF from exporting gas. In other words, even if due to force majeure or other causes preventing gas exports, the Importer was not obliged to

pay YPF the gas price component (as far as not delivered), Importer should pay Segment B of Transportation. ----------

1445. YPF claims that the amendments agreed upon by Parties did not affect TGM negatively; by contrast, it was benefited as these modifications allowed the survival of the Transportation Service Agreement. YPF said, in any case, that initially contacted TGM and TGN to participate in negotiations with AESU and Sulgás, but their representatives chose not to participate (Testimony of T. Marco¶ 15). ----------

1446. In any case, YPF states that Complementary Agreements did not modify certain aspects of the payment of Transportation of Section B, in particular: ----------

a. The conditionality of payment of the transportation price was not modified, so TGM could not, even in the absence of the Complementary Agreements, demand the collection to YPF of amounts not received from Importer. ----------
b. Nor was it modified Importer obligation to pay the price of transportation even when gas was not nominated, in accordance with Sections 4.3.7, 4.3.8 and 4.3.9 of the Gas Supply Agreement. ----------

b. YPF is not bound to pay the price under the Transportation Service Agreement during the Relevant Period ----------

1447. YPF denies owing the transportation price under the Transportation Service Agreement or the Irrevocable Contributions claimed by TGM during the Relevant Period. ----------

1448. YPF files two main defenses: First, that its obligation to pay for Segment B was suspended because as AESU/Sulgás had not in turn paid for Segment B to YPF, which was a condition precedent necessary to give rise to YPF obligation under Section 5.10 of the Transportation Service Agreement (Part (i)) and that the invoices were not accrued as the transportation capacity of TGM was not available, due to government measures since 2004 (Part (ii)). ----------

(i) YPF obligation to pay the price of the Transportation Service Agreement was suspended -------

1449. YPF said that as a result of the suspension by the Importer of its obligations under the Gas Supply Agreement, carried out on September 15, 2008, the Importer stop paying YPF the price component of the Gas Supply Agreement concerning the price of the Transportation Service Agreement (i.e. Segment B of Transportation). Therefore, YPF alleges that, according to Section 5.10 of the Transportation Service Agreement, its obligation of in turn paying the price for the transportation to TGM under the Transportation Service Agreement was not accrued, being that

obligation suspended (Y¬MD, ¶¶ 535-555; Y-MC, ¶¶ 598-605; 637-643; Y-Replication, ¶¶ 288-298). ----------

1450. YPF says that its defense against TGM is based on the terms of the Gas Supply Agreement before it was amended by the Complementary Agreements. YPF acknowledges that under the original Gas Supply Agreement, the Importer was not liable for the payment of Segment B of Transportation regarding those days and those quantities of natural gas that YPF excused its obligation to deliver on the basis of an event of force majeure (Section 16.2.2.2 and 17.2 of the Gas Supply Agreement). YPF also recognizes that they informed the Importer about the existence of acts of state during the period between April 2004 and March 2009 restricting exports of Argentinean gas. However, YPF holds that during the period as from September 2008 to March 2009 there was no obligation corresponding to YPF to deliver gas to the Importer that was excused by force majeure, as AESU did not nominated gas at any time. ----------

1451. In this sense, YPF holds that there can be no force majeure without a previous enforceable obligation to claim to be excused for it. YPF claims that without gas nomination there was no obligation of delivery, without delivery obligation there was no obligation to be excused by force majeure. YPF adds that, in accordance with Sections 4.3.7, 4.3.8 and 4.3.9 of the Gas Supply Agreement, the Importer was required to pay Segment B of Transportation (which, in turn, YPF should transfer to TGM) even when it did not nominate gas, which was not modified in the Complementary Agreements. However, after the illegitimate suspension of its obligations under the Gas Supply Agreement on September 15, 2008, the Importer failed to pay the price of Segment B of Transportation, which constituted it in default of its obligation to pay for that component of the price under the Gas Supply Agreement[252]. As a result, YPF obligation to pay the price to TGM under the Transportation Service Agreement was suspended by applying the condition precedent pursuant to Section 5.10 of the Transportation Service Agreement. YPF adds that since the suspension (and subsequent termination) of the Gas Supply Agreement by AESU and Sulgás was not justified by YPF breaches (YPF position as described in previous parts of this award), Importer excluding fact of liability did not arise (according to Section 5.10 of the Transportation Service Agreement). ----------

1452. YPF rejects TGM argument that Section 5.10 of the Transportation Service Agreement would be enforceable only when the Importer were in default of the "Price of Transportation"

[252] YPF adds that AESU and Sulgás knew they were in default of this obligation, as, through letters of November 3 and December 2, 2008 (Annex Y-94 and Y-9) rejected the invoices issued by YPF for that purpose. ----------

and not of what erroneously describes as a penalty substitutive of that (TOP of transport), whose default would not trigger the enforcement of Section 5.10. According to YPF, this alleged distinction between the Price of Segment B and the TOP of transportation is quite skilful, and is not supported by the Gas Supply Agreement: according to YPF, the concepts and the amount of the Price and the TOP of transportation are identical, since the TOP is a guarantee of payment of the transportation capacity regardless of actual use (as opposed to the situation of the DOP, whose amount exceeds the value of the undelivered gas). That is, the TOP of transportation constitutes a guarantee of payment of the Price by 100% of the hired transportation capacity and not as a substitute penalty forcibly described by TGM. Therefore, there is in the Gas Supply Agreement one formula for invoicing what corresponds to transportation each month, which is applied in all cases, and the amount is the same (that is to say, it does not work as a penalty), regardless of whether or not the Importer nominates amounts of gas (sections 4.3.7, 4.3.8 and 4.3.9 of the Gas Supply Agreement). ----------

1453. YPF denies having claimed and permanently maintained its own force majeure during the Relevant Period, as claimed by TGM. YPF holds instead that, as from the Argentinean government measures in April 2004 that disrupted and subordinated firm exports agreements to supply natural gas in the domestic market, YPF claimed Acts of God or force majeure against the Importer regarding its obligation to deliver natural gas each day the Importer nominated gas under the Gas Supply Agreement and in which the Argentinean government measures prevented it to deliver all or part of the gas nominated by the Importer. This does not mean that YPF has applied this remedy every day between April 2004 and March 2009, or that YPF failed to deliver natural gas to AESU every day for five years between 2004 and 2009. In those years, when the Importer nominated, YPF provided significant amounts of natural gas and AESU / Sulgás paid the price for such amounts, including the component of the price connected to the price of the Transportation Service Agreement. Thus, the first invoice claimed by TGM since April 2004 is for the period of September 2008, despite the force majeure set in April 2004 with the issuance of the first actions by Argentinean government. ----------

1454. Therefore, YPF claims that its force majeure was enforceable and had legal effects only in those days when AESU nominated natural gas from YPF and YPF did not supply the amounts requested by AESU for being excused by a force majeure event which affected it or which affected TGN and TGM. According to YPF, this is confirmed by Section 16.2.2.2. of the Gas Supply Agreement which provides that "PETROBRAS shall not pay the PRICE OF SEGMENT B OF

TRANSPORTATION exclusively... In the DAYS and for the firm transportation capacity on SEGMENT B OF TRANSPORTATION not available, ... by ACTS OF GOD OR FORCE MAJEURE OF YPF. "That is, the Importer shall always pay the component of the price of the Gas Supply Agreement concerning the price of the Transportation Service Agreement, except on the days and for the quantities not delivered as a result of acts of God or force majeure of YPF. But this exception does not apply when there is no nomination by AESU / Sulgás, since in these cases the non-delivery of gas is due to the lack of nomination and not because of a force majeure event. ----------

1455. In this situation, YPF informed TGM and TGN that invoices relating to the transportation should be sent directly to the Importer (Letter from YPF to TGN with a copy to TGM from January 3, 2009, Annex A15/S15). Indeed, in this arbitration YPF requests the Tribunal to order that "[A]ESU and Sulgás must pay TGM the invoices for Segment B of the Transportation after September 15, 2008[...]." (Y-MD, ¶ 588(ii)). ----------

1456. YPF accused TGM of misrepresenting its position when it argues that by the request previously quoted YPF would have consented to the payment of these invoices to TGM. YPF asserts that they just wanted to say that, if somebody is liable, that is AESU/Sulgás. YPF claims that it never consented and does not acknowledge that invoiced are due as TGM was not in the position of providing the firm service involved. ----------

1457. YPF also denies that the Complementary Agreements have turned the condition precedent set in Section 5.10 Transportation Service Agreement unenforceable due to the amendments in the assumptions for the "conditioning fact" (the previous payment of Segment B of Transportation to YPF by AESU / Sulgás) or for the "event excluding the condition" (that Sulgás default payment of the price was due to a breach of YPF under the Gas Supply Agreement), as claimed by TGM. YPF argues that, in the Complementary Agreements, YPF and AESU/Sulgás made use of rights inherent to them, and that Section 18.4 of the Gas Supply Agreement cannot be construed as requiring the consent of TGM for it. According to YPF, the exercise of such rights by YPF and AESU/Sulgás was certainly enforceable against TGM, although it directly affected it. -------

1458. In any case, since the defense of YPF is based on the unmodified original Gas Supply Agreement, it alleges that TGM's arguments regarding the lack of potential of the Payment Agreement are irrelevant. ----------

(ii) YPF never invoked force majeure under the Transportation Service Agreement ----------

1459. Regarding TGM's argument that, pursuant to section 6.2 of the Transportation Service Agreement, YPF waived its right to invoke force majeure against the Importer, YPF argues that it

has never invoked an event of force majeure of its own to release from its obligations against TGM (Y-MC, ¶¶ 644-666; Y-Replication, ¶¶ 299-310, 350-400). Evidence of this is that, though YPF invoked force majeure against AESU and Sulgás due to the Argentine government measures initiated in 2004, until September 2008 it never stopped paying TGM the price of the Transportation Service Agreement. ----------

1460. As already explained, YPF claims instead that its payment obligation for the transportation service during the period between September 2008 and March 2009 was suspended by virtue of section 5.10 of the Transportation Service Agreement, since the conditioning fact that the Importer pay YPF in turn for Segment B of Transportation under the Gas Supply Agreement did not take place.----------

1461. In addition, YPF claims that the fact that YPF has maintained its invocation of force majeure against AESU and Sulgás is consistent with such argument, because of the following reasons: -------

a. Firstly, the letters between the Importer and YPF refer to mutual obligations between YPF and AESU/Sulgás, particularly the controversy between the parties regarding the admissibility of the DOP penalties claimed by AESU and Sulgás, which were not accrued in force majeure events. That controversy remained even after the Importer suspended its obligations under the Gas Supply Agreement. The letters account for this circumstance and have no relation with the effectiveness of the condition for the payment of the price of the Transportation Service Agreement established in section 5.10 thereof. ----------

b. Secondly, though the Importer was not nominating gas since September 2008, the government measures were still in force. If for any reason AESU and Sulgás decided to resume the nominations, YPF would have had to supply said gas. Therefore, it was logical that YPF would sustain the position that, in case AESU and Sulgás nominated gas again, the force majeure could possibly prevent YPF from providing all nominated volumes each day. ----------

c. Finally, in the context of high controversy in which the communications between the parties and the participants took place since June 2008 (date in which the Importer broke with the practice existing between the parties of making the continuity of the Gas Agreement viable and started to prepare its exit of the business), it was logical that YPF would maintain its invocation of force majeure. ----------

1462. YPF acknowledges that, until its Arbitration Request, it claimed to be in current and not past force majeure. According to YPF, “it also reflects, logically, the fact that the export restricting measures continued to be in force at that time, and even nowadays. It would have been

incoherent that, not having ceased its application, YPF would have claimed that the event of force majeure had ceased" (Y-MC, ¶ 663). But TGM cannot affirm that, in those letters, YPF has intended to invoke force majeure to release itself from its obligations to TGM. From the review of those letters, it is understood that they are addressed exclusively to AESU/Sulgás, and that they deal with the existence of force majeure with the purpose of excusing itself from its obligations to AESU and Sulgás; TGM was simply copied on them. ----------

1463. YPF adds that its defense of force majeure against the Importer does not preclude the application of section 5.10 of the Transportation Service Agreement. YPF claims that sections 5.10 and 6.2 of the Agreement are compatible and have different scopes of application. ----------

a. Firstly, YPF argues that its force majeure is irrelevant regarding the obligation of Sulgás to pay for Segment B of Transportation, since AESU did not nominate natural gas during the entire Relevant Period. As explained, the view of YPF is that, if there is no nomination, there is no obligation to supply, and therefore, there is no obligation to perform or excuse under force majeure. Under such circumstances, the Gas Supply Agreement provides that it is the responsibility of the Importer to pay for the cost of transportation. Thus, YPF is not arguing that the force majeure of YPF was relevant in September 2008 as an excuse for not paying TGM for the transportation invoices (YPF's argument is that such payment obligation was suspended pursuant to section 5.10 of the Transportation Service Agreement); YPF invokes such force majeure in the relevant months of 2006 for which AESU and Sulgás invoiced penalties for non-supply and in which TGM received the transportation payment on a regular basis. ----------

b. Secondly, YPF rejects the interpretation of TGM regarding YPF's waiver of the right to invoke force majeure under section 6.2 of the Transportation Service Agreement. According to YPF, such waiver cannot affect either YPF's right to enforce the compliance with the condition established in section 5.10 of the Transportation Service Agreement, or the existence of an event excluding such condition. In other words, in order to determine if YPF is in default under the Gas Supply Agreement (situation that would render YPF liable for the payment of the price of the Transportation Service Agreement, even without payment by AESU/Sulgás), it is necessary to resort to the provisions of the Gas Supply Agreement, under which YPF has the right to invoke force majeure against the other party. Consequently, if YPF argues that the DOP penalties claimed by AESU/Sulgás were not accrued for being in a situation of force majeure, it implies that YPF has breached the Gas Supply Agreement, and that is enforceable against TGM for the purposes of section 5.10 of the Transportation Service Agreement. According to YPF, the force

majeure in this situation does not serve as release from liability for the failure to pay the penalties accrued, but rather it directly eliminates the possibility of creation or accrual of the penalties. ----------

(iii) TGM was precluded from providing firm transportation service ----------

1464. In addition to the remedy of section 5.10, YPF holds that it does not owe TGM the payment of the price of the Transportation Service Agreement, not only because the Importer did not pay, but also because TGM was, since 2004 and particularly since 2007, legally precluded from providing the firm transportation service of the Transportation Service Agreement, under the terms agreed upon at the execution of the agreement. (Y-MC, ¶¶ 667-701)----------

1465. YPF indicates that, under section 6.2 of the Transportation Service Agreement, it was not compelled to pay for the transportation if TGN or TGM was precluded from complying with the hired transportation service. In this regards, YPF affirms that TGN, per se and as operator of TGM, repeatedly interrupted the transportation service for export due to the orders of the Argentine Government, which subordinated the provision of such service to the prior supply to domestic demand. ----------

1466. YPF notes that TGM rejects the existence of such legal impossibility to perform, claiming that it always had the physical transportation capacity available and that, if it did not render the service, it acted as a supervisor of the gas producers' performance of the Argentine government orders that interrupted the firm export agreements. YPF claims that it is not relevant if TGM had or not the physical transportation capacity available (which is not being questioned), but rather if that transportation capacity was "legally" available (that is, if TGM could legally provide a firm transportation service for export in firm condition (that is, 365 days a year and for the whole of the 2,800,000 m3/day). ----------

1467. According to YPF, the transportation capacity was not legally available for export in the dates claimed, and that prevents TGM from claiming the price of a "firm" transportation service. It also asserts that the Carriers did not perform (nor could perform) their obligations under the terms agreed upon the execution of the agreement. Specifically, even in those periods in which YPF confirmed the entirety of the natural gas volumes nominated by the Importer, TGN, complying with the Argentine government measures, authorized volumes inferior to those confirmed by YPF. This proves that the restrictions imposed by the Argentine government had parallel virtuality and scope per se regarding the Carriers. The lack of authorization by TGN due to government orders of gas volumes nominated by YPF prevented the gas from reaching TGM's gas

pipeline and TGM from providing the transportation service agreed upon. According to YPF, this is precisely one of the situations contemplated in section 6.2 of the Transportation Service Agreement that releases YPF from the payment obligation of Segment B of Transportation. ---------

1468. According to YPF, the extinction of the firm nature of the Transportation Service Agreement arises clearly from the Argentine legislation passed as from 2004 and from the events that occurred as a result of the application of such legislation. YPF indicates that such rules affected not only the exporters-producers, including YPF, but also the gas pipeline operators, including TGM, by legally preventing them from providing the firm transportation service under the terms originally agreed upon and with the purpose for which the agreements were entered into. Particularly, YPF quotes the following rules reflecting the fact that carriers were also affected: ----------

a. The Resolution SE N° 265/2004 (Annex YL-82), section 1, subsection c) ordered the Fuel Undersecretariat to "prepare a RATIONALIZATION PROGRAM OF NATURAL GAS EXPORTS ***AND THE USE OF THE TRANSPORTATION CAPACITY*** originally reserved for those purposes", which should "contemplate a scheme of useful cutoffs of: (i) the transportation services linked to exports [...]." ----------

b. The "Rationalization Program of Natural Gas Exports and the Use of the Transportation Capacity" approved by Provision SSC N° 27/2004 (Annex YL-83), which was applicable to "(i) natural gas volumes for export and to electricity generation for export, to the extent necessary to complete the injection of transportation systems to supply the domestic market; and (ii) ***the transportation services linked to exports*** that may be required for domestic supply." (Annex I, Item 1 of Provision 27/2004). ----------

c. The "Complementary Program of Natural Gas Supply to Domestic Market" approved by Resolution SE N° 659/2004 (Annex YL-87), which had "the purpose of ensuring, as the transportation and/or distribution system permits, the supply of gas and transportation" for certain specific users. (Annex I, Item 1 of Resolution SE N° 659/2004). ----------

d. The Resolution SE N° 752/05 (Annex YL-89), whose section 27 was replaced by section 6.2 of the "Complementary Program of Natural Gas Supply to Domestic Market" was above-mentioned considering that: ----------

"6.2) ***The licensees or operators of gas pipelines***, regardless of their regulatory status or authorization scheme, ***shall not, under any circumstances, carry natural gas for export*** that has been injected, directly or indirectly, by an exporter-producer when: (i) they had not fulfilled their

obligation of additional injection for the domestic market, pursuant to the provisions established in this PROGRAM, and/or ii) there are unsatisfied natural gas volumes duly demanded through the mechanism of standard Irrevocable Offers, and/or (iii) there is total or partial failure of such producer to comply with a Permanent Additional Injection order, and/or (iv) such producer fails to duly comply with its previously assumed obligations to any domestic market user or consumer." ----------

e. Note N° 1011 of the Energy Secretariat, which implemented the so-called "Shipment Ruling of the Demand Volumes of the Agreement (Res 599/2007)" (Annex YL-168), which specifically ordered carriers "not to authorize any transportation of natural gas for export until all purchased gas has been confirmed (DOP) or indicated by the Competent Authority (IAP-DDR-AI659) for the domestic market (MI, as in Spanish), which has been nominated by its seller or indicated by the Competent Authority". ----------

f. ENARGAS Resolution N° 1/1410 (YL-177), which established a "Procedure for Gas Applications, Confirmations and Control" that provided a new legal regime for the management of natural gas delivery, by virtue of which the Government replaced, by regulatory means (and not de facto), the producer in the handling of the delivery." ----------

1469. YPF adds that the impact on the Transportation Service Agreements with TGN and TGM was even clearer, since it was the only case in which ENARGAS interfered, by means of administrative acts called "Regulatory Orders", in the "Firm Transportation Service" hired through TGN Transportation Service Agreement. YPF quotes an internal report of ENARGAS (Annex Y-113), which expressly addressed the possibility of limiting the transportation capacity to Uruguayana Power Plant[253], explaining that, in this particular case, ENARGAS started to impose, on an annual basis and in a progressive manner (e.g., starting at 365,000 m3/day and ending at 2,246,000 m3/day, considering that YPF purchased 2,800,000 m3/day), the forced reallocation of the public firm transportation service hired by means of TGN Transportation Service Agreement, in favor of third party users of the domestic market. ----------

---

[253] ENARGAS internal report entitled "2004 Winter Supply", February 2004, stated: "If this alternative is to be adopted, of all exports made to neighboring countries, it would only be profitable the natural gas supply to the Uruguayana power plant, since such volume is carried to the high demand centers (GBA Littoral), especially considering that the volume currently consumed by the Uruguayana power plant is about 1.400.000 m3/day, with the remaining capacity of the gas pipeline that carries it (2.800.000 m3/day) available for temporary use if needed in the crisis at hand. For this purpose, it could reallocate the available capacity in such gas pipeline to distributors who lack the sufficient transportation to supply its permanent demand."(Annex Y-113, p. 28).----------

1470. Finally, YPF holds that the legal impossibility of the Carriers' performance is also relevant to the issue of the DOP penalties, since during certain periods in which the Importer demands missing gas deliveries from YPF, YPF confirmed the total volume nominated by the Importer, and it was TGN, in its capacity as operator of TGM, who authorized a smaller volume rejecting the rendering of the firm service required by YPF. That is, the force majeure of YPF does not come exclusively from its own legal impossibility to deliver natural gas to the Importer in a firm manner, but also from the legal impossibility of the Carrier to provide transportation service for export in a firm manner.----------

1471. In this sense, YPF stresses that, pursuant to section 1.1 of the Gas Supply Agreement, the force majeure excusing YPF from its obligation to deliver natural gas and/or pay DOP under the Gas Supply Agreement also includes the case in which YPF is prevented from making available to the Importer any amount of gas due to the legal impossibility of TGN or TGM. ----------

c. YPF does not owe the Irrevocable Contributions under the Memorandum of Agreement --------

1472. YPF denies owing the Irrevocable Contributions during the Relevant Period (Y-MC,¶¶ 824-825). ----------

1473. According to YPF, the payment of Irrevocable Contributions is conditional on YPF being obliged to pay for the price of TGM's Transportation service corresponding to said months (section 4 of the Memorandum of Agreement). Since YPF claims that it is not obliged to pay for the invoices of Segment B claimed by TGM it is not obliged to pay for the Irrevocable Contributions of those months as well. ----------

3. Analysis----------

1474. The dispute between TGM and YPF at this point concerns the payment of the firm transportation service that TGM claims to have rendered to YPF during the Relevant Period, as well as the payment of the Irrevocable Contributions accrued during such period. The fact that YPF must pay for the Irrevocable Contributions as long as it is obliged to pay for the transportation service (section 4 of the Memorandum of Agreement) is not in question. Thus, the Tribunal shall focus, first, on determining if YPF is obliged to pay for the transportation service, and then on the payment of the Irrevocable Contributions, taking into account the conclusions arrived at in the first place. ----------

1475. The Tribunal observes that YPF has not questioned the accuracy or the amounts of the invoices claimed by TGM under the Transportation Service Agreement. YPF has essentially raised

two defenses to excuse itself from the payment of the price of the firm transportation service (hereinafter, for the purpose of facilitating the reading, the Tribunal shall refer to the price of the firm transportation service simply as the "Price"): ----------

a. That YPF's obligation to pay for the Price was suspended, because AESU/Sulgás had not in turn paid YPF for Segment B of Transportation, turning this payment into a condition precedent to YPF's obligation under section 5.10 of the Transportation Service Agreement; and ----------

b. That the Price was not payable because the transportation capacity of TGM was not available due to the Argentine government measures enacted from 2004. ----------

1476. In the Tribunal's opinion, the first question to be answered is whether YPF incurred in the obligation to pay the Price, thus it shall first analyze YPF's argument that the transportation capacity of TGM was not available. Only if the conclusion arrived at is that the transportation capacity of TGM was available, the Tribunal shall analyze YPF's argument that its payment obligation was suspended under section 5.10 of the Transportation Service Agreement. ----------

a. Was TGM prevented from providing transportation services during the Relevant Period? -------

1477. YPF claims that the price was not payable because TGM's transportation capacity was unavailable due to the measures taken by the government from 2004. YPF founded its defense in section 6.2 of the Transportation Service Agreement, which provides: ----------

"Under no circumstances may YPF be exempted from making the payment of the Price alleging an Act of God or Force Majeure event. Notwithstanding the foregoing, ***YPF shall not be obliged to pay the Price when (i) TGM is prevented from providing the Firm Transportation Service due to an Act of God or Force Majeure event of TGM***, or (ii) when YPF is unable to supply Gas to TGM in the Point of Reception due to an Act of God or Force Majeure event of TGN declared by TGN under TGN Firm Transportation Service Agreement." (Emphasis added) ----------

1478. The Tribunal understands that YPF's argument is that YPF was not obliged to pay the Price because the excluding condition of section 6.2, part two occurred (i), that is, TGM was not able to provide the transportation service due to an Act of God or Force Majeure event. YPF has not expressly claimed that there existed a legal impossibility of TGN under the terms of section 6.2, part two (ii). However, for the sake of this award, the Tribunal shall briefly address this point at the end of this section. ----------

1479. The Tribunal first observes that it is not in dispute that TGM never invoked its own "Act of God or Force Majeure event of TGM", regardless of whether the impediment occurred before or

after the Relevant Period, in order to release itself from the performance of its obligations under the Transportation Service Agreement to YPF[254]. However, if there was an Act of God or Force Majeure event of TGM, even in the case TGM did not invoke it, the Tribunal shall consider that the necessary requirements for the existence of an Act of God or Force Majeure event of TGM were not met. ----------

1480. Firstly, section 2.1 of the Transportation Service Agreement provides that "[...] the transport obligation between the Point of Reception and Point of Delivery assumed by TGM shall be considered fulfilled when TGM effectively makes it available to YPF a daily reserve of transportation capacity in the Gas Pipeline for the Gas volume abovementioned, regardless of whether or not YPF makes use of such reserve of capacity". YPF acknowledges that such transportation capacity was physically available, but claims that it was not "legally" available. Since during the Relevant Period YPF never requested the use of TGM's transportation capacity, it is not relevant to consider if such transportation capacity was "legally" available. YPF has not proven to have required TGM's transportation capacity for even one day during the Relevant Period. Neither has it proven that TGM rejected such request for being legally prevented from providing the transportation service. Therefore, the defense of YPF should be rejected outright. ---

1481. In fact, the Tribunal considers that TGM has irrefutably proven that during the Relevant Period, it was never legally prevented from providing partially or totally the gas transportation service in Segment B of Transportation. The Tribunal acknowledges that the rules invoked by YPF that were in force during the Relevant Period (the only period of interest for the purposes of TGM's claims) refer to events in which the transportation capacity is affected. However, none of such events implies that the affected condition of the transportation capacity results in TGM being legally prevented from rendering the transportation service. ----------

1482. YPF quotes paragraph 1 of Annex I of the Resolution SE 659/2004 establishing the "Complementary Program of Natural Gas Supply to Domestic Market", which provides: ----------

"1. The "PROGRAM" is intended to ensure, to the extent that the **system of transportation** and/or distribution **permits**, the gas and **transportation supply** for: 1.1 those users especially contemplated in Section 31 of Executive Order N° 180, dated February 13, 2004; 1.2 SGP users (third level of consumption) and firm users of the distribution borrower (SGG FT, FD AND FIRME

[254] Section 1.1 of the Transportation Service Agreement defines an "Act of God or Force Majeure event of TGM" as "the Act of God or Force Majeure event of TGM that prevented it from providing the partial or total gas transportation service in Segment B of Transportation, pursuant to section 11 of the "Ruling for the Service of Carriers". An "Act of God or Force Majeure" event has the meaning indicated in sections 513 and related sections of the Civil Code----------

GNC -by reserved capacity-) with services for domestic consumption; 1.3 thermal power plants, for up to the volumes needed to avoid the interruption of the electric utility [...]." (Emphasis added) ----------

1483. Although this resolution suggests that there might have been a lack of transportation capacity, TGM has proven that the supply problems were not due to transportation capacity problems but, on the contrary, the producers-shippers did not inject enough gas to exploit the full capacity of the transport system. The Tribunal concluded in Part VII.B.1 of this Award that gas shortages in Argentina were caused by decline in reserves and production capacity attributable to gas producers, including YPF. In the context of the dispute between YPF and AESU/Sulgás, YPF never claimed that the gas shortage crisis had been due to lack of transportation capacity, despite having claimed that the firm nature of the transportation was affected by some Argentine government measures adopted during the crisis. In its Note ENRG/GDyE/GAL/GT/GD N° 14,901, dated October 28, 2009, to the Energy Secretariat (Annex TL-3), ENARGAS confirms the Tribunal's understanding: ----------

"[...] It is concluded that the volumes of gas injected into each of the production basins of our country have not covered the maximum transport capacities hired, and therefore, it is not possible to apply any of the mechanisms and regulations in force that are applied when there is a shortage in Transportation, since the demand was not restricted by the lack of capacity in the transportation system. Thus, the cause of the shortage was the lack of gas in the gas pipeline header. Only if the transportation capacity in injection had been complete, the application of the rules governing the transport shortage (i.e., Enargas Resolution N° 716/98, etc.) could have been considered [...]". (Emphasis in the original) ----------

1484. YPF also quotes paragraph 6.2 of Annex I of Energy Secretariat Resolution 659/2004, as amended by Resolution No. 752/2005, which states:----------

"6.2) ***The licensees or operators of gas pipelines,*** regardless of their regulatory status or authorization scheme, ***shall not under any circumstances carry natural gas for export that has been injected, directly or indirectly, by an exporter-producer when****:* (i) they had not fulfilled their obligation of additional injection for the domestic market, pursuant to the provisions established in this "PROGRAM", and/or ii) there are unsatisfied natural gas volumes duly demanded through the mechanism of standardized Irrevocable Offers, and/or (iii) there is total or partial failure of such producer to comply with a Permanent Additional Injection order, and/or (iv) such producer

fails to duly comply with its previously assumed obligations to any domestic market user or consumer." (Emphasis added) ----------

1485. YPF also refers to Note N° 1011 of the Argentine Energy Secretariat implementing the so-called "Shipment Ruling of the Demand Volumes of the Agreement (Res 599/2007)", which provides: ----------

"1. ***Transportation of natural gas for export shall not be authorized until all purchased gas has been confirmed*** (DOP) or indicated by the Competent Authority (IAP-DDR-AI659) ***for the domestic market*** [MI, in Spanish], which has been nominated by its seller or indicated by the Competent Authority". (Emphasis added) ----------

1486. While these rules stipulate prohibitions on gas transportation, it is clear that such prohibitions were addressed to gas producers-exporters, who were obliged to reallocate certain gas volumes through orders of permanent additional injection and who would face sanctions in case of default. In this context, TGM and its experts have convincingly explained that, since the gas pipelines are the way to transport the gas to their export clients, the operators of such gas pipelines (the carriers) were forbidden to transport gas for export in those cases in which the producer tried to avoid the redirectioning. It arises from the abovementioned rules that such prohibitions were only imposed when the producer-exporter had failed to comply with its obligation to ensure domestic supply. Once these requirements were met, it follows that there was no prohibition to the carriers on providing the transportation services. ----------

1487. For the same reasons, the Tribunal does not consider that the "firm" nature of the Transportation Service Agreement has disappeared. Such nature refers to the *ship-or-pay* modality of the payment of the transport, according to which YPF was obliged to pay for the capacity of reserve, regardless of whether it had used it or not. The firm nature of the hired transportation was not altered by the rules quoted by YPF. In this respect, in the note quoted in paragraph 1483 above, ENARGAS indicated that "since in the cases provided, the restrictions started in the lack of complete injection to the Transportation Systems, the Carriers must invoice both the firm transportation charges and the specific charges for expansion [...]." (Note ENRG/GDyE/GAL/GT/GD N° 14,901 of October 28, 2009, to the Energy Secretariat, Annex TL-3). ---

1488. Therefore, the Tribunal concludes that, during the Relevant Period, TGM was not legally prevented from providing the transportation service and that for the purposes of section 2.1 of the Transportation Service Agreement, TGM effectively made it available to YPF a daily reserve of its transportation capacity in the Gas Pipeline for the required Gas volume. The transportation

obligation between the Point of Reception and the Point of Delivery assumed by TGM must be then considered fulfilled. ----------

1489. The Tribunal also rejects YPF's argument, which seems to arise from the closing arguments, that it was not obliged to pay the price because TGN was in a situation of legal impossibility under the terms of section 6.2, second part (ii). TGM has asserted, and YPF has not disputed, that during the Relevant Period, TGN made its transportation capacity available to YPF, which has never required TGN the transportation service. Therefore, there was no transportation request from YPF that could possibly be affected by a legal impossibility to provide the transportation service. In any case, as already determined, the rules invoked by YPF do not determine a legal impossibility for carriers to transport. Finally, it is not disputed that TGN never declared its own Act of God or Force Majeure event under TGN's Firm Transportation Service Agreement, requirement expressly demanded by said provision. ----------

1490. For the foregoing reasons, the Tribunal concludes that, during the Relevant Period, the Price of the transportation capacity was accrued. ----------

b. Was the obligation to pay the Price under section 5.10 of the Transportation Service Agreement suspended? ----------

1491. YPF argues that, pursuant to section 5.10 of the Transportation Service Agreement, the payment of the Price under such Agreement was subject to the condition precedent that "the Importer" (as AESU and Sulgás is defined) pays YPF, as it is provided in the Gas Supply Agreement, for the price of Segment B of Transportation. YPF asserts that AESU and Sulgás suspended its obligations under the Gas Supply Agreement, on September 15, 2008, and stopped paying YPF for the price of Segment B of Transportation. Therefore, YPF claims that its obligation to pay the Price of the Transportation Service Agreement was suspended.----------

1492. Section 5.10 of the Transportation Service Agreement establishes that: ----------

"Section 5.10 Conditional Payment ----------

Notwithstanding the foregoing, ***the obligation to pay the Price*** and any other sum of money owed by YPF under the Firm Transportation Service Agreement ***is conditional on YPF effectively collecting the sums of money for the Price of Segment B of Transportation 1, the Price of Segment B of Transportation 2 and the Price of Segment B of Transportation 3***, (as defined in the Gas Supply Agreement) ***that Petrobras {now Sulgás}*** (or AES in the case established in paragraph 4 of Section 14.1.1 of the Gas Supply Agreement) ***must pay YPF under the Gas Supply Agreement; with the exception that YPF shall be unconditionally bound to fulfill the payment***

obligations due to TGM under the Firm Transportation Service Agreement, if the default of Pretrobas {Sulgás, nowadays} (or AES) in the payment of the Price of Segment B of Transportation 1, the Price of Segment B of Transportation 2 and the Price of Segment B of Transportation 3, ***is caused by the default of YPF under the Gas Supply Agreement*** which has not been in turn caused by the default of TGM under the Firm Transportation Service Agreement and/or of TGN under TGN Firm Transportation Service Agreement. Conversely, YPF is not obliged to fulfill the payment obligations due to TGM under the Firm Transportation Service Agreement, if the default of Petrobras (now the Importer) [...] in the payment of the Price of Segment B of Transportation 1, the Price of Segment B of Transportation 2 and the Price of Segment B of Transportation 3, is caused by the default of YPF under the Gas Supply Agreement which have been caused by default of TGM under the Firm Transportation Service Agreement and/or of TGN under TGN Firm Transportation Service Agreement." (Emphasis added) ----------

1493. TGM does not dispute that the payment of the Price was conditional on YPF effectively receiving the Price of Segment B of Transportation owed by Sulgás, provided that (i) it is one of the cases in which Sulgás is obliged to pay to YPF for the price of Segment B (ii) under the original Gas Supply Agreement (not modified by the Complementary Agreements) and (iii) that the default of Sulgás was not caused by the breaches of YPF under the Gas Supply Agreement. ----------

1494. YPF does not dispute its unconditional obligation to pay the Price provided that the default of Sulgás was caused by the breach of YPF under the Gas Supply Agreement (and as long as such breach was not in turn caused by the breach of TGM and TGN). However, YPF denies that such was the case. On the contrary, as widely discussed herein, YPF claims not to have committed the violations cited by AESU and Sulgás that led to the suspension, and subsequent termination, of the Gas Supply Agreement. After having considered the arguments of YPF and AESU/Sulgás on this issue, the Tribunal ruled (Part VII.A.5 supra) that the suspension by AESU and Sulgás of its obligations under the Gas Supply Agreement, on September 15, 2008, was legally justified due to the nonperformance of YPF. Thus, there occurs an event exclusive of the condition to the Price payment referred to in the second part of section 5.10 of the Transportation Service Agreement, and consequently, YPF is unconditionally responsible for the payment of the Price during the Relevant Period. ----------

1495. It should be added, for the purposes hereof, that even if YPF were not unconditionally bound to pay the price, the Tribunal finds anyway that the requirements for the suspension of the Price payment were not satisfied under Section 5.10 of the Transportation Service

Agreement. The Tribunal agrees with TGM on the fact that Section 5.10 of the Transportation Service Agreement could only be suspended (i) in cases where Sulgás owed YPF the Segment B of Transportation, (ii) in accordance with the original Gas Supply Agreement.----------

1496. In relation to item (ii), Section 18.4 of the Gas Supply Agreement clearly states that "[a]ll the amendments to this AGREEMENT and its annexes shall be made through written proposals, expressly accepted by the PARTIES and PARTICIPANTS, insofar as they affect such PARTICIPANTS". Therefore, the amendments to the Gas Supply Agreement made by YPF, AESU and Sulgás by executing the Complementary Agreements (such as the Payment Agreement), and affecting the rights of TGM, cannot be implemented without the express and written consent of TGM. Since it is not in dispute that TGM did not consent to the Complementary Agreements, the amendments made by YPF, AESU and Sulgás cannot affect TGM. The provisions of the Payment Agreement are valid only for YPF, AESU and Sulgás, thus the Tribunal shall address separately YPF's claim that AESU and Sulgás are the ones liable for payment to TGM. In any event, the Tribunal points out that YPF [SIC] under the terms of the original Gas Supply Agreement, and not the Payment Agreement. ----------

1497. In connection with item (i), the Tribunal agrees with TGM on the fact that YPF's obligation to pay the Price is subject, pursuant to section 5.10, to the prior payment by Sulgás of Segment B of Transportation only in the case that Sulgás "must pay" YPF for such segment under the Gas Supply Agreement, which implies the existence of an obligation enforceable against Sulgás. This interpretation is confirmed by the use of the term "default" later in the section, which implies the delay in fulfilling an enforceable obligation. But the Tribunal does not share the interpretation of Section 5.10 proposed by TGM that the Price of Segment B of Transportation is only payable if there is a gas supply, deriving in the obligation to pay the "price" of the commodity plus the "price" of the transportation emerges (sections 13.1 and 13.2 of the Gas Supply Agreement). In the Tribunal's opinion, Sulgás obligation to pay for the price of Segment B of Transportation under the Gas Supply Agreement, according to section 5.10[255], includes the sums of money that Sulgás must pay YPF for the TOP of the transportation (that is, Sulgás's obligation to pay for the transportation even if it did not nominate gas, pursuant to sections 4.3.7, 4.3.8 and 4.3.9 of the Gas Supply Agreement). While the TOP of the Transportation can be deemed as a penalty in the

[255] Section 5.10 of the Transportation Service Agreement refers to the sums of money for the Price of Segment B of Transportation 1, the Price of Segment B of Transportation 2 and the Price of Segment B of Transportation 3 (as defined in the Gas Supply Agreement), that Petrobras (now, Sulgás) [...] must pay YPF under the Gas Supply Agreement [...]."----------

sense that Sulgás is obliged to pay for the use of the transportation even when it did not use it, the Tribunal considers that the meaning of section 5.10 of the Transportation Service Agreement is to condition the payment of the Price of the Transportation Service Agreement on YPF receiving from Sulgás the amounts owed, for any reason, regarding Segment B. In other words, the condition of section 5.10 of the Transportation Service Agreement applies whenever Sulgás owes YPF the *pass-through* of Segment B, as suggested by the TGM[256]. The Tribunal also observes that the TOP of Transportation had the same value as the Price of Transportation, so it did not economically work as a penalty.----------

1498. Regardless of the distinction that TGM tries to draw between Sulgás's obligation to pay for the price of Segment B of Transportation and its obligation to pay for the TOP of Transportation, TGM asserts that, under the original Gas Supply Agreement, Sulgás did not owe the price of Segment B of Transportation during the Relevant Period, since, as a result of the force majeure invoked by YPF (that YPF held, according to TGM, permanently and consistently throughout the Relevant Period), the obligations of the Parties (i.e., YPF and Sulgás) were suspended, including the obligation to pay for Segment B of Transportation, pursuant to sections 16.2.2.2 and 17.2 of the Gas Supply Agreement.----------

1499. YPF acknowledges that, under the original Gas Supply Agreement, Sulgás was not liable for the payment of Segment B of Transportation regarding those days and those quantities of natural gas that YPF excused its obligation to deliver, on the basis of an event of force majeure (section 16.2.2.2 and 17.2 of the Gas Supply Agreement). However, YPF claims that, during the Relevant Period, it never invoked force majeure to excuse the failure to deliver gas, since during such period AESU (in representation of Sulgás) never nominated gas. YPF adds that, under sections 4.3.7, 4.3.8 and 4.3.9 of the Gas Supply Agreement, the Importer was obliged to pay for Segment B of Transportation (cost that YPF should in turn transfer to TGM), even if it did not nominate gas.

---

[256] TGM explains that the *pass-through* agreed upon between YPF and Sulgás under the Gas Supply Agreement, "consisted of YPF's right under the Gas Supply Agreement to transfer to Sulgás, in some cases, the cost of what TGM was personally and directly obligated to pay as price for the hired reserve capacity [as the only shipper] under the Firm Transportation Service Agreement." (T-MC, ¶ 273). TGM adds that "if YPF had the right of *pass through* of the cost of Segment B of transportation under the Gas Supply Agreement [that is, if SULGÁS owed the price component of Segment B of Transportation under the Gas Supply Agreement signed by TGM], it could be assessed whether or not the "conditional payment" under section 5.10 of the Firm Transportation Service Agreement was applicable. If such YPF's right of *pass-through* did not exist under the Gas Supply Agreement, then it would have no sense to consider the "conditional payment" to the collecting of an amount that is not owed, which would never be paid for not existing. That occurred, for instance, when YPF declared its Act of God under the Gas Supply Agreement [...]. In such situation, YPF was liable for the transportation cost, since it had expressly assumed, at least before TGM, the risk of its Act of God."(T-MC, ¶ 273).----------

1500. TGM refutes this argument, indicating that the force majeure invoked by YPF had also the effect of suspending the obligation of Sulgás to nominate gas. On the other hand, YPF denies having permanently maintained an invocation of force majeure having such suspension effect, and clarifies that it raised the defense of force majeure only on those days in which AESU nominated gas and it could not deliver it as a result of the measures imposed by the government.-

1501. Sections 4.3.7, 4.3.8 and 4.3.9 of the Gas Supply Agreement provide that:----------

"4.3.7) Whatever it may be the BASE GAS AMOUNT that PETROBRAS {today Sulgás} nominates and receives in any MONTH, PETROBRAS shall be bound to pay for the PART OF THE INVOICE REGARDING TRANSPORTATION 1 for that MONTH, determined pursuant to Section 15.1.1.2 (TAKE-OR-PAY OF TRANSPORTATION 1). ----------

4.3.8) Whatever it may be the ADDITIONAL AMOUNT OF GAS that PETROBRAS {today Sulgás} nominates and receives in any MONTH, PETROBRAS shall be bound to pay for the PART OF THE INVOICE REGARDING TRANSPORTATION 2 for that MONTH, determined pursuant to Section 15.1.2.2 (TAKE-OR-PAY OF TRANSPORTATION 2).----------

4.3.9) Whatever it may be the AMOUNT OF PEAK GAS that PETROBRAS {today Sulgás} nominates and receives in any MONTH of any PEAK PERIOD up to the tenth YEAR included, PETROBRAS shall be bound to pay for the PART OF THE INVOICE REGARDING THE COMMODITY 3 and the PART OF THE INVOICE REGARDING TRANSPORTATION 3 for that MONTH, determined pursuant to Sections 15.1.3.1 and 15.1.3.2, respectively (TAKE-OR-PAY OF COMMODITY 3 AND TAKE-OR-PAY OF TRANSPORTATION 3)." ----------

1502. Section 16.2.2.2 of the Gas Supply Agreement (entitled "Exceptions to the Payment of the Price of Segment B of Transportation") establishes that: ----------

"PETROBRAS {today Sulgás} shall not pay for the PRICE OF SEGMENT B OF TRANSPORTATION exclusively under the following circumstances: ----------

(i) On the DAYS and for the firm transportation capacity in the unavailable SEGMENT B OF TRANSPORTATION, expressed in CUBIC METERS under SAID CONDITIONS as a consequence of a YPF ACT OF GOD or FORCE MAJEURE EVENT; ----------

(ii) On the DAYS and for the GAS AMOUNTS not made available to PETROBRAS for failure by YPF, or TGN, or TGM falling within the situation provided for in Section 14.1.2.1." ----------

1503. Section 17.2 of the Gas Supply Agreement provides in its second paragraph: ----------

"In the event of FORCE MAJEURE OR ACT OF GOD OF YPF, YPF shall not be liable before PETROBRAS {today Sulgas} for damages, being the compliance with the duties of the PARTIES

suspended, which duties were to be complied after the FORCE MAJEURE OR ACT OF GOD, as long as the cause that gave rise to it lasts, including the PRICE OF SEGMENT A OF TRANSPORTATION and the PRICE OF THE SEGMENT B OF TRANSPORTATION".----------

1504. The Tribunal observes that, as argued by YPF, the general rule was that, whatever the quantity of gas nominated by Sulgás was, it was bound to pay the price of Segment B of Transportation. However, that was in cases in which YPF had not invoked its own force majeure[257]. Section 17.2 of the Gas Supply Agreement clearly establishes that, once the Act of God or Force Majeure event occurs, the fulfillment of the PARTIES' obligations is suspended subsequent to the occurrence of such Act of God or Force Majeure event as long as the cause of origin lasts. The Tribunal understands that such suspension refers to all obligations of the Parties, including but not limited to the obligation of Sulgás to pay for the price of transportation of Segments A and B, without excluding other obligations of the Parties. Therefore, YPF's invocation of its own force majeure also had the effect of suspending the obligation of Sulgás to nominate gas [258]----------

1505. YPF claims that it could not invoke force majeure regarding its obligation to deliver gas if Sulgás had not nominated gas. In principle and with the exception of section 17.2 of the Gas Supply Agreement, the Tribunal agrees with YPF that force majeure cannot be invoked but in connection with an enforceable obligation that is intended to be excused by such impediment. However, section 17.2 is clear: the suspension of the obligations is effective "as long as the cause of origin lasts". ----------

1506. YPF's arguments in this arbitration as well as the evidence on the record leave no doubts that the cause which originated the event of force majeure invoked by YPF lasted until the date of termination of the Gas Supply Agreement and continues nowadays[259]. ----------

[257] According to the first paragraph of Section 17.2 of the Gas Supply Agreement, an "ACT OF GOD OR FORCE MAJEURE EVENT OF YPF" shall mean "ANY ACT OF GOD OR FORCE MAJEURE EVENT" that prevents YPF from offering PETROBRAS any quantity of GAS that YPF would be otherwise obliged to offer to PETROBRAS by virtue of this AGREEMENT, including the impossibility supply and/or transport GAS to the POINT OF DELIVERY by the FORCE MAJEURE OR ACT OF GOD OF TGN or by FORCE MAJEURE OR ACT OF GOD OF TGM, or comply with any other obligation of YPF by virtue of this AGREEMENT which was not an obligation to pay outstanding sums of money pursuant to the AGREEMENT". ----------

[258] Although section 17.2 says *once the Act of God or Force Majeure event "occurs"*, the Tribunal considers that section 17.2 applies when YPF has "invoked" its own force majeure, although the existence of such force majeure, in cases where it is in dispute, must be verified by a Tribunal (as in this arbitration).----------

[259] Indeed, YPF has argued in this arbitration that its force majeure is "current". For example, in its Opening Brief YPF indicates that "the situation described was current when such Force Majeure was invoked, and **even continues to be so**, because the legal regime for the supply and transportation of natural gas for export continuous to be in force, without the possibility of having the effective regulatory framework when

1507. In any case, the Tribunal agrees with TGM that YPF permanently maintained its invocation of force majeure since at least August 25, 2008. On that date, YPF notified AESU of the continuation of the force majeure events, explaining that "while the existing event of Force Majeure endures, YPF's contractual obligations shall be suspended" (Annex Y-85, A15/S15). In its letters dated September 5 and October 21, 2008 (Annex T-II-10 and T-II-14, A15/S15), YPF repeated that, as a result of its invocation of force majeure, "the fulfillment of the Parties' obligations was suspended". But the clearest evidence that YPF maintained its invocation of force majeure lies on its letter of December 4, 2008 (Annex T-II-19), where YPF declared that "[...] if the Force Majeure event that affects the supply is overcome and the natural gas nominations by AESU are resumed, it should be kept in mind that YPF's delivery obligations are suspended due to the default of AESU". In other words, YPF acknowledged that the resuming of AESU's nominations depended on the overcoming of the Force Majeure event that, according to YPF, prevented the gas supply.----------

1508. For the abovementioned reasons, the Tribunal concludes that, during the Relevant Period, Sulgás did not owe YPF the price of Segment B of Transportation. Since the condition established in section 5.10 of the Transportation Service Agreement was not verified, YPF is obliged to pay TGM for the Price due for the transportation capacity available during the Relevant Period, as detailed by TGM on the invoices mentioned in paragraph 1376 above. ----------

c. Considerations regarding the obligation of Sulgás to pay the price of Segment B of Transportation under the Gas Supply Agreement ----------

1509. This conclusion does not prevent AESU and Sulgás from being bound, under the Payment Agreement, to pay YPF for the price of Segment B of Transportation. According to section 4 of the Payment Agreement, YPF, AESU and Sulgás amended section 8.4 of the First Conflict Resolution Agreement, as follows:----------

Every MONTH of 2006, 2007, 2008 and 2009, ***Sulgás shall pay YPF the entire Segment B of Transportation, even in case of an ACT OF GOD OR FORCE MAJEURE EVENT of any of the PARTIES, or for any other reason***, (unless AESU or Sulgás consider that they are not obliged to pay Segment B of Transportation for causes attributable to TGM or TGN, notifying YPF about their position and, as a consequence, YPF shall not pay Segment B of Transportation to TGM) and regardless of whether YPF has confirmed the nominations and/or provided the Gas for any

---

the Gas Supply Agreement was signed in 1998 restored." (V-MD, ¶ 460. Second emphasis added by the Tribunal).----------

reason (notwithstanding the above mentioned provisions on the causes attributable to TGM or TGN).----------

1510. This obligation is independent of YPF's obligation to pay for the Price of the Transportation Service Agreement, and should be determined in consideration of the legal relationship between YPF and Sulgás. While YPF has claimed that the one really bound to pay for Price of the transportation was "the Importer" (the Tribunal understands that in this case YPF refers to Sulgás) and that the Gas Supply Agreement established a *pass-through* of such price to Sulgás, which could have been so from an economic point of view, the Tribunal cannot ignore the fact that, legally, the parties to the Transportation Service Agreement are only YPF and TGM, and that the one who was primarily obliged to pay for the Price of the Transportation Service Agreement under such legal relationship is YPF, notwithstanding that YPF could in turn claim to Sulgás, under the Gas Supply Agreement, the payment of the equivalent amount of the Price of the Transportation Service Agreement. If not, YPF and TGM would not have had to agree on the conditionality of section 5.10 of the Gas Supply Agreement: this conditionality is only useful in the understanding that TGM cannot demand payment directly from Sulgás. The direct demand of payment referred to by YPF under section 14.1.1 of the Gas Supply Agreement concerns cases where Sulgás has not paid an invoice to YPF, in which case YPF shall be entitled to suspend gas deliveries, without Sulgás being released from the payment of the price of Segments A and B of Transportation under the Gas Supply Agreement, unless the default of Sulgás is caused by acts or omissions of AESU. Only in the latter case, TGM and TGN would be able to demand payment directly from AESU. But, except in such case, TGM cannot pursue action against Sulgás for the payment of the Price of the Transportation Service Agreement. ----------

1511. As regards the legal relationship between YPF and Sulgás, as indicated by TGM, the only obligation of Sulgás that was in force as of September 15, 2008 was its obligation to pay for Segment B of Transportation under the Payment Agreement. All other obligations of Sulgás were suspended as a result of the Force Majeure invoked by YPF (under section 17.2 of the Gas Supply Agreement). Since the Tribunal has already determined that Sulgás (along with AESU) lawfully suspended its obligations under the Gas Supply Agreement since September 15, 2008, the Tribunal finds that Sulgás does not owe YPF the payment of the price of Segment B of Transportation between said date and the termination of the Gas Supply Agreement. ----------

d. Discussion regarding Irrevocable Contributions ----------

1512. The Tribunal now analyzes TGM's claim regarding Irrevocable Contributions during the Relevant Period. Section 4 of the Memorandum of Agreement provides:----------

"YPF's acknowledgment that each of the CONTRIBUTIONS and the subsequent obligation to pay each of the CONTRIBUTIONS are subject to YPF being bound, under the FIRM TRANSPORTATION SERVICE AGREEMENT OF TGM and the AGREEMENT and in the MONTH to which the CONTRIBUTION corresponds, to pay TGM for the Price established in such FIRM TRANSPORTATION SERVICE AGREEMENT OF TGM". ----------

1513. It is not in question that, pursuant to section 4 of the Memorandum of Agreement, if YPF is obliged to pay for the Price of the Transportation Service Agreement, it is also obliged to pay for the Irrevocable Contributions for the relevant month. ----------

1514. The Tribunal has determined that YPF owes TGM the Price for the transportation capacity during the Relevant Period, so it follows that the obligation of YPF to pay for the Irrevocable Contributions was also accrued. ----------

1515. Notwithstanding the foregoing, the Tribunal finds that TGM has identified only three invoices (see note 249), but claims Irrevocable Contributions for the entire period. Since the Memorandum of Agreement does not provide that the obligation to pay for the Irrevocable Contributions requires previous invoicing, the Tribunal concludes that YPF owes TGM all the Irrevocable Contributions accrued during the entire the Relevant Period. ----------

e. Was YPF's default fraudulent? ----------

1516. TGM argues that YPF's breaches of the Transportation Service Agreement and the Memorandum of Agreement are fraudulent, since YPF stopped paying the invoices claimed as stipulated. YPF does not explicitly address this claim of TGM, but denies having breached the Transportation Service Agreement.----------

1517. As indicated in part VII.C *supra*, the Tribunal considers that to determine whether YPF acted with fraud is not necessary in the context of this Partial Award on liability, but it could be relevant for the quantification of damages. It also finds that there was no sufficient debate on this subject, possibly because the parties considered it as an issue to be addressed in the next phase of this arbitration. Therefore, for the same reasons given in part VII.C above, the Tribunal defers the decision regarding the existence of fraud and its consequences on the quantification of damages to the next phase of this arbitration. ----------

B. MUTUAL CLAIMS OF TGM AND YPF REGARDING THE RESPONSIBILITY FOR THE TERMINATION OF THE TRANSPORTATION SERVICE AGREEMENT ----------

1518. Both TGM and YPF each claim to have terminated the Transportation Service Agreement under their own authority and pursuant to their own terms, and dispute the admissibility of the termination made by the other. Specifically: ----------

a. TGM requests that the termination of the Transportation Service Agreement and the Memorandum of Agreement, made on March 23, 2009, by TGM pursuant to the creditor's authority be declared lawful and due to YPF's default. On the other hand, YPF requests that the termination of the Transportation Service Agreement made by TGM be declared unlawful and untimely. ----------

b. YPF requests that the validity of the vicarious termination of the Transportation Service Agreement made by YPF on April 8, 2009, under section 13.2 of the Transportation Service Agreement be declared, as well as the responsibility of AESU and Sulgás for such vicarious termination (for unlawfully terminating the Gas Supply Agreement). It also requests that the termination of the Memorandum of Agreement without liability for YPF be declared.----------

1519. The Tribunal shall first address the arguments of the parties concerning the termination by TGM (Part 1), then the arguments of the parties on the termination (vicarious termination) made by YPF (Part 2), and then move to a joint analysis of all claims relating to the termination of the Transportation Service Agreement (Part 3). ----------

1. TGM Claim: that the termination of the Transportation Service Agreement validly made by TGM due to YPF's default be declared ----------

a. TGM's position ----------

1520. TGM argues that the Transportation Service Agreement and the Memorandum of Agreement have been terminated by TGM due to YPF's default with effects as of March 23, 2009, so that it is added to the debt owed by YPF to TGM resulting from the invoices claimed, YPF obligation to compensate all damages arising from the termination of the Transportation Service Agreement and the Memorandum of Agreement for noncompliance, suffered by TGM and it which may suffer in the future (T-MD, ¶¶ 448). ----------

1521. TGM claims that as of March 23, 2009, YPF was in default payment of the invoices due under the Transportation Service Agreement, identified in paragraph 1376 above.----------

1522. According to TGM, YPF was in default in payment of these invoices in the term arising from section 5.9 of the Transportation Service Agreement, which states:----------

"Before or on the tenth (10th) day of each month, TGM shall issue and deliver to YPF the invoice for the immediately preceding calendar month. Subject to the provisions of section 5.10 infra, YPF shall pay TGM for the invoice (i) on the second business day of the month immediately following the month of issuance of the invoice, if the last day of the month of issuance of the invoice is not a business day, or (ii) on the first business day of the month immediately following the month of issuance of the invoice, if the last day of issuance of the invoice was a business day". ----------

1523. TGM also states that at that time YPF was in default in payment of Irrevocable Contributions under the Memorandum of Agreement, identified in paragraph 1376 above. ----------

1524. According to TGM, YPF was in default in payment of these contributions for the term arising from the end of section 1 of the Memorandum of Agreement, which provides that "all CONTRIBUTIONS shall be payable before the fifteenth (15) day of the calendar month following the MONTH to which the CONTRIBUTION in question corresponds." ----------

1525. TGM explains that, pursuant to sections 1204 of the Argentine Civil Code and 216 of the Argentine Commercial Code, it is implicit in bilateral contracts the right of the non-breaching party to terminate such contracts due to the default of the other party. According to TGM, this termination is governed by the following assumptions:----------

a. It results from the default of one of the parties and the non-default of the other. ----------

b. Except in some cases, the non-breaching party is required to grant a grace period to the breaching party only for the latter, already a defaulting party, to reconsider its default and perform all the unfulfilled obligations (plus the consequences arising from the default). ----------

c. The notice of default must be given by the non-breaching party under penalty of termination (so that there are no doubts or misunderstandings regarding the will of the non-breaching party). -

d. If, after such notice, the breaching party does not cure the breach, the termination of the contract occurs without the need of further notice and on the basis of the expression of will of the non-breaching party in the notice of default. ----------

1526. Given the continuing default by YPF, TGM exercised its right to terminate the Transportation Service Agreement by the creditor's authority. To such end, through its letter of March 23, 2009, TGM expressed its intent to terminate the Transportation Service Agreement

due to YPF's default, granting YPF a term of fifteen days to cure the breach. TGM's letter reads as follows: ----------

"I contact you on behalf of TRANSPORTADORA DE GAS DEL MERCOSUR SA ("TGM") to demand that, in the only and final term of fifteen (15) calendar days as from receipt of this letter, you make full payment of invoices N° 0001-000000292, 0001-000000294, 0001-000000296 and 0001-000000298 due and unpaid by YPF SA ("YPF"), for the services of firm transportation of natural gas provided to said company, and N° 0001-000000293, 0001-000000295 and 0001-000000297 due and unpaid for the "Irrevocable Contribution", plus interest in both cases.----------

This notice of default is under penalty of termination of the Firm Transportation Service Agreement binding YPF and TGM, due to YPF's default, in which case we shall be entitled to demand the compensation for damages arising from such termination" (AnnexT-VII-2). ----------

1527. TGM claims that YPF never answered directly the notice given by TGM. YPF did not pay the invoices and obligations claimed (including the portion of the invoice of September, 2008, that it had acknowledged as due). However, through its presentations in this YPF Arbitration and the TGM Arbitration of April 8, 2009, respectively, YPF expressly admitted that it would not meet the obligations claimed by TGM (Annex T-II-35 and T-V-I). In particular:----------

a. Through its complaint in this YPF Arbitration, filed on April 6, 2009, YPF requested the Tribunal to declare the "termination of the Gas Export Agreement due to the Importer's fault", "with the corresponding liability and consequences under the Gas Export Agreement, which includes, without limitation, the declaration of termination of the Export Firm Transportation Service Agreement with TGM". ----------

b. Through its answer to the arbitration complaint of TGM in this TGM Arbitration, filed on April 8, 2009, YPF requested the Tribunal to declare "with effects starting on September 15, 2008, the termination of the Export Firm Transportation Service Agreement with TGM: (i) due to the fault of AESU and SULGÁS (jointly the "Importer") as a result of the termination of the Gas Export Agreement [...] due to the Importer's fault. ----------

1528. According to TGM, with the filing of such writings, YPF categorically rejected the opportunity given by TGM to avoid the termination of the agreement. Consequently, TGM asserts that, upon the expiration of the term granted to YPF (on April 7, 2009), the termination of the Transportation Service Agreement and the Memorandum of Agreement simply occurred. To avoid doubts, on April 15, 2009, TGM sent a notification to YPF stating that the termination of the agreement had occurred (Annex T-II-36). According to TGM, the termination was effective as

from the moment TGM expressed to YPF its intent to terminate the agreement, i.e. on March 23, 2009. If this argument is not accepted, TGM claims that the termination of the Transportation Service Agreement and the Memorandum of Agreement occurred on April 6, 2009, date on which YPF filed its complaint in this arbitration and categorically rejected the opportunity given by TGM to avoid the termination of the agreement. In any case, TGM claims that, even if none of these arguments regarding the date of the termination is accepted, the termination of the Transportation Service Agreement and the Memorandum of Agreement occurred no later than on April 7, 2009, date on which the term granted by TGM in its letter of March 23, 2009, expired. -1529. As a result of this termination by the creditor's authority, TGM claims that, in addition to the payment of the obligations claimed, it is entitled to obtain from YPF the full compensation for damages suffered in the course or as a result of the anticipated termination of the Transportation Service Agreement and the Memorandum of Agreement (Sections 1204 of the Civil Code and 216 of the Commercial Code; Sections 505, 506, 512, 519, 521, 901, 902, 903, 904, 1197 and related sections of the Civil Code; Legal Opinion of Dr. Trigo Represas, p. 27).----------

b. YPF's position ----------

1530. YPF argues that the intended termination made by TGM, through the letter dated April 15, 2009, due to YPF's alleged fault is invalid (Y-MC, ¶¶802-826). ----------

1531. As explained in the next part, YPF argues that, on such date, YPF had already terminated the Gas Supply Agreement. YPF indicates that on April 8, 2009, YPF gave actual notice of the vicarious termination of the Transportation Service Agreement, which was effective no later than on April 13, 2009 (five days as from such actual notice). In later writings, YPF claims that said vicarious termination has retroactive effects as from the date of the notice (i.e., on April 8, 2009) (Y-Replication, ¶¶335-338).----------

1532. YPF rejects the argument that the effects of the termination of the Transportation Service Agreement allegedly made by TGM have to be backdated to the date on which TGM gave YPF notice of default for the payment of the invoices allegedly owed, i.e., March 23, 2009 (Schedule Y-159). While such notice of default was given under penalty of termination of the Agreement, YPF claims that the Transportation Service Agreement was not terminated by operation of law after the expiration of the term granted to cure the breach, but rather, as from that moment, TGM had the option to terminate it. YPF asserts that TGM only exercised that option on April 15, 2009 (Annex Y-107). ----------

1533. YPF adds that it is so expressly established in section 17 of the Carriers Service Regulations, applicable to the case pursuant section 13.1 of the Transportation Service Agreement, governing the cases of termination for default, as follows: ----------

"In the event that the breaching party does not cure or eliminate the cause(s) originating the breach or compensate the other party for each and every consequence of the breach during such term of ten (10) days, the Agreement may be terminated at the option of the non-breaching party." ----------

1534. But, according to YPF, that termination can occur only when the non-breaching party gives notice of the termination to the breaching party. YPF points out that sections 216 of the Commercial Code and 1204 of the Civil Code, identical to each other, establish in their third paragraph that in cases in which it has been expressly agreed the power to terminate the agreement upon the default of the other party (as in the Transportation Service Agreement), the termination "shall be effective as from the date on which the interested party notifies the breaching party of its will to terminate, in a reliable way." YPF claims that the books of authority are clear in that "the termination occurs when the debtor receives actual notice from the creditor to that effect. [...] Before such notice, the termination does not occur. [...] It cannot be asserted in our legal regime that the termination takes place simultaneously to the default, or that the declaration is retroactive to that moment.[260]."----------

1535. YPF claims that the terms used by TGM in its letter of April 15, 2009 show that it knew that the Transportation Service Agreement could only be terminated as of that day. YPF adds that TGM's behavior confirms the foregoing, since TGM invoiced YPF for the entire month of March, 2009, and even the first 15 days of April, 2009 (Annex Y-11, Y-17), though TGM subsequently modified its argument and reduced its collection claim to March 23, 2009. YPF points out that TGM even acknowledged in writing that the validity of the Transportation Service Agreement included the first 15 days of April, 2009 (TGM's letter dated June 3, 2009, Annex Y-16). ----------

1536. In any case (and as already explained), YPF argues that AESU and Sulgás were the ones in arrears in the payment of the transport invoices claimed by TGM, so TGM's termination was unfounded. YPF claims to have proven that it did not owe TGM the transportation or the contributions of the Memorandum of Agreement. YPF also states that it did not breach the Gas Supply Agreement, which was terminated due to the fault of AESU and Sulgás. ----------

---

[260] See JUAN M. FARINA, "Rescisión y resolución de contratos", Ed. Orbir. 1965, pages 205-206, Annex YL-27.----------

1537. In connection with the termination of the Memorandum of Agreement, YPF's argument is that the effective term of the Memorandum of Agreement expired without liability of the parties for the termination of the Gas Supply Agreement and without YPF's fault, pursuant to section 4 of the Memorandum of Agreement. Consequently, the validity of the Memorandum of Agreement expired without liability of YPF on March 25, 2009 (date on which YPF was notified of the termination of the Gas Supply Agreement by AESU and Sulgás, through the letter dated March 20, 2009). ----------

2. YPF claim: that it shall be declared that the Transportation Service Agreement has been duly terminated by YPF by virtue of the vicarious termination mechanisms set forth in the Gas Supply Agreement ----------

a. YPF Position ----------

(i) The vicarious termination mechanism of the Transportation Service Agreement and the Memorandum of Agreement, and the unified liability system of the Gas Supply Agreement ------

1538. YPF affirms that YPF and TGM contractually established a termination mechanism of the Transportation Service Agreement upon the termination of the Gas Supply Agreement indicated in section 13.2 of the Transportation Service Agreement (Y-MD,¶¶ 557-562): ----------

"If the Gas Supply Agreement is terminated for any reason, except for YPF fault which is not originated from the breach of any of the Participants and/or Petrobras, YPF shall be entitled to (i) continue with the execution of the Firm Transportation Service Agreement, or (ii) terminate the Firm Transportation Service Agreement duly notifying TGM five (5) uninterrupted days in advance. In such a case, the liabilities attributable to the Parties among them and/or YPF and TGM in relation to third parties shall be governed pursuant to sections 14.2.3, 14.2.4, 14.2.5 and 14.2.6 of the Gas Supply Agreement. As long as YPF does not exercise its right of termination, it shall be construed that YPF is exercising its right to continue with the execution of the Firm Transportation Service Agreement, notwithstanding YPF's right to terminate said agreement at any subsequent time. […] Should YPF exercise its option to terminate the Firm Transportation Service Agreement as set forth in the foregoing sub-paragraph (ii), it shall be construed that TGM, as permitted by law, has waived to exercise any action or claim for damages against YPF". ----------

1539. YPF states that this is logical, since the transportation capacity would be useless if the gas sales business which permitted to provide gas through TGM gas pipeline ceased to exist. ----------

1540. According to YPF, along with this mechanism of termination, all the Parties and Participants to the Gas Supply Agreement agreed upon a unified liability system (Y-MD, ¶¶ 558-567). By virtue of this system, a non-compliance event and the termination of the Gas Supply Agreement would be necessarily, as regards liability, reflected on the other Related Agreements (pursuant to sections 1.1 and 14.2.6 of the Gas Supply Agreement). This covers the damages caused as a result of the exercise of the right to terminate the Transportation Service Agreement. ----------

1541. Specifically, YPF states that the fault of one or more Parties and/or Participants in the termination of the Gas Supply Agreement makes them responsible for the recovery of the damages suffered by the other Parties and Participants, including those suffered by the impossibility of continuation of their Related Agreements. YPF is based on the following sub-sections of section 14.2 of the Gas Supply Agreement which governs its termination: ----------

a. Section 14.2.1 of the Gas Supply Agreement which makes reference to YPF termination due to the Importer's fault, establishes that "PETROBRAS or the corresponding PARTICIPANT […] shall compensate YPF and, if applicable, PETROBRAS and/or other PARTICIPANTS for all the damages caused to them by the termination for breach of the agreement". ----------

b. Section 14.2.2 of the Gas Supply Agreement which states the same for the case of the Importer's termination due to YPF's fault, in which case "YPF or the corresponding PARTICIPANT […] shall compensate PETROBRAS for all the damages caused by said termination for breach of the agreement to PETROBRAS and/or other PARTICIPANTS". ----------

c. Section 14.2.5 of the Gas Supply Agreement, which deals with the termination for a Participant's fault, establishes that: "[…] In such a case, the damages caused to the PARTIES for the termination shall be, exclusively and directly, compensated by the BREACHING PARTICIPANT against whom the PARTIES shall file the corresponding claims, being the PARTIES among them and in relation to the PARTICIPANTS released from any liability". YPF affirms that this section sets forth the non attribution of liability to the Parties in case of termination of the Gas Supply Agreement under the terms of the sections 14.2.1, 14.2.2 and 14.2.3 caused as a result of a "Participant's" breach (as AESU) which as a result placed a "Party" under an objective situation of arrears. ----------

d. Section 14.2.6 of the Gas Supply Agreement, which, according to YPF, determines the damages caused to the Participants by the early termination of the Gas Supply Agreement includes the damages caused by the termination of their corresponding Related Agreements (as Transportation Service Agreement with TGM). ----------

"In the cases of termination of the AGREEMENT which, under the terms of Section 14.2.5, arise from acts or omissions performed by the BREACHING PARTICIPANT, the compensation for damages experienced by the remaining PARTICIPANTS as a result of the vicarious termination of the respective RELATED AGREEMENTS (as defined below) derived from the termination of the AGREEMENT, shall be directly and exclusively faced by the BREACHING PARTICIPANT against whom the corresponding actions shall be filed. For the purposes of this Section, the term "RELATED AGREEMENT" indistinctly refers to […] (ii) the TGM FIRM TRANSPORTATION SERVICE AGREEMENT for 2,800,000 of M3/day for the stretch Aldea Brasilera-Uruguayana, […] and (v) any other agreements to be entered into in the future in substitution of some or all of the ones mentioned in (i), (ii), (iii) and (iv)". ----------

1542. According to YPF, this global (for involving more than one agreement) and single (the person responsible for the termination of the Gas Supply Agreement shall be liable for damages caused by the vicarious termination of the other Related Agreements, including the Transportation Service Agreement) liability was expressly agreed upon in advance by the Parties and Participants of the Uruguayana Project. In other words, the Parties and Participants of the Uruguayana Project agreed that the person responsible for the termination of the Gas Supply Agreement shall, finally, be responsible for the payment of "damages" of the whole project. -------

1543. Pursuant to this unified liability system, YPF states that the person responsible for the termination of the Gas Supply Agreement shall be also responsible for the vicarious termination of the Transportation Service Agreement, since the Gas Supply Agreement sets forth that the fault of one or more Parties or Participants shall be common for both the Gas Supply Agreement and the Transportation Service Agreement. ----------

1544. For this reason, YPF requests in this arbitration that AESU and Sulgás liability for all damages suffered by the Parties and Participants (including TGM) as from September 15, 2008, when AESU and Sulgás suspended the compliance with their obligations under the Gas Supply Agreement be ordered. ----------

(a) The vicarious termination of the Transportation Service Agreement by YPF was valid ----------

1545. YPF states that, as a consequence of the illegitimate termination of the Gas Supply Agreement by the Importer, YPF was forced to vicariously terminate the Transportation Service Agreement, for a reason not attributable to YPF. As a consequence, by the application of the unified liability system indicated in the Gas Supply Agreement, YPF states that AESU and Sulgás

are responsible for the consequences arising from this vicarious termination. (Y-MD, ¶¶ 568-574; Y-MC, ¶¶ 790-823, Y-Replication, ¶¶ 327-338; Y-Rejoinder, ¶¶ 424-431). ----------

1546. YPF affirms that, on April 8, 2009, it mentioned the vicarious termination of the Transportation Service Agreement through its Counterclaim pleading for Termination in TGM Arbitration, based on section 13.2 and on sections 14.2.1, 14.2.2, 14.2.5, 14.2.6 and related sections of the Gas Supply Agreement. ----------

1547. YPF dismisses the restrictive construction made by TGM of Section 13.2 of the Transportation Service Agreement. Instead, YPF states that this provision shall be construed pursuant to the liability system of the Gas Supply Agreement, set forth in sub-sections of Section 14.2.2 of said Agreement, expressly referred to in the Transportation Service Agreement. Thus, YPF affirms that TGM does receive the compensation for damages, but said damages shall be repaired by the person liable for the Gas Supply Agreement termination, pursuant to its rules. -----

1548. YPF also dismisses TGM allegations related to the invalidity of the vicarious termination carried out by YPF. ----------

1549. Firstly, YPF affirms that it was entitled to exercise said termination since YPF did not fail to comply with its obligations under the Gas Supply Agreement, but, it was AESU/Sulgás' fault which caused the early termination of the agreement. ----------

1550. YPF points out that section 13.2 sets forth that YPF shall be entitled to vicarious termination when "the Gas Supply Agreement is terminated for any reason whatsoever, except for the fault attributable to YPF which is not originated from the breach of any of the Participants and/or Petrobras {today the Importer}". Therefore, the standard refers to the fault by the breach caused by the termination of the Gas Supply Agreement, and not to any other fault or potential non-compliance. YPF also denies the existence of a "non-involvement" standard, as expressed by TGM. ----------

1551. In any case, YPF alleges that it has demonstrated that (i) it did not owe the transportation to TGM by virtue of the conditional payment set forth in section 5.10 of the Transportation Service Agreement; (ii) it did not owe the contributions of the Memorandum of Agreement; (iii) it did not fail to comply with the Gas Supply Agreement; and (iv) the termination of the Gas Supply Agreement did not occur due to YPF's fault, but the Importer's fault, which illegitimately suspended its obligations and abandoned the Gas Supply Agreement. ----------

1552. Secondly, YPF affirms that it complied with the formal requirement of reliable notice indicated in section 13.2 of the Gas Supply Agreement, since on April 8, 2009, it mentioned the

vicarious termination of the Transportation Service Agreement through its Counterclaim for Termination in TGM Arbitration. YPF states that the incorporation of the termination claim in the Counterclaim in TGM Arbitration constituted a fully valid and efficient means to notify TGM, pursuant to the definition of reliable notice set forth in section 9.1 of the Transportation Service Agreement. YPF alleges that Argentine books of authority are consistent by accepting the possibility of establishing the termination of an agreement through a judicial or arbitration complaint. Furthermore, it states that YPF will to terminate the agreement was not questionable based on the Counterclaim content and on the fact that the means used by YPF were the most appropriate to communicate the vicarious termination to TGM. ----------

1553. YPF states that neither section 13.3 of the Transportation Service Agreement nor the Remedial Period included therein are applicable since TGM failed to use the option provided by said section, that is to say, to avoid the termination of the agreement through the appointment of a "substitute" shipper of YPF within a period of 60 days subsequent to the termination, in which all the parties rights and obligations under the Transportation Service Agreement were suspended[261]. ----------

1554. According to YPF, notwithstanding TGM omission to use said mechanism, the Transportation Service Agreement specifically indicates that in such a case: "for all the purposes arising from the compensations that the Parties may owe each others under the terms of sections 14.2.3 14.2.4 and 14.2.5 of the Gas Supply Agreement, it is considered that the Firm Transportation Service Agreement has been duly terminated on the date in which YPF has given to TGM reliable notice of termination […]", that is to say, on April 8, 2009, and that "the Remedial Period existence shall not generate any cause or damage to YPF, and shall not suspend the Parties' exercise of their respective rights under sections 14.2.3, 14.2.4, 14.2.5 and 14.2.6 of the Gas Supply Agreement", that is to say, the application of the unified liability distribution system set forth in the Gas Supply Agreement. ----------

[261] Section 13.3 states that "[…] in case YPF exercises its right to terminate the Firm Transportation Service Agreement; said termination shall be effective sixty (60) uninterrupted days ("Remedial Period") subsequent to the date in which YPF has given to TGM reliable notice of termination. During the Remedial Period, all Parties rights and obligations under the Firm Transportation Service Agreement shall be suspended by operation of law and to the maximum permitted by law. TGM may avoid the completion of the termination if during the Remedial Period TGM requests YPF and YPF accepts to assign all YPF rights and obligations under the Firm Transportation Service Agreement in favor of a third party designated by TGM, subject to the compliance with the following conditions [...]." ----------

1555. In any case, YPF states that, according to section 13.2 of the Transportation Service Agreement, said agreement was terminated not later than on April 13, 2009, five uninterrupted days after TGM was duly notified. ----------

(ii) The Memorandum of Agreement was terminated without YPF's fault ----------

1556. In relation to the Memorandum of Agreement, YPF states that it agreed with TGM that, upon the termination of the Gas Supply Agreement without YPF fault, the Memorandum of Agreement is terminated with no liability of any of the parties. Since, according to YPF, the cause of termination of the Gas Supply Agreement was the guilty termination attributable to the Importer without YPF's fault, YPF states that the Memorandum of Agreement terminated with AESU/Sulgás termination of the Gas Supply Agreement on March 25, 2009, and said termination caused no liability for YPF (Y-MC, ¶826; Y-AF, ¶322). ----------

b. TGM Position ----------

(i) The vicarious termination of the Transportation Service Agreement and the Memorandum of Agreement performed by YPF is not admissible ----------

1557. TGM dismisses the vicarious termination of the Transportation Service Agreement and the Memorandum of Agreement performed by YPF (TGM-MC, ¶¶ 389-613, TGM-Replication, ¶¶ 481¬563, TGM-Rejoinder, ¶¶ 288-303) because it was not admissible. ----------

1558. According to TGM, through this alleged "vicarious termination", YPF expects to avoid its liability for the termination of the Transportation Service Agreement and the Memorandum of Agreement carried out by TGM for the non-compliances, in pursuit of applying TGM waiver set forth in section 13.2 of the Transportation Service Agreement. TGM affirms that, for said purpose, YPF is based on a good faith proceeding which shall govern not only the execution but also the construction and performance of the agreements. ----------

a. At the beginning, YPF stands in silence in relation to the opportunity provided by TGM on March 23, 2009, to purge its non-compliances; ----------

b. Then, on April 6, 2009, YPF, expressly and definitely, repudiates said opportunity and states, through arbitration request, that YPF shall not comply with any obligation claimed; and ----------

c. Finally, on April 8, 2009, attempts to use said opportunity provided by TGM to only remedy its non-compliances to suggest its own "vicarious termination" of the Transportation Service Agreement (whose termination has already been established by TGM) without complying with any of the circumstances set forth for said purpose. ----------

1559. The foregoing was to attempt to illegitimately prevent TGM from exercising the right to compensation provided by YPF for the termination of the Firm Transportation Service Agreement and the Memorandum of Agreement. ----------

1560. TGM expresses that sections 13.2 and 13.3 of the Transportation Service Agreement on which YPF is based adopt an exceptional remedy and which shall be strictly construed, any time causing extremely serious consequences to TGM: (i) the early termination of the Transportation Service Agreement and the Memorandum of Agreement (single fund sources for TGM); (ii) with no compensation for TGM by YPF; and (iii) having TMG fully and timely complied with all its obligations. ----------

1561. Therefore, TGM alleges that all the premises related to the sole source (the contractual will of the parties) and consequences (extremely serious for TGM) of the right invoked by YPF, led to the strict construction of the scope of said right and to require the duly compliance with all the conditions and circumstances set forth by the parties will for their admission. ----------

1562. TGM alleges that the admissibility requirements for the vicarious termination, to be cumulatively complied with, are the following: (a) that YPF has not failed to comply with its obligations under the Transportation Service Agreement, the Memorandum of Agreement and the Gas Supply Agreement; (b) that the Gas Supply Agreement has been terminated by a reason not attributable to YPF and (c) that YPF has exercised its right to terminate the Transportation Service Agreement complying with the formal requirements set forth in sections 13.2 and 13.3 of the Transportation Service Agreement, particularly through a reliable notice given to TGM within a period of five uninterrupted days as of the effective date of notice. TGM states that none of these circumstances have been complied with; therefore, the vicarious termination reasoning is not supported. ----------

1563. Finally, TGM alleges that (d) the vicarious termination mechanism was neither in force nor operational during the validity of the Complementary Agreements. ----------

(a) YPF has incurred in a breach of its obligations under the Transportation Service Agreement, the Memorandum of Agreement and the Gas Supply Agreement----------

1564. TGM states that, on the date in which YPF attempted to vicariously terminate the Transportation Service Agreement, YPF was in default of its obligations under the Transportation Service Agreement, the Memorandum of Agreement and the Gas Supply Agreement. TGM alleges that it is a general principle, set forth in the Argentine legislation, books of authority and case

law, that, in bilateral agreements, only the non-breaching party may require the termination of said agreement. Particularly, TGM affirms that YPF has not complied with: ----------

a. The Transportation Service Agreement and has incurred in arrears of payment of the invoices corresponding to September-December, 2008 and January-March, 2009; ----------

b. The Memorandum of Agreement and in default of the compliance with the irrevocable contributions of September-December, 2008 and January-March, 2009; ----------

c. Its obligations under the Gas Supply Agreement in relation to TGM, for infringement of sections 18.4 and related sections (for the execution of the Complementary Agreements, affecting TGM) and for infringement of sections 14.2.2 and related sections, if YPF has incurred in non-compliances which led to the termination of the Agreement by AESU and Sulgás, or of sections 3.1, 3.5, 14.2.2, 18.4 and related sections, in case AESU and Sulgás have unlawfully terminated the Gas Supply Agreement, by YPF consent to the alleged unlawful termination of the Gas Supply Agreement (as indicated by Part IX below); ----------

d. It obligations under section 15.5 of the Gas Supply Agreement in relation to Sulgás, due to the failure to comply with the proceeding for controversial payments upon the DOP penalty claimed by Sulgás for 2006, which led to the early termination of the Gas Supply Agreement for YPF breach, and ----------

e. The Gas Supply Agreement in relation to AESU and Sulgás based on all accusations carried out by AESU and Sulgás. ----------

(b) YPF was not external to the termination of the Gas Supply Agreement ----------

1565. According to TGM, YPF was not external to the early termination of the Gas Supply Agreement. TGM states that, except for what is expressly set forth in section 3.5 of the Gas Supply Agreement, said Agreement could not be lawfully terminated before the expiration of its term (section 3.1, 3.2 and related sections of the Gas Supply Agreement) affecting TGM, without having TGM's prior and express consent, which through this participation would have the opportunity to defend its rights and interest in relation to the Parties and other Participants. TGM believes that, should AESU and Sulgás have terminated the Gas Supply Agreement lawfully (as AESU/Sulgás state) or unlawfully (as indicated by YPF), in any case, said termination is not external to YPF and therefore, the vicarious termination set forth in sections 13.2 and 13.3 of the Transportation Service Agreement cannot proceed. ----------

1566. This is because, according to TGM, there are only two possibilities in relation to the resolution of the dispute among YPF, AESU and Sulgás as regards the "legitimacy" of the termination of the Gas Supply Agreement provided by AESU and Sulgás. These are: ----------

a. That AESU and Sulgás have lawfully exercised their right to early terminate the Gas Supply Agreement under the terms of section 14.2.2 of the Gas Supply Agreement. In this case, besides YPF liability in relation to TGM under section 14.2.2 of the Gas Supply Agreement (which is subject matter of TGM Counterclaim against YPF), it is evident that the Gas Supply Agreement was not terminated for a reason external to YPF; ----------

or, alternatively, ----------

b. that YPF proves that the termination allegedly established by AESU and Sulgás has been "unlawful" and, therefore, it implies "a non-remedied breach of the agreement" by AESU and Sulgás. In this case, the notice given by AESU and Sulgás on March 20, 2009 might not have had a termination effect of the Gas Supply Agreement, since, in TGM's opinion, an Importer's breach may have never constituted the legitimate exercise of the right to terminate the Gas Supply Agreement based on the conditions set forth in section 14.2.2. However, it is a non-questionable fact that the Gas Supply Agreement is extinguished. According to TGM, the termination of the Gas Supply Agreement could only have been produced by the mutual consent of YPF, AESU and Sulgás (phenomenon known as "rescission"), while the dispute between YPF and AESU and Sulgás on the liability for this termination exists. This mutual agreement (in violation of what was agreed upon with TGM) would be the real cause of the early termination of the Gas Supply Agreement at a time prior to the one agreed upon with TGM in sections 3.1, 3.2 and 3.5 of the Gas Supply Agreement. Based on the foregoing, also in this case (and besides YPF liability in relation to TGM for the breach of the Gas Supply Agreement (section 3.5, 18.4 and related sections), TGM alleges that the Gas Supply Agreement was not terminated by a reason external to YPF, since it was its concurrence to consent the "Importer" initiative which led to the termination of the Gas Supply Agreement. ----------

1567. Therefore, the early termination of the Gas Supply Agreement is attributable, in any case, to YPF, whether exclusively or jointly with AESU/Sulgás. ----------

1568. TGM states that the reasons through which YPF states that AESU and Sulgás termination would be unlawful (such as, for example, AESU and Sulgás waiver to terminate the Gas Supply Agreement for the failure to provide gas) cannot be enforced against TGM, since, either these reasons are the consequence of AESU and Sulgás alleged non-compliances with the obligations

assumed under the Complementary Agreements, or these reasons arising from YPF statement and maintenance of the occurrence of an Act of God or force majeure event which may have prevented YPF from complying with its obligation to provide gas. YPF has expressly waived to the invocation of said acts of God or force majeure events against TGM in section 6.2 of the Transportation Service Agreement ("Under no circumstances may YPF be exempted from making the payment of the Price alleging an Act of God or Force Majeure event […]"). ----------

(c) YPF failed to complied with the formal requirements needed to exercise the vicarious termination of the Transportation Service Agreement ----------

1569. TGM states that YPF failed to comply with the formal requirements needed to exercise the vicarious termination of the Transportation Service Agreement. ----------

1570. Firstly, YPF never gave reliable notice to TGM that YPF expected to exercise its alleged right of vicarious termination under the terms of section 13.2 establishing that "if the Gas Supply Agreement was terminated for any reason, except for YPF's fault which is not originated from the breach of any of the Participants and/or Petrobras, YPF shall be entitled to […] terminate the Firm Transportation Service Agreement through a reliable notice given to TGM five (5) uninterrupted days in advance". [...]." ----------

1571. Also, YPF failed to comply with the Remedial Period set forth in section 13.3 of the Transportation Service Agreement, which establishes: ----------

"[…] in case YPF exercises its right to terminate the Firm Transportation Service Agreement; ***said termination shall be effective sixty (60) uninterrupted days ("Remedial Period")*** subsequent to the date in which YPF has given to TGM reliable notice of termination. During the Remedial Period, all Parties rights and obligations under the Firm Transportation Service Agreement shall be suspended by operation of law and to the maximum permitted by law. TGM may avoid the completion of the termination if during the Remedial Period TGM requests YPF and YPF accepts to assign all YPF rights and obligations under the Firm Transportation Service Agreement in favor of a third party designated by TGM, subject to the compliance with the following conditions (…) (v) for all the purposes arising from the compensations that the Parties may owe among them under the terms of sections 14.2.3 14.2.4 and 14.2.5 of the Gas Supply Agreement, it shall be considered that the Firm Transportation Service Agreement has been duly terminated on the date in which YPF has given to TGM reliable notice on termination and (vi) the Remedial Period existence shall not generate any cause or damage to YPF, and shall not suspend the Parties'

exercise of their respective rights under sections 14.2.3, 14.2.4, 14.2.5 and 14.2.6 of the Gas Supply Agreement". (Emphasis added). ----------

1572. Therefore, YPF never complied with the terms established in sections 13.2 and 13.3 of the Transportation Service Agreement: five days for the non-existing notice to be valid and sixty days for the vicarious termination to be possibly enforceable. ----------

1573. In relation to YPF allegation that the Counterclaim notice acts as a reliable notice, TGM states that in the cases in which, exceptionally and through express legal provision, the termination of an agreement through a judicial claim is admitted, it is required that the plaintiff seeks that the judge be the one who orders the termination which hypothetically has not occurred yet but who does not order an already extra-judicial termination, as claimed by YPF in this case. ----------

1574. On the other hand, TGM affirms that on the date in which YPF attempted to terminate the Transportation Service Agreement; it had already been terminated by TGM decision and for YPF breaches through letter dated March 23, 2009, in which it demanded payment of pending invoices within a term of 15 days (to April 7, 2009), gracefully granting (since there was no legal requirement) to YPF the opportunity to comply (Annex T-VII-2). YPF neither answered said letter nor remedied the default. But, YPF refused to pay by the submission of the Arbitration Complaint in this proceeding on April 6, 2009. TGM states that, pursuant to sections 216 of the Commercial Code and 1204 of the Civil Code of Argentina, the termination of the Transportation Service Agreement was carried out based on YPF breach, which would be valid on the date of demand of payment, that is to say, on March 23, 2009. To clear up doubts, TGM sent a note to YPF on April 15, 2009 stating that the termination had been carried out (Annex T-II-36). As a consequence, YPF vicarious termination lacked an agreement upon which to be applied. ----------

1575. TGM states that, in any case, the vicarious termination attempted by YPF could not be valid until June 12, 2009, date on which the Remedial Period would end as set forth in section 13.3 of the Transportation Service Agreement. At that time, the Transportation Service Agreement had already been terminated by TGM. ----------

1576. TGM denies that the purpose of section 13.3 of the Transportation Service Agreement would have only been to grant TGM an option to avoid the termination of the agreement by obtaining a substitute shipper to YPF, and that, as TGM did not exercise said option, the rules would not be applicable. According to TGM, Section 13.3 clearly states that "in case YPF exercises its right to terminate the Firm Transportation Service Agreement; said termination shall be

effective sixty (60) uninterrupted days ("Remedial Period") subsequent to the date in which YPF has given to TGM reliable notice of termination". ----------

1577. TGM states that number (v) of section 13.3 of the Transportation Service Agreement (which establishes that "for all the purposes arising from the compensations that the Parties may owe each others under the terms of sections 14.2.3 14.2.4 and 14.2.5 of the Gas Supply Agreement, it is considered that the Firm Transportation Service Agreement has been duly terminated on the date in which YPF has given to TGM reliable notice on termination") is not contradictory to its position. Pursuant to TGM, number (v) constitutes a protection in favor of TGM. Indeed: ----------

a. The vicarious termination would be effective at the end of the period of sixty days of the Remedial Period, but during this period the Transportation Service Agreement would be suspended, and YPF would not be bound to pay the transportation price to TGM. This would render TGM with no compensation during the Remedial Period. ----------

b. To cover this situation and to avoid causing any damage to TGM, number (v) of section 13.3 establishes a consistent fiction when considering, for the only purpose of the compensation, as if the Transportation Service Agreement had been duly terminated on the date in which YPF would have given reliable notice. ----------

(d) The vicarious termination mechanisms was neither in force nor operational during the validity of the Complementary Agreements. ----------

1578. On the other hand, TGM states that the vicarious termination mechanism (sections 13.2 and 13.3 of the Transportation Service Agreement) was neither in force nor operational during the validity of the Complementary Agreements. ----------

1579. In this sense, TGM alleges that YPF and AESU/Sulgás generally and systemically modified the Gas Supply Agreement through the execution of the Complementary Agreements, without TGM intervention under the terms of section 18.4 of the Gas Supply Agreement. TGM affirms that the execution and application of these Complementary Agreements totally altered the Gas Supply Agreement dynamics set forth in section 13.2 of the Transportation Service Agreement without TGM authorization. TGM states that the Gas Supply Agreement based on section 13.2 is not the new Gas Supply Agreement resulting for YPF and AESU/Sulgás from the Complementary Agreement, but the original Gas Supply Agreement. TGM alleges that it never accepted the risk that the Transportation Service Agreement shall be vicariously terminated due to the termination of the Gas Supply Agreement which was not the one signed by TGM but another one arising from

the substantial modifications introduced without its express and written consent. Therefore, during the validity of the Complementary Agreements and the new Gas Supply Agreement resulting for YPF and AESU/Sulgás from said agreements, it shall be understood that the mechanism of vicarious termination indicated in the Transportation Service Agreement was not operational, as the conditional payment set forth in section 5.10 of the Transportation Service Agreement was not applicable. ----------

1580. For the same reason, TGM states that the mechanism of early termination of the Memorandum of Agreement was not in force for YPF to use it. ----------

3. Analysis----------

1581. Both TGM and YPF allege to have terminated the Transportation Service Agreement pursuant to law. TGM alleges to have terminated the agreement through the exercise of its rights as creditor based on YPF breaches and default, pursuant to sections 1204 of the Civil Code and 216 of the Commercial Code. YPF, on the other hand, alleges to have exercised its right to vicariously terminate the Transportation Service Agreement through the termination of the Gas Supply Agreement under section 13.2 of the Transportation Service Agreement. Both dismiss the admissibility of the termination carried out by the other party. ----------

1582. The parties also argue about the date in which these terminations would have become effective. TGM alleges that its termination of the Transportation Service Agreement became effective on March 23, 2009, date in which TGM demanded YPF to pay the invoices pending payment, under the penalty of considering the Transportation Service Agreement terminated if YPF failed to remedy its default within a period of fifteen days. YPF dismisses this construction, alleging that the termination carried out by TGM, in case it is sustained, would have only been effective on April 15, 2009, date on which TGM notified YPF that the Transportation Service Agreement had been terminated. On said date, YPF alleges that the Transportation Service Agreement had already been vicariously terminated by YPF on April 8, 2009, date on which YPF filed its Counterclaim in TGM Arbitration[262]. TGM denies to have received reliable notice of vicarious termination of the Transportation Service Agreement, stating that said vicarious termination, in case it is sustained, would only have been effective on June 12, 2009, upon the termination of the Remedial Period indicated in section 13.3 of the Gas Supply Agreement. ---------

[262] YPF indicated in some pleadings that this vicarious termination would become effective on April 13, 2009, after five days of the reliable notice, but in subsequent pleadings, YPF affirmed that the effects of its vicarious termination would be taken back to the date of notice.----------

1583. It cannot be argued that YPF was entitled to "vicariously" terminate (rescind) the Transportation Service Agreement if the Gas Supply Agreement had been terminated based on a reason not attributable to YPF, as indicated in section 13.2 of the Transportation Service Agreement. ----------

"***If the Gas Supply Agreement is terminated for any reason, except for YPF fault*** which is not originated from the breach of any of the Participants and/or Petrobras, **YPF shall be entitled to** (i) continue with the execution of the Firm Transportation Service Agreement, or (ii) ***terminate the Firm Transportation Service Agreement*** through a reliable notice given to TGM five (5) uninterrupted days in advance. In such a case, the liabilities attributable to the Parties among them and/or YPF and TGM in relation to third parties shall be governed pursuant to sections 14.2.3, 14.2.4, 14.2.5 and 14.2.6 of the Gas Supply Agreement. As long as YPF does not exercise its right to terminate, it shall be construed that YPF is exercising its right to continue with the execution of the Firm Transportation Service Agreement, notwithstanding YPF's right to terminate said agreement at any subsequent time. […] Should YPF exercise its option to terminate the Firm Transportation Service Agreement as set forth in the foregoing sub-paragraph (ii), it shall be construed that TGM, as permitted by law, has waived to exercise any action or claim for damages against YPF". ----------

1584. However, by its own terms, section 13.2 of the Transportation Service Agreement clearly establishes that YPF right to terminate the Transportation Service agreement only arises from in case "the Gas Supply Agreement is terminated for any cause, except for the fault of YPF not arising from the failure of any of the Parties and/or Petrobras". The Tribunal majority has determined in Part VII of this Award that AESU and Sulgás terminated the Gas Supply Agreement pursuant to law by YPF guilty repudiation of the Gas Supply Agreement. Therefore, YPF was not entitled to vicariously terminate the Transportation Service Agreement pursuant to section 13.2 of said agreement. ----------

1585. As YPF was not entitled to vicariously terminate the Transportation Service Agreement, its Counterclaim against TGM in TGM Arbitration could not have the judicial potential to terminate the Transportation Service Agreement. ----------

1586. In relation to the termination of the Transportation Service Agreement claimed by TGM, the Tribunal notes that the Transportation Service Agreement establishes a specific provision related to the termination by breach of one of the parties: ----------

"13.1. <u>General rule</u> ----------

The default in the compliance with obligations on its due date shall be automatic and without the need of any demand of compliance. Any breach of the agreement shall lead to the early termination of the Firm Transportation Service Agreement, complying with the proceeding established in section 17 of the Carriers Service Regulations". ----------

1587. Section 17 of the Carriers Service Regulations establishes that: ----------

"In case the breaching party fails to remedy or to eliminate the reasons or to compensate the non-breaching party for its consequences of said breach within said period of ten (10) days, at the election of the non-breaching party, the Agreement may be terminated". ----------

1588. TGM did not invoke said rules neither in the notices given to YPF on March 23 and April 15, 2009, nor in this arbitration. But, TGM did invoke sections 1204 of the Civil Code and 216 of the Commercial Code, of identical text, which provides for the implied resolutory covenant in Argentine law, under the following terms: ----------

"In the agreements with reciprocal considerations, the power to terminate the obligations emerging from them is implied in case one of the parties fails to comply with its commitment. But, in the agreements in which some of the considerations have been complied with, the ones complied with shall be definite and shall produce the corresponding effects. ----------

In case the consideration is not exercised, the creditor may request the breaching party to comply with its obligation within a term not inferior than fifteen days, unless customs and practices or an express agreement establish an inferior term, plus damages caused by the default; upon the termination of said term, in case said consideration has not been complied with, the obligations emerging from said agreement shall be terminated being the creditor entitled to damages for compensation. [...]" ----------

1589. The Tribunal has already decided that YPF incurred in arrears of payment of the Price of the Transportation Service Agreement and of the Irrevocable Conditions accrued during the Relevant Period. Therefore, TGM was entitled to terminate the Transportation Service Agreement. ----------

1590. The question is when this termination became effective. In the opinion of the Tribunal majority[263], the termination carried out by TGM shall be held as effective on April 7, 2009. Sections 1204 of the Civil Code and 216 of the Commercial Code clearly establish that the obligations emerging from the agreement "shall be terminated, **without further action**" (emphasis added) upon the termination of the term granted by the creditor failing the debtor to

[263] The Prof. Roque J. Caivano disagreed in relation to this issue. His dissenting opinion is attached to this Award. As a consequence of this disagreement, the determinations and conclusions arising from this decision are adopted by the Tribunal majority----------

comply with its obligation. On TGM letter dated on March 23, 2009, TGM granted YPF "the single and non-extendable term of fifteen (15) uninterrupted days as from the receipt hereof" so that YPF could pay pending invoices. Said demand of payment was provided "under the penalty of establishing the termination" of the Transportation Service Agreement. Pursuant to section 17 of the Carriers Service Regulations, TGM could have granted YPF a term of ten days, but TGM decided not to grant said period. Annex Y-159 proves, through the corresponding seal of receipt, that YPF received the letter sent by TGM on March 23, 2009. Therefore, the Transportation Service Agreement shall be construed as terminated "without further action" fifteen days later, that is to say, on April 7, 2009. YPF notice, sent on April 15, 2009, shall be deemed as a confirmation of said termination. ----------

1591. The Tribunal does not agree with TGM allegation in the sense that the terms "without further action", in sections 1204 of the Civil Code and 216 of the Commercial Code, imply that the effects of the termination go back to the date of demand of payment under the penalty of terminating the agreement. Books of authority and case law are clear when stating that the termination through the exercise of the implied resolutory covenant automatically becomes effective (*ope legis* or "by operation of law") upon the termination of the granted term, without going back to the effects of the termination when sending the demand[264]. ----------

1592. The Tribunal does not accept TGM allegation in the sense that the termination was performed by operation of law by YPF repudiation, stated on April 6, 2009, through the filling of its complaint in this arbitration. Even if the development of the arbitration may constitute YPF repudiation (matter on which the Tribunal does not decide), TGM should have based on said matter to decide the termination of the Transportation Service Agreement and the Memorandum of Agreement, which did not happen. ----------

1593. The foregoing conclusions are also applied to the termination of the Memorandum of Agreement. Although the Memorandum of Agreement does not establish a specific mechanism of termination, the implied resolutory covenant established in sections 1204 of the Civil Code and 216 of the Commercial Code extend their application to any bilateral agreement. ----------

1594. Therefore, the Tribunal decides that the Transportation Service Agreement and the Memorandum of Agreement were duly terminated by TGM becoming effective on April 7, 2009

[264] See, among others, MOSSET ITURRASPE, J., Contratos, p. 452, ed. Rubinzal-Colzoni, 1997; BORDA, G., La reforma al Código Civil y el pacto comisorio, EI Derecho, vol. 31, p. 989; Ruben Stiglitz, Pacto Comisorio Tácito, La Ley, vol. 1999-D, pp. 900-906. GHERSI, Carlos A., Contratos Civiles y Comerciales, ed. Astrea, 3º edition, 1994, t. 1, p.328; MORELLO, Augusto M., Ineficacia y frustraci6n del contrato, ed. Abeledo-Perrot, 1975, p.154. ----------

based on YPF breach. Therefore, YPF is liable in relation to TGM for the damages caused by said early termination to TGM. ----------

IX. DISPUTE BETWEEN TGM, YPF, AESU AND SULGÁS UNDER THE GAS SUPPLY AGREEMENT -------

1595. TGM claims in its Counterclaim against YPF under the Gas Supply Agreement were almost identical to the claims included by TGM in its cross-claim against AESU and Sulgás under the Gas Supply Agreement. Specifically: ----------

a. TGM files an almost identical complaint against YPF (in its counterclaim) and against AESU and Sulgás (in its cross-claim) based on YPF, AESU and Sulgás infringement of their obligations under sections 18.4 and related sections of the Gas Supply Agreement (specifically, for the modification of the Gas Supply Agreement through the Complementary Agreements without TGM consent). As a remedy, TGM request, in relation to both YPF and AESU and Sulgás (i) the compensation for damages regarding which TGM alleges that YPF, AESU and Sulgás's liability is joint; and (ii) the broadest and absolute non-enforceability of the Complementary Agreements against TGM----------

b. Subsidiary to the foregoing, TGM files a complaint against YPF for the early termination of the Gas Supply Agreement without TGM consent, and claims for the damages caused by said early termination. This complaint is filed in case the Tribunal does not sustain the claim against YPF abovementioned in letter (a), ----------

c. Subsidiary to the above-mentioned in letters (a) and (b), TGM files a complaint against AESU and Sulgás for the early termination of the Gas Supply Agreement without TGM consent, and claims for the damages caused by said early termination. This complaint is filed in case the Tribunal does not sustain the claim against AESU and Sulgás in letter (a), but also only in case the Tribunal decides that the Gas Supply Agreement was terminated by AESU and Sulgás fault under letter (b).----------

1596. The Tribunal shall concurrently deal with said claims, although TGM has prepared two separate complaints and has independently submitted its allegations in relation to each one of these complaints. ----------

A. TGM CLAIM AGAINST YPF, AESU AND SULGÁS FOR INFRINGEMENTS TO THE GAS SUPPLY AGREEMENT----------

1. TGM Position----------

a. YPF, AESU and Sulgás failed to comply with section 18.4 of the Gas Supply Agreement----------

1597. TGM affirms that, pursuant to section 18.4 of the Gas Supply Agreement, the Participants to said agreement are entitled not to be affected by the modifications introduced by the Parties (whether or not with the participation of other Participants) to the Gas Supply Agreement, unless the Participants have been engaged in the signature of the respective modification agreements, expressly accepting in writing the terms and conditions of said modification agreement[265]. Only in the latter case, the Participant who has been engaged in the respective modification agreement would have expressed its consent to be affected by the modifications agreed upon in said agreement. The other side of this right is the individual obligation of each Party and other Participants not to enter into agreements which may introduce modifications to the Gas Supply Agreement which may affect the Participants, without the express consent in writing of all the Participants who may be affected (Legal Opinion of Prof. Trigo Represas, pages 28 and 29). ---------

1598. TGM alleges that, in violation of the right set forth in section 18.4 of the Gas Supply Agreement, YPF, AESU and Sulgás signed between 2004 and 2006 some complementary and modification agreement to the Gas Supply Agreement (which TGM calls "Complementary and Modification Agreements", identified in this Award as the "Complementary Agreements") without TGM participation and consent (T-MD, ¶¶ 39-59; 453-592; ¶¶ 644-710; T-Replication, ¶¶ 345-480; ¶¶ 570-628, T¬AF, ¶¶ 725-901, 938-964). ----------

1599. TGM states that the causes of the execution of these Complementary Agreements were (i) the alleged YPF failure to comply with its obligation to provide gas to Sulgás, as from the issue by the Goverment of Argentina of some rules to limit gas exports by gas producers who previously failed to comply with the obligation to supply the prioritized domestic supply; and (ii) YPF invocation and maintenance of its own act of God or force majeure event under the Gas Supply Agreement, based on the above mentioned sanction of rules. ----------

1600. As previously indicated, TGM states that both circumstances (i) have always been external to TGM and irrelevant to affect its right to collect the price pending payment by YPF under the Transportation Service Agreement; and (ii) have always constituted YPF risks. The fact that YPF, AESU and Sulgás have never requested TGM consent to the Complementary Agreements confirms that they also considered that the problem among them was external to TGM. ----------

1601. TGM states that the Complementary Agreements affected TGM, which constitutes a breach by YPF, AESU and Sulgás of TGM right under section 18.4 of the Gas Supply Agreement. According

[265] Section 18.4 of the Gas Supply Agreement states that: “All modifications to this AGREEMENT and its annexes shall arise from proposals made in writing and expressly accepted by the PARTIES and PARTICIPANTS, as long as they affect PARTICIPANTS”.----------

to TGM, the introduction of new obligations and rights under the Complementary Agreements and the modification of the previously existing rights and obligations under the Gas Supply Agreement caused the general and systemic alteration of the Gas Supply Agreement, which TGM deems as "general disorder" which affected TGM. ----------

1602. Specifically, TGM states that these affectations would derive from four groups of modifications to the Gas Supply Agreement: ----------

a. Modifications to Sulgás obligation to pay YPF for Segment B of Transportation to YPF set forth in sections 16.2.2, 17.2 and related sections of the Gas Supply Agreement;----------

b. Modifications to YPF obligation to pay Sulgás DOP penalty set forth in sections 14.1.2 and related sections of the Gas Supply Agreement;----------

c. Modifications to Sulgás obligation to pay YPF DOP penalty set forth in sections 4.3.1, 4.3.2, 4.3.3 and related sections of the Gas Supply Agreement; and----------

d. Modifications to Sulgás right to establish the termination of the Gas Supply Agreement attributable to YPF for the failure to provide gas set forth in sections 14.2.2(i) and related sections of the Gas Supply Agreement. ----------

1603. In relation to the first group of modifications, TGM states that, in the original Gas Supply Agreement, if YPF invoked its own force majeure event, Sulgás was not forced to pay Segment B of Transportation to YPF (pursuant to sections 16.2.2, 17.2 and related sections of the Gas Supply Agreement), but YPF continued to be bound to pay the Price for the transportation capacity under the Transportation Service Agreement. However, in the 2006 Payment Agreement, YPF, AESU and Sulgás agreed that ----------

"Every MONTH of 2006, 2007, 2008 and 2009, Sulgás shall pay YPF the entire Segment B of Transportation, even in case of an ACT OF GOD OR FORCE MAJEURE EVENT of any of the PARTIES, or for any other reason,(unless AESU or Sulgás consider that they are not obliged to pay Segment B of Transportation for causes attributable to TGM or TGN, notifying YPF about their position and, as a consequence, YPF shall not pay Segment B of Transportation to TGM) and regardless of whether YPF has confirmed the nominations and/or provided the Gas for any reason (notwithstanding the above-mentioned provisions on the causes attributable to TGM or TGN)". (Section 4 of the Payment Agreement). ----------

1604. According to TGM, this provision added a new obligation to Sulgás in relation to YPF, which TGM calls "reimbursement obligation", through which Sulgás shall reimburse YPF the amounts that YPF should pay, in any case, to TGM under the Transportation Service Agreement, even

when Sulgás did not have this obligation under the Gas Supply Agreement. TGM states that this new reimbursement action is critical in this arbitration since: ----------

a. YPF has asserted against TGM an alleged "Importer's arrears" based on Sulgás breach of this reimbursement obligation to be exempted from the payment of the Price of the reserve capacity under the Transportation Service Agreement and the Irrevocable Contributions. ----------

b. The sole obligation that AESU could attempt to hold in its letter dated September 15, 2008 was this reimbursement obligation, since, as YPF had invoked its own force majeure event under the Gas Supply Agreement, all remaining obligations of the Parties were suspended. ----------

c. AESU alleged non-compliance with this new reimbursement obligation was what caused YPF suspension to provide gas as from December 4, 2008. ----------

1605. In relation to the second group of modifications, TGM states that, through section 7.1 of the 2004 First Conflict Resolution Agreement and section 4.1 of the 2006 Supplementary Agreement, YPF, AESU and Sulgás modified section 14.1.2.1 of the Gas Supply Agreement in at least two ways: ----------

a. They modified the compensation amount due by YPF for DOP penalty set forth in the Gas Supply Agreement at 150% of the Commodity Price; and ----------

b. YPF expressly assumed the obligation to pay DOP penalty even under an act of God or force majeure event under the Gas Supply Agreement. ----------

1606. TGM notes that these modifications would be effective during the years 2006, 2007, 2008 and 2009, that is to say, during the entire period claimed by TGM. ----------

1607. According to TMG, this YPF new obligation is also critical for this arbitration since its non-compliance by YPF has been invoked by AESU to invalidate not only the Complementary Agreements but also the Gas Supply Agreement. This proves that these modifications do not stop causing effects in relation to YPF-AESU-Sulgás, but project their consequences on the whole Gas Supply Agreement, affecting also the Participants, who never accepted said Complementary Agreements. TGM states that, in case this modification had not existed, as YPF invoked its own force majeure event, the DOP penalty invoked by AESU and Sulgás to terminate the Gas Supply Agreement could not have been accrued. Therefore, TGM states that the breach of the Complementary Agreements determined, according to YPF, AESU and Sulgás, the termination of the Gas Supply Agreement. ----------

1608. In relation to the third group of modifications, TGM states that through section 5.1 of the 2004 First Conflict Resolution Agreement, YPF, AESU and Sulgás modified sections 4.3.1, 4.3.2 and

4.3.3 of the Gas Supply Agreement, establishing that during the "Periods" (winter period) of the years 2005, 2006, 2007, 2008 and 2009, the TOP penalty would not be accrued even if Sulgás failed to nominate gas. ----------

1609. As regards the fourth group of modifications, TGM states that, through sections 7.4 and 10 of the 2004 First Conflict Resolution Agreement and section 10 of the Supplementary Agreement, AESU and Sulgás waived (during the years 2005, 2006, 2007, 2008 and 2009) the recording of any day of YPF gas supply deficiency for the purposes of Section 14.2.2 (i) of the Gas Supply Agreement (which established Sulgás right to terminate the Agreement for this reason), and also waived to the right to terminate the Gas Supply Agreement under the terms of section 14.2.2 (i) of said Agreement. TGM states that this modification is relevant for this Arbitration because YPF invokes it to state that the early termination of the Gas Supply Agreement established by AESU has been unlawful, among other reasons, for the infringement of Section 7.4 of the 2004 First Conflict Resolution Agreement.----------

1610. Additionally, in its Closing Arguments, TGM states that, as a consequence of the Complementary Agreements, the Gas Supply Agreement became non-permanent, that is to say, not definite (for the creation of winter periods, and because YPF provided gas only when possible or when convenient) (T-AF, ¶¶ 748-749). ----------

1611. According to TGM, all described modifications not only affected the expressly altered rights and obligations, but also vicariously affected other rights and obligations in the Gas Supply Agreement. Particularly, TGM alleges that these modifications determined that: ----------

a. The modification of the grounds for early termination of the Gas Supply Agreement specifically agreed upon by the Parties and all Participants to the Gas Supply Agreement (sections 3.5 and related sections of the Gas Supply Agreement), which permitted the early termination of the Agreement in situations neither included in said agreement nor accepted by TGM, and ----------

b. The modification of the system of liability of the Parties and Participants in relation to TGM for the early termination of the Gas Supply Agreement agreed upon by the Parties and all the Participants to said agreement (sections 14.2.1, 14.2.2, 14.2.5 and 14.2.6 of the Gas Supply Agreement), which makes it impossible to determine this liability for early termination pursuant to the rules agreed with TGM. ----------

1612. Therefore, TGM states that its right not to be affected by the modifications to the Gas Supply Agreement made without its express and written consent set forth in section 18.4 of the

Gas Supply Agreement was infringed. Specifically, TGM indicates that this infringement was stated through:----------

a. The filing of defenses to TGM claims. Particularly, YPF has filed against TGM complaint the defense that its obligation to pay the Price of the Transportation Service Agreement was suspended by the alleged "Importer's arrears" arising from AESU and Sulgás reimbursement obligation created under the 2006 Payment Agreement.----------

b. The filling of claims, through complaints or counterclaims, against TGM. According to TGM, all YPF claims in this arbitration are grounded on the Complementary Agreements. Pursuant to TGM; YPF has stated that the termination of the Gas Supply Agreement by the Importer was illegitimate for the following reasons, among others: (i) the Importer invoked a non-existing debt of DOP penalty, whose legitimacy may arise from the Complementary Agreements; (ii) the Importer had waived in the Complementary Agreements to terminate the Agreement based on the failure to provide gas; (iii) in the Complementary Agreements, the Importer assumed the obligation not to terminate the Gas Supply Agreement before the existence of a force majeure event invoked by YPF was determined; and (iv) the Complementary Agreements implied the adoption of a binding practice among the Parties designed to prevent the early termination of the Gas Supply Agreement. ----------

c. The early termination of the Gas Supply Agreement. TGM states that it only tolerated the early termination of the Gas Supply Agreement in section 3.5 of the Gas Supply Agreement based on a legitimate statement (i) of one of the Parties (that is to say, YPF or Sulgás) and (ii) duly based on one of the objective grounds expressly set forth in sections 14.2.1 and 14.2.2 of the Gas Supply Agreement. In this case, the termination of the Gas Supply Agreement was decided by AESU (a Participant) and not by Sulgás, based on the non-compliance with an obligation which did not existed in the original Gas Supply Agreement (YPF obligation to pay DOP even upon YPF invocation of its own force majeure event, created through the Complementary Agreements). -----

d. The frustration of the application of the system of liability in favor of TGM set forth in sections 14.2.1, 14.2.2, 14.2.5 and 14.2.6 of the Gas Supply Agreement. According to TGM, the systemic alteration of the Gas Supply Agreement generated by the Complementary Agreement causes that the Parties and Participants liability arising from the early termination cannot be determined pursuant to the rules agreed upon with TGM, since this liability shall be "randomly" borne by those who, pursuant to the original rules agreed upon with TGM, were not liable, and, on the

other hand, being others released from any liability when, applying the original rules, they would have been held liable in relation to TGM. ----------

1613. TGM points out that none of the Complementary Agreements was executed by Petrobras Distribuidora, other Participant to the Gas Supply Agreement, which based on the assignment of rights from Petrobras to Sulgás became liable and assumed joint and several liability as co-debtor of Sulgás obligations (section 19.2 and 19.3 of the Gas Supply Agreement). TGM alleges that it never accepted to be creditor of Sulgás without this joint and several bond of Petrobras Distribuidora. If Petrobras Distribuidora refuses this joint and several bond stating that the Gas Supply Agreement has been modified without its consent, this will affect TGM. TGM states that YPF, AESU and Sulgás shall prove that this cannot happen. TGM states that on June 8, 2010, TGM requested the incorporation of Petrobras Distribuidora to this arbitration acting as joint and several guarantor of Sulgás, but this request was dismissed both by YPF and AESU and Sulgás (through letters dated June 16, 2010). TGM alleges that this defense shall be construed as contrary to YPF interest. ----------

1614. As an answer to YPF allegations, TGM states the following main objections: ----------

a. TGM specifies that its position shall not be that the Gas Supply Agreement cannot be modified without its consent, but that these modifications cannot affect TGM. TGM adds that even without section 18.4, the Parties and Participants could modify their own rights and obligations; the purpose of this section was to establish that these modifications (of the rights and obligations of the intervening Parties and Participants) could not affect the non-intervening Participants. ------

b. TGM explains that it did not object to the Complementary Agreements before its arbitration complaint, since, while these modifications (as well as their related controversies) remain within the scope of the legal relationship which connects YPF, AESU and Sulgás, the damage that TGM could suffer remained at a potential level. But, when these modifications “exceed” this bilateral relationship between YPF and AESU/Sulgás and start to “affect” TGM, damages are caused to TGM. ----------

c. TGM adds that the fact that YPF has hired TGM to make it participate in the Complementary Agreement proves that they involved TGM, and the fact that TGM has refused to participate only confirms that TGM refused to be affected by said agreements. ----------

d. TGM insists on the importance of the Complementary Agreements for the definition of the controversy, since it is evident that neither YPF, nor AESU nor Sulgás expect the controversy to be solved based on the provisions of the original Gas Supply Agreement. ----------

e. TGM denies that the Complementary Agreements have benefited it. YPF has always been directly and unconditionally obliged to pay TGM the price for the reserve capacity under the Transportation Service Agreement. If Sulgás had terminated the Gas Supply Agreement before the date in which Sulgás did it, TGM would have been entitled to collect the compensation for damages from YPF. (TGM is based on the fact that as YPF was under a force majeure event, YPF could not have terminated the Agreement for Sulgás's fault).----------

f. TGM states that the non-enforceability of the Complementary Agreements cannot be the single remedy available, since in some cases, given the nature of TGM affectation, the non-enforceability is neither sufficient nor useful. ----------

1615. As an answer to AESU and Sulgás allegations, TGM states the following main objections: ----

a. Based on AESU and Sulgás allegations that the Complementary Agreements do not affect TGM, the latter affirms that the meaning of "damage" used in section 18.4 of the Gas Supply Agreement does not have the limited effect which AESU and Sulgás want to establish, but it consists of a broad concept including any type of alteration, including not only a direct damage but also any damage which a Participant may experiment as a result of an amendment to the agreement agreed upon by the Parties of the Gas Supply Agreement without its consent. The foregoing takes place not only at the time in which the modification is granted, but also if the "damage" occurs afterwards. The "damage" may also arise from TGM rights under the Transportation Service Agreement as "Related Agreement" pursuant to section 14.2.6 of the Gas Supply Agreement. ----------

b. TGM adds that, even when only YPF would have submitted claims or defenses against TGM, YPF has only "carried out" the modification potentially infringing TGM rights under section 18.4 of the Gas Supply Agreement, and it has only been possible since AESU and Sulgás expressed their consent to execute the modifications to the Gas Supply Agreement. ----------

b. Remedies stated by TGM----------

1616. As a consequence of the indicated non-compliances, TGM states that it has two remedies available, whose joint application is requested to the Tribunal: ----------

a. The non-enforceability against TGM of the Complementary Agreements and their consequences, and----------

b. The remedy of the damages suffered by TGM as a consequence of the infringement of TGM right not to be affected by the Complementary Agreements. ----------

(i) The non-enforceability against TGM of the Complementary Agreements and their consequences ----------

1617. The first remedy requested by TGM consists in depriving of effects the illegitimate affectations originated in the Complementary Agreements and its consequences; such abridgment consists in not considering these agreements and its consequences in relation to the legal relationships which involve TGM in the cases in which said consideration may generate damages or detriment to TGM. That implies the establishment of the broadest and absolute non-enforceability of the Complementary Agreements against TGM as long as they are invoked as the basis of any defense or claim of YPF, AESU or Sulgás against TGM, or they affect TGM in any way. (Legal Opinion of the Prof. Trigo Represas, pages 32-33). ----------

1618. Therefore, TGM requests the Arbitral Tribunal to order the broadest and absolute non-enforceability against TGM of the Complementary Agreements and of their provisions, set forth or agreed upon and their consequences, including, but not limited to: ----------

a. The obligations whether directly or indirectly created through the Complementary Agreements; ----------

b. The modifications, whether directly or indirectly, included through the Complementary and Modification Agreements to the obligations, rights and powers set forth in the Gas Supply Agreement, including the modifications made to the system of early termination and liability for the early termination of the Gas Supply Agreement; ----------

c. The compliance or non-compliance with the obligations directly or indirectly created through the Complementary Agreements and the compliance or non-compliance with the obligations, rights and powers set forth in the Gas Supply Agreement, whether directly or indirectly modified by the Complementary Agreements and their consequences; ----------

d. The disputes between YPF, AESU and Sulgás in relation to the Complementary and Modification Agreements, their scope, their compliance or non-compliance or regarding any of the subjects indicated in the foregoing letters (b) and (c); and ----------

e. The resolution, through any means, of the controversies indicated in the foregoing letter (d). ---

1619. The foregoing, as long as any of the above-mentioned acts, facts, events or subjects are, directly or indirectly, invoked or considered as grounds for any defense or claim of YPF, Sulgás and/or AESU against TGM in this arbitration and/or any form affecting TGM. ----------

(ii) The remedy of the damages suffered by TGM as a consequence of the infringement of TGM right not to be affected by the Complementary Agreements.----------

1620. The second remedy requested by TGM consists in ordering YPF, AESU and Sulgás to remedy all damages, whether present or future, arising from the non-compliances of YPF, AESU and Sulgás with the Gas Supply Agreement when modifying said agreement without TGM consent. -----

1621. According to TGM, YPF, AESU and Sulgás infringements to the Gas Supply Agreement have caused some damages which cannot be remedied through the non-enforceability remedy. Particularly, TGM states that: ----------

a. On the one hand, YPF, AESU and Sulgás consolidated by mutual consent the early termination of the Gas Supply Agreement, even when they argue about their respective liabilities in said regard. TGM states that this consolidation is irreversible, since the Gas Supply Agreement shall not be resumed. ----------

b. On the other hand, YPF, AESU and Sulgás made it impossible to determine who, among them, would have been liable in relation to TGM for the termination of the Gas Supply Agreement for the application of the rules agreed upon with TGM. Since the rules of the original Gas Supply Agreement do not govern anymore the relationship between YPF, AESU and Sulgás it has no sense, and it is impossible, due to YPF, AESU and Sulgás moral turpitude, to attempt to determine the liability for the termination of the Gas Supply Agreement based on the rules agreed upon with TGM. ----------

1622. TGM states that, pursuant to sections 1197, 505, 506, 508, 521, 625, 628, 630, 633, 634 and related sections of the Civil Code, the non-compliance with the obligation not to perform an act set forth in section 18.4 of the Gas Supply Agreement makes YPF, AESU and Sulgás, individually and personally liable to compensate TGM for all the damages arising from said non-compliance. Therefore, YPF along with AESU and Sulgás are individually and jointly liable (in solidum) for said non-compliances with the Gas Supply Agreement and the resulting infringement of TGM rights. As a consequence, YPF, AESU and Sulgás, individually and jointly among them, shall compensate TGM for all the damages caused, as long as said damages have not been fully and effectively remedied by YPF within the framework of the claim filed by TGM against YPF for YPF non-compliance with its obligations under the Transportation Service Agreement (Legal Opinion of Prof. Trigo Represas, pages 30). ----------

1623. TGM dismisses YPF objections to this joint liability. (TGM¬Replication, ¶ 463-480). According to TGM, YPF confuses the system of liability for the early termination of the Gas Supply Agreement set forth in section 14.2 of the Gas Supply Agreement with the system of liability for other breaches of the Gas Supply Agreement. TGM indicates that these systems of liability are

different and independent and they are not excluding. Depending on the non-compliance incurred, one or the other system shall be applied. ----------

1624. In this case, TGM affirms that YPF has incurred in breach of its obligations in relation to TGM under section 18.4 of the Gas Supply Agreement and, therefore, YPF shall compensate TGM for the damages caused by its own and personal breach. This is independent from determining the one responsible for the early termination of the Gas Supply Agreement. This liability is individual and personal, notwithstanding the fact that it may coincide with AESU and Sulgás liability (also individual and personal) for their own non-compliances. ----------

1625. TGM explains that it has not stated that YPF, AESU and Sulgás liability was joint and several but joint. The source of this joint liability is the non-compliance with the obligation not to perform an act assumed under section 18.4 of the Gas Supply Agreement, obligation which has been assumed both by YPF and by AESU/Sulgás, individually. Each Party and Participant assumed its own obligation, even when these obligations have an identical purpose (in this case, not to introduce modifications to the Gas Supply Agreement susceptible to affect a Participant without the consent of the Participant susceptible to be affected). According to TGM, the non-compliance with this obligation by YPF, AESU and Sulgás is a personal non-compliance. As a consequence, the debits generated by said non-compliances are independent, although there is a connection between them as they have the same affected party. That determines that the obligation on each of the breaching parties is joint or indistinct and, as a consequence, TGM may seek the remedy for damages caused by the non-compliance by any of the breaching parties since each of them is liable for its own breach, notwithstanding the reimbursement actions which may be applicable among the breaching parties. ----------

c. YPF, AESU and Sulgás fraudulent non-compliance ----------

1626. TGM states that YPF, AESU and Sulgás non-compliance with the obligation not to perform an act set forth in section 18.4 of the Gas Supply Agreement is "fraudulent" under the terms of section 521 of the Civil Code[266]. TGM indicates that, according to the Argentine books of authority and case law, a "malicious" breach is equivalent to a "fraudulent" breach, applying the consequences of section 506 of the Civil Code[267]. ----------

[266] Section 521 of the Civil Code establishes: "Section 521. If the non-execution of the obligation is malicious, the damages and interest shall also include non-immediate consequences. ----------
In this case, the maximum percentage set forth in the last paragraph of section 505 shall not be applicable.-

[267] Section 596 of the Civil Code establishes: "The debtor is liable in relation to the creditor for the damages and interest caused by fraud in the compliance with said obligation". ----------

1627. TGM explains that, contractually, a fraudulent or malicious breach means the non execution of an obligation with the intention not to comply with it (*dolo in solvendi*). TGM affirms that, in this case, it is evident that YPF, AESU and Sulgás breach is fraudulent, since they entered into the Complementary Agreement voluntarily, knowingly, willfully and freely. Furthermore, YPF has recognized in this arbitration and in related arbitrations that the connection between the different legal relationships arising from the Gas Supply Agreement and the Transportation Service Agreement are "necessary" and "indivisible", which proves that YPF was aware that the modifications introduced into the Gas Supply Agreement would affect all the Parties and Participants, including TGM under the Transportation Service Agreement. ----------

2. YPF Position ----------

1628. YPF states that TGM claim for damages for alleged infringement of section 18.4 of the Gas Supply Agreement is not admissible (Y-MC, ¶¶ 728-789; Y-Replication, ¶¶ 280¬287; Y-Rejoinder, ¶¶ 401-423). ----------

a. There was neither a violation of section 18.4 of the Gas Supply Agreement nor any damage caused to TGM ----------

1629. YPF states that the purpose of section 18.4 of the Gas Supply Agreement was to state that the Parties may sign modification agreements of the latter, even without the express consent of the Participants. This clause would not have been necessary if its purpose had been to restate the principle of *res inter alios acta* set forth in section 1193 [*rectified* 1199] of the Argentine Civil Code. ----------

1630. Therefore, as long as the rights and obligations of the Participants are not affected, the Parties to the Gas Supply Agreement (that is to say YPF and the Importer) may modify the terms and conditions of their bilateral relationship. The Participants accepted this mutual nature of the Gas Supply Agreement when they signed the agreement, and they were aware that said agreement could be modified without their consent (as long as they were not affected). ----------

1631. YPF acknowledges that there existed Complementary Agreements signed by AESU/Sulgás and YPF, to which TGM was not a party, but YPF explains that the partial and temporary modifications of the Gas Supply Agreement agreed upon by AESU, Sulgás and YPF through the Complementary Agreements: (i) exclusively referred to the scope of the bilateral obligations between AESU/Sulgás and YPF as reciprocal parties to the Agreement, and (ii) neither caused damages to TGM nor had an impact on the dispute, but, on the contrary, greatly benefited it. ------

1632. In relation to (i), YPF states that TGM was not part of the Complementary Agreements for the simple reason that these made reference to the bilateral legal relationship between AESU/Sulgás and YPF, without having modified the rights of the other Party or Participant of the Gas Supply Agreement and the clauses of their Related Agreements, including the Transportation Service Agreement. In any case, YPF affirms that when the negotiations which led to the signature of the Complementary Agreements were initiated, YPF included TGM in said conversations, conversely to what TGM argues. However, TGM representatives "always stated that they had no power to negotiate any modification, and in the contractual scheme, the negotiations between AESU/Sulgás and YPF did not imply the changes of the rights and obligations of the carriers". (Testimony of Teodoro Marcó, ¶15). ----------

1633. In relation to (ii), YPF affirms that none of the fourth modifications to the Gas Supply Agreement agreed upon the Complementary Agreements that TGM says that damaged it, is relevant in the decision of the controversy, whether directly or vicariously. ----------

a. Firstly, YPF states that the Importer had to pay the price for Segment B of Transportation regardless of the provisions of the Complementary Agreements. The modification made by the Complementary Agreements in relation to the payment of the transportation even in case of YPF force majeure is irrelevant in relation to TGM, since AESU did not nominate gas from September 2008, and in such a case, Sulgás had to pay the price of the transportation service under the Gas Supply Agreement, even without the modifications introduced in the Complementary Agreements. Therefore, the suspension by the Importer of its obligations on September 15, 2008 constitutes a non-compliance with its obligations under the original Gas Supply Agreement. --------

b. Secondly, YPF affirms that the Parties' agreement that the DOP penalty shall be paid even in the cases of YPF force majeure set forth in the Complementary Agreements was valid only during the Special Periods (that is to say, winter periods). However, the Importer based the termination of the Agreement upon the lack of payment of DOP penalties which correspond to the penalties allegedly accrued outside winter period. Therefore, the agreement set forth in the Complementary Agreements is irrelevant to this dispute. ----------

c. Thirdly, YPF states that the Importer's termination claim is invalid regardless of the modifications to the grounds for termination of the Gas Supply Agreement introduced in the Complementary Agreements. Although in the Complementary Agreements the Importer waived to terminate the Gas Supply Agreement based on the failure to provide gas (section 14.2.2(i) of the Gas Supply Agreement), the Importer based its termination claim on the default in payment

of DOP penalties (section 14.2.2(ii) of the Gas Supply Agreement), obligation which was not modified by the Complementary Agreements for the periods not included in the winter period. ---

d. Finally, YPF indicates that the Complementary Agreements provisions on TOP penalties are not applicable to the resolution of this dispute. ----------

1634. On the contrary, YPF affirms that the Complementary Agreements benefited TGM since said agreements permitted the subsistence of the Transportation Service Agreement for more than four years, which would have been terminated in the year 2004 in case the subsistence of the Gas Supply Agreement had not been maintained as a consequence of the regulatory changes affecting said agreement. ----------

1635. In relation to TGM allegations regarding Petrobras Distribuidora, YPF states that whether Petrobras Distribuidora remains as guarantor of Sulgás obligations even with the modifications agreed upon by the latter is a matter that is not part of the dispute in this arbitration, and that, in any case, it shall be dealt with in other proceeding between TGM, Sulgás and Petrobras Distribuidora. ----------

b. The modifications to the Gas Supply Agreement are binding upon TGM ----------

1636. YPF states that, if any modification of the Parties obligations (YPF and AESU/Sulgás) set forth by the Complementary Agreements is relevant for the determination of the liability for early termination of the Gas Supply Agreement and for the determination of the liability for the breach which caused the termination of the Gas Supply Agreement, said modification would be binding upon TGM. ----------

1637. According to YPF, the Parties to the Gas Supply Agreement may modify the terms and conditions of their bilateral relationship without the Participants consent, as long as they were not affected. The Participants accepted this mutual nature of the Gas Supply Agreement upon its signature by virtue of clause 18.4 of said agreement. Therefore, TGM, acting as Participant, signed a Gas Supply Agreement which may be changed without its consent in relation to those matters which are not incumbent to TGM. Such was the case that the definition of the "Gas Supply Agreement" set forth in the Transportation Service Agreement expressly includes the modifications which said agreement may have[268]. ----------

[268] Section 1.1 of the Transportation Service Agreement defines the Gas Supply Agreement as "the letter offer for the sale of gas, with all its Annexes, made by YPF to Petrobrás and to the Participants dated September 28, 1998 and duly accepted by Petrobrás and the Participants pursuant to the acceptance proceeding herein indicated, as well as the modifications and amendments which may be included at any time pursuant to the Gas Supply Agreement".----------

1638. YPF states that the system of liability agreed upon in the Gas Supply Agreement in case of its termination (which was not modified by the Complementary Agreements) continued to be applicable to TGM. This system of liability alternatively contemplated that the Importer or YPF or a Participant, as the case may be, may be held liable for the payment of all damages for the termination of the Gas Supply Agreement. Depending on the obligation which is not complied with, one or the other one may be held liable. Therefore, TGM was always subject to the consequences of the determination of liability of a possible non-compliance with the Gas Supply Agreement, which would determine the liability for the damages of the termination of the Gas Supply Agreement and the vicarious termination of the Transportation Service Agreement with absolute independence of TGM will. ----------

1639. Since the Complementary Agreements arranged the Parties' rights and did not affect the Participants' rights, YPF states that AESU/Sulgás liability for the termination of the Gas Supply Agreements, and their liability for the damages caused by said termination, including the damages for the vicarious termination of the Related Agreements, is enforceable against TGM, even when it is established that said liability arises from a non-compliance with an obligation established by the Complementary Agreements. ----------

c. Objections in relation to the remedies claimed by TGM ----------

1640. Even if the modifications to the Gas Supply Agreement agreed upon by the Parties to the Complementary Agreements had a negative impact on TGM in any manner not permitted by the Gas Supply Agreement, YPF states that the sanctions set forth by section 18.4 of the Gas Supply Agreement would be the non-enforceability of said provision against TGM. But that does not mean that it constitutes a breach of the Gas Supply Agreement which holds the parties liable for its termination, mainly when their early termination was not caused by the application of the provisions of said Complementary Agreements. ----------

1641. Even if the remedy for the compensation is not admissible, YPF dismisses that its liability and AESU and Sulgás liability is joint and several. By virtue of the regime of the Argentine Civil Code, the joint and several liability is an exception case, which is not presumed and which shall expressly arise from the parties will or from law[269]. The parties' will clearly consist in the determination of a single responsible for the termination of the Gas Supply Agreement and, therefore, it cannot be considered a source of joint and several liability. There is no joint and

[269] YPF states that Section 701 of the Civil Code sets forth that: "For the obligation to be joint and several, it is necessary that the express joint and several liability be stated by unequivocal terms". ----------

several liability between AESU, Sulgás and YPF arising from any law. None of these cases in which the Civil Code, the Commercial Code or special laws set forth the joint and several liability apply to this case. ----------

1642. Based on TGM explanation that it is claiming a joint or *in solidum* liability (and not joint and several liability), YPF also dismisses the existences of this liability. YPF affirms that in solidum or joint obligations are identified for having a subject matter unity and a creditor unity, but different debtors, whose causes are also different and independent among them, and generate diverse debts, different from joint and several liabilities, in which the debt is only one. YPF affirms that this type of liability is only set forth in the Civil Code for only a few and precise cases, among which none is similar to this case. ----------

1643. In this case, YPF observes that TGM understanding seems to be that YPF, AESU and Sulgás are debtors of a single obligation not to perform (not to introduce modifications to the Gas Supply Agreement which affect a Participant, without its consent). However, YPF states that the joint liability for the contractual obligations of two co-debtors with the same reason-source is not set forth, in which case, the provisions established by the parties to the contract shall govern. YPF also states that the parties in the Uruguayana Project expressly agree that the party liable for the termination of the Gas Supply Agreement would be the party who would definitely pay the "damages": that is to say, a global and single liability system. (YPF-Rejoinder, ¶¶ 408-419) ----------

3. AESU and Sulgás Position----------

1644. AESU and Sulgás denied that TGM has been affected by the Complementary Agreements[270] (A/S-Reply Brief, ¶¶ 902-978; A/S-Rejoinder ¶¶ 524-561; A/S-Arguments, ¶¶ 434-446). ----------

1645. AESU and Sulgás state that TGM "expects to participate in a creditor-debtor relationship which is external to TGM" (A/S-Reply Brief, ¶ 942). They state that TGM did not participate in the Complementary Agreements because these agreements did not modify the rights and obligations acquired or incurred in by TGM neither under the Gas Supply Agreement (nor under the Transportation Service Agreement). So, they claim that TGM has not suffered damages. ----------

1646. AESU and Sulgás deny that the Complementary Agreements have modified or affected TGM rights or obligations under the Gas Supply Agreement. Specifically: ----------

---

[270] Although AESU and Sulgás refer to these agreements as "Conflict Resolution Agreements", to facilitate the explanation, the Tribunal shall refer to them as it has been doing up to now, that is to say, as "Complementary Agreements". This word choice shall imply neither a value judgment nor any acknowledgement of these content agreements.----------

a. AESU and Sulgás explain that in those clauses in which the rights already accrued by AESU, Sulgás or YPF are set forth, these companies are doing nothing but dispose of their equity. ----------

b. On the other hand, they indicate that when future decisions on obligations external to TGM are modified (as TOP or DOP penalties), TGM cannot be damaged since these are clauses where TGM is neither creditor nor debtor. ----------

c. AESU and Sulgás also state that when it is decided how they shall bear the payment of the transportation for Segment B, TGM's right to collect the payment of said transportation is not affected. According to AESU and Sulgás, the single decision made is how in the internal relationships between AESU, Sulgás and YPF, they shall compensate each other for said payment. -

d. Similarly, when the provisions through which Sulgás may terminate the Gas Supply Agreement or the provisions which set forth DOP penalty are regulated, the decisions made are about matters which are external to TGM, they do not affect its rights and obligations under the Gas Supply Agreement or the Transportation Service Agreement as well as TGM debtor and creditor under said acts. ----------

1647. In relation to the cases of "damage" claimed by TGM: ----------

a. AESU and Sulgás deny having filed defenses against TGM claims based on the Complementary Agreements. ----------

b. AESU and Sulgás note that they have not filed any action or counterclaim against TGM. ----------

c. In relation to the early termination of the Gas Supply Agreement, AESU and Sulgás asserted that the grounds for termination invoked (default in payment of DOP penalties, breach of the obligation to act as a reasonable and prudent operator and repudiation of the Agreement) were never modified or even mentioned in the Complementary Agreements. Furthermore, they reject that the only reasons for the termination were the ones set forth in section 3.5 of the Gas Supply Agreement, being also available the reasons established in the applicable law. AESU and Sulgás also point out that the termination was decided by Sulgás with the participation of AESU; it was not a decision taken only by AESU. ----------

d. In relation to the established system of liability frustrated, they state that out of the four provisions of the Gas Supply Agreement quoted by TGM, the Complementary Agreements only dealt with subsection (i) of section 14.2.2 and indicate that this section was not mentioned in the termination of the Gas Supply Agreement. AESU and Sulgás also reject TGM allegation that the execution of the Complementary Agreements had altered the Parties and Participants liability.

1648. AESU and Sulgás state that the execution of the Complementary Agreements did not affect TGM. AESU and Sulgás accept that the provisions of said agreements are not enforceable against TGM; therefore, its request related to them is not necessary. But, they state that the execution of these agreements cannot be considered as an infringement of section 18.4 of the Gas Supply Agreement. On the contrary, section 18.4 expressly authorized that said agreements were executed by the parties and in the way they were executed. ----------

1649. Finally, AESU and Sulgás assert that TGM has not suffered damages for the execution of the Complementary Agreements. They state that these agreements were executed as from 2004 to 2006 and TGM never indicated its disagreement nor stated that TGM has suffered damages. In any case, AESU and Sulgás state that the damages now suggested by TGM do not exist and are not even possible. ----------

4. Analysis----------

1650. Section 18.4 of the Gas Supply Agreement states that: ----------

"All modifications to this AGREEMENT and its annexes shall arise from proposals made in writing and expressly accepted by the PARTIES and PARTICIPANTS, as long as they affect PARTICIPANTS". -

1651. TGM states that this provision grants the right not to be affected by modifications to the Gas Supply Agreement agreed upon by the Parties and/or the other Participants without TGM written and express consent. TGM also states that this right, on the other hand, has an obligation not to perform imposed on the Parties and Participants consisting in not introducing modifications to the Gas Supply Agreement affecting TGM without the TGM express and written consent. ----------

1652. TGM states that YPF, AESU and Sulgás infringed this obligation not to perform when the Complementary Agreements were executed without TGM express and written consent. According to TGM, the Complementary Agreements affected its rights as previously described. TGM states that the infringement of this obligation not to perform enables TGM to the non-enforceability of the Complementary Agreement as well as to be compensated for the damages caused in case the non-enforceability is not sufficient as remedy. ----------

1653. YPF, AESU and Sulgás refused to have infringed this provision. They state that through the Complementary Agreements they only disposed of their rights and that these modifications did not affect TGM. In any case, in those cases in which TGM rights could have been affected, YPF, AESU and Sulgás state that the appropriate remedy would be the non-enforceability of the Complementary Agreements, and not the compensation for damages. ----------

1654. According to the Tribunal, section 18.4 of the Gas Supply Agreement imposes on the Parties and Participants an obligation to perform an act, consisting in the compliance of some requirements to modify the Gas Supply Agreement and its annexes. Specifically, section 18.4 establishes that all modifications "shall arise from proposals made in writing and expressly accepted by the PARTIES and PARTICIPANTS, as long as they affect PARTICIPANTS". As the Gas Supply Agreement is a multilateral agreement whose parties have different rights and obligations (Parties and Participants), the purpose of this provision is to permit the modifications to the Gas Supply Agreement as long as there is consent among the affected Parties and Participants; said consent shall be in writing and expressly stated. On the contrary, section 18.4 of the Gas Supply Agreement does not require the consent of the Parties and Participants not affected by said modifications. ----------

1655. It is a general principle of the agreements, expressly adopted by Argentine law, that the agreements cannot be enforceable against third parties who have not participated in said agreements (*res inter alias acta*)[271]. Section 18.4 of the Gas Supply Agreement confirms this general rule in the context of a multilateral agreement. Therefore, the Complementary Agreements are not enforceable against TGM. ----------

1656. But, one thing is to determine that the Complementary Agreements are not enforceable against TGM and another thing is to determine whether the obligation set forth in section 18.4 of the Gas Supply Agreement has been infringed, leading to a compensation for damages. According to its own terms, for the provision to be infringed in relation to TGM, the latter must have been "affected" by the Complementary Agreements. TGM states that the damage has been expressed through (i) the filing of defenses to TGM claims; (ii) the filling of claims, through complaints or counterclaims, against TGM (iii) the early termination of the Gas Supply Agreement in a way not agreed upon by TGM, and (iv) the frustration of the application of the system of liability in favor of TGM set forth in sections 14.2.1, 14.2.2, 14.2.5 and 14.2.6 of the Gas Supply Agreement. ---------

[271] Indeed, section 1199 of the Argentinean Civil Code establishes that "the agreements can neither be enforceable against third parties not be invoked but in the cases set forth by section 1161 and 1162". Furthermore, section 1161 establishes that "no one may enter into an agreement on behalf of a third party, without the latter's consent, or with its representation governed by law". The agreement entered into on behalf of a third party, with no authorization or legal representation, shall not be valid and shall not bind any party. The agreement shall be valid if the third party expressly ratifies or executes the agreement". Section 1162 states that "the ratification performed by a third party on behalf or on interest of whom the agreements is entered into causes the same effects as the prior authorization and entitles said party to enforce the agreement".----------

1657. The Tribunal does not coincide with TGM broad construction of the term "damage" [In Spanish: *afectación*]. TGM would be "affected" by the Complementary Agreements only if they modify TGM rights or obligations under the Gas Supply Agreement or the Transportation Service Agreement, preventing the latter from being compensated. Therefore, the filling of defenses against TGM claims in this arbitration, or the claims against TGM may only affect TGM as long as they are successful in modifying TGM rights under the Gas Supply Agreement and preventing TGM from being compensated (notwithstanding TGM right to request the payment of the costs of this arbitration). Similarly, the early termination of the Gas Supply Agreement, as well as the alleged "frustration" of the system of liability set forth therein may only affect TGM as long as they prevent TGM from exercising its right to be compensated for damages which, in the absence of the Complementary Agreements, would have corresponded to TGM in case of the early termination of the Gas Supply Agreement. ----------

1658. Finally, the sanction for non-compliance with the obligation set forth in section 18.4 of the Gas Supply Agreement consists, firstly, in the non-enforceability of the modifications to said Agreement carried out without TGM consent, as long as said modifications have affected the latter. The compensation for damages shall be sustained only when the modification has caused damages to TGM and as long as the other civil liability requirements are complied with. ----------

1659. In this case, the Tribunal considers that none of the modifications to the Gas Supply Agreement agreed upon by YPF, AESU and Sulgás in the Complementary Agreements have affected TGM rights in the sense established in section 18.4 of the Gas Supply Agreement. ----------

1660. In relation to TGM allegation that the modifications agreed upon in the Complementary Agreement have caused the filing of the defenses against TGM claims in this arbitration, TGM has identified an specific defense which may arise (according to TGM) from the Complementary Agreements. Indeed, according to TGM, YPF may have filed against TGM complaint for the payment of the Price of the Transportation Service Agreement the defense that its obligation to pay the Price was suspended by an alleged "Importer's default" arising from AESU and Sulgás reimbursement obligation created under section 4 of the Payment Agreement. However, based on the above-mentioned reasons, the Tribunal decided this matter based on the terms of the original Gas Supply Agreement and has decided that YPF owes TGM the Price of the Transportation Service Agreement and the Irrevocable Contributions during the entire Relevant Period. Therefore, the Complementary Agreements have not affected TGM right to collect the

amounts accrued under the Transportation Service Agreement and the Memorandum of Agreement, as YPF is held liable for any damage caused to TGM[272]. ----------

1661. In any case, the Tribunal agrees with TGM that the Payment Agreement is not enforceable against TGM and cannot affect its right to request YPF to pay the Price of the Transportation Service Agreement under the conditions set forth in said Agreement. ----------

1662. In relation to TGM allegation that the modifications agreed upon in the Complementary Agreements may have led to the claims filed against TGM in this arbitration, TGM position is that all the reasons through which YPF states that the termination of the Gas Supply Agreement by the "Importer" was illegitimate are based on the agreements set forth in the Complementary Agreements. As TGM claims to have been affected by the claims filed against it, it is important to specify to which YPF claims TGM refers to determine its allegation scope. The Tribunal considers that TGM refers to YPF claim in this arbitration requesting that the vicarious termination of the Transportation Service Agreement carried out by YPF (based on the previous termination of the Gas Supply Agreement "for the Importer's fault") is declared valid, and that, on the contrary, that the termination of the Transportation Service Agreement carried out by TGM is declared untimely. However, the Tribunal majority has determined that the termination of the Gas Supply Agreement was caused by YPF breaches (particularly, the repudiation of the Agreement), which invalidated the vicarious termination of the Transportation Service Agreement carried out by YPF. The Tribunal has also decided that the termination of the Transportation Service Agreement by TGM was valid. Therefore, TGM rights have not been affected and YPF claim against TGM lacks grounds. ----------

1663. Regardless of the fact that the only reason for the termination of the Gas Supply Agreement which may be relevant for TGM is the one that the Tribunal considers duly grounded (that is to say, the repudiation of the Gas Supply Agreement by YPF), the Tribunal has also considered the other TGM allegations on YPF claim basis. The Tribunal conclusion regarding this matter is that TGM is wrong when it asserts that all the reasons expressed by YPF alleging that the termination of the Gas Supply Agreement by the "Importer" was illegitimate are based on the

[272] In relation to TGM allegation that the Complementary Agreements permitted YPF to file the defense of the Payment Agreement, the Tribunal states that YPF argued on its Opening Brief that its defense was based on the terms of the original Gas Supply Agreement. Although in the pleadings prior to this procedural stage YPF could have filed as a defense the obligations assumed by AESU and Sulgás in the Payment Agreement, in this procedural stage, YPF waived to file this defense against TGM. The financial consequences of this conduct may be considered upon the determination of the costs of this arbitration.---

agreements set forth in the Complementary Agreements. During this proceeding, it has been proved that: ----------

a. The DOP penalty debt invoked by AESU and Sulgás to terminate the Agreement arose from the failure to provide gas outside the winter period, whose source was established in the original Gas Supply Agreement and not in the Complementary Agreements. The other modifications established by YPF, AESU and Sulgás in the Complementary Agreements in relation to the obligation to pay DOP penalties (such as the establishment of annual DOP limits or penalty discharges) did not prevent said debt accrual. Therefore, with or without Complementary Agreements, Sulgás would have been entitled to bill said debt. ----------

b. Although it is true that, in the Complementary Agreements, AESU and Sulgás had waived to terminate the Gas Supply Agreement based on the failure to provide gas, AESU and Sulgás terminated the Gas Supply Agreement based on other YPF breaches (default in payment of DOP penalty, failure to act as a reasonable and prudent operator and repudiation of the Agreement). The Tribunal majority established that the reason of the repudiation invoked by AESU and Sulgás was duly grounded, stating that the Gas Supply Agreement was duly terminated for said reason. --

c. The Tribunal has determined that in the Complementary Agreements AESU and Sulgás did not condition their right to terminate the Gas Supply Agreement to a prior determination that a force majeure event invoked by YPF was duly grounded. ----------

d. The Tribunal also decided that the negotiation and execution of the Complementary Agreements did not create a binding practice among YPF, AESU and Sulgás to prevent AESU and Sulgás from terminating the Gas Supply Agreement. ----------

1664. TGM also states that the modifications set forth in the Complementary Agreements vicariously modified the grounds of the early termination of the Gas Supply Agreement. Specifically, TGM states that it only tolerated the early termination of the Gas Supply Agreement (section 3.5 of the Gas Supply Agreement) based on a legitimate statement (i) of one of the Parties (that is to say, YPF or Sulgás) and (ii) with basis duly grounded on one of the objective grounds expressly set forth in sections 14.2.1 and 14.2.2 of the Gas Supply Agreement. In this case, TGM states that the termination of the Gas Supply Agreement was decided by AESU (a Participant but not a Party to the Gas Supply Agreement) and based on the non-compliance with an obligation which did not exist in the original Gas Supply Agreement (YPF obligation to pay DOP even upon YPF invocation of its own force majeure event, created through the Complementary Agreements). ----------

1665. There is no discussion about the fact that the termination was decided by Sulgás (with AESU participation, which acted as agent). Therefore, this TGM allegation shall be dismissed. In any case, AESU participation does not arise from the Complementary Agreements. ----------

1666. In relation to the abovementioned modification of the grounds for early termination of the Agreement, the only reason which may be important to TGM is the reason through which the Tribunal considered the termination as grounded (that is to say, the repudiation of the Agreement). Notwithstanding the foregoing, it is not true that AESU and Sulgás have terminated the Agreement based on a ground created in the Complementary Agreements. The DOP penalty debt invoked by AESU and Sulgás to terminate the Agreement arose from the failure to provide gas outside the winter period and therefore, its source was in the original Gas Supply Agreement. The other grounds invoked by AESU and Sulgás were not modified nor even mentioned in the Complementary Agreements. ----------

1667. In this case, the Tribunal dismisses TGM allegation in the sense that it may have been affected by these vicarious modifications to the grounds for early termination of the Gas Supply Agreement. According to the system of liability established in section 14.2 of the Gas Supply Agreement, the party responsible for the early termination of the Gas Supply Agreement is bound to compensate the non-responsible Parties and Participants for the damages which may be caused by said early termination. Therefore, it is not important for TGM the grounds for the early termination or if said grounds have been modified, unless TGM right to be compensated by virtue of this termination is modified. This right has not been modified and therefore, TGM is entitled to be compensated by the party responsible for the termination of the Gas Supply Agreement, that is to say, by YPF. This matter is analyzed in Part IX.B below. ----------

1668. Finally, TGM states that the Complementary Agreements frustrated the system of liability in favor of TGM set forth in sections 14.2.1, 14.2.2, 14.2.5 and 14.2.6 of the Gas Supply Agreement. According to TGM, the systemic alteration of the Gas Supply Agreement caused by the Complementary Agreements establishes that the Parties and Participants liability for the early termination cannot be determined based on the rules agreed upon with TGM. This liability shall be “randomly” borne by those who, pursuant to the original rules agreed upon with TGM, were not liable. On the other hand, others who would have been held liable in relation to TGM applying the original rules may be released from any liability. ----------

1669. The Tribunal dismisses TGM allegation. Upon the execution of the Gas Supply Agreement, TGM could not know who would be the party responsible for its possible termination: Any of the

Parties (YPF or Petrobras) or Participants (AESU, Sulgás, TGN or Petrobras Distribuidora) could have been liable and TGM assumed the risk that any of them could be liable. After the right assignment of Petrobrás to Sulgás, TGM also assumed the risk that the party responsible for the termination may be Sulgás as Party, although now having Petrobras Distribuidora warranty. The only situation in which TGM may have been forced to assume a risk to collect not originally assumed would be the case in which (i) the termination was caused by AESU and Sulgás fault and (ii) Petrobras Distribuidora refused to comply with its obligation to assume a joint and several liability for Sulgás obligations based on the modifications set forth in the Complementary Agreements without its consent. But this "damage" to TGM rights is not legally possible since the Tribunal majority has decided that YPF shall bear the responsibility for the termination of the Gas Supply Agreement. ----------

1670. Therefore, the Tribunal decides that the execution of the Complementary Agreements by YPF, AESU and Sulgás did not affect TGM rights. The fact that those Complementary Agreements have been entered into without TGM express and written consent, therefore, did not infringe section 18.4 of the Gas Supply Agreement. ----------

1671. As a consequence of the foregoing, there are no contractual or legal grounds to hold YPF, AESU or Sulgás liable for any compensation. ----------

1672. This conclusion does not prevent, pursuant to the general rules, the Complementary Agreements from being non-enforceable against TGM, which is decided by the Tribunal for the purposes of this arbitration. ----------

B. TGM ACCESORY CLAIM AGAINST YPF FOR THE EARLY TERMINATION OF THE GAS SUPPLY AGREEMENT----------

1. TGM Position----------

1673. Subsidiary to TGM first claim against YPF under the Gas Supply Agreement, and in case the Tribunal decides that the modifications made by YPF, AESU and Sulgás to the Gas Supply Agreement through the Complementary Agreements and its consequences shall not constitute a breach of the provisions of sections 18.4 and related sections of the Gas Supply Agreement, TGM requests YPF the compensations for the early termination of the Gas Supply Agreement (T-MD, ¶¶60-72; ¶¶593-643; T-Replication, ¶¶286-344; T-AF, ¶¶677¬686)). ----------

1674. This claim considers two alternative situations, based on how the Tribunal decides on the dispute between YPF and AESU/Sulgás in relation to the liability for the termination of the Gas Supply Agreement. ----------

a. In case the Tribunal dismisses YPF claim that the termination of the Gas Supply Agreement was based on the "Importer" breach and sustains AESU and Sulgás claim that the termination of the Gas Supply Agreement was based on YPF breach, TGM requests that YPF be declared liable for the early termination of the Gas Supply Agreement, and that YPF be ordered to compensate TGM, in its capacity as Participant to the Gas Supply Agreement, for the damages that the early termination of the Gas Supply Agreement has caused or may cause in the future to TGM, based on section 14.2.2 and related sections of the Gas Supply Agreement. ----------

b. In case the Tribunal sustains YPF claim and states that the termination of the Gas Supply Agreement performed by the "Importer" was illegitimate and, therefore, AESU and/or Sulgás were responsible for said termination, TGM requests that YPF be also held liable for the termination of the Gas Supply Agreement for having agreed to the termination determined by AESU and Sulgás, in violation of sections 3.1, 3.5, 18.4 and related section of the Gas Supply Agreement. In this case, YPF shall be individually (for its own breach) and jointly (in solidum) liable with AESU and Sulgás and which is the subject matter of TGM Cross-Claims against AESU and Sulgás. ----------

1675. Since the majority of the Tribunal has sustained AESU and Sulgás claim and has determined that the liability for the termination of the Gas Supply Agreement corresponds to YPF, the Tribunal shall only deal with TGM allegations in relation to the first alternative. ----------

1676. TGM alleges that in case, as affirmed by AESU and Sulgás, the termination of the Gas Supply Agreement is caused by YPF non-compliance with its obligations under this agreement, section 14.2.2 of the Gas Supply Agreement establishes that YPF shall compensate TGM "for all damages that said termination for non-compliance generates" to TGM. ----------

1677. TGM additionally states that the obligation assumed by YPF before TGM to remedy "all damages" caused by the early termination of the Gas Supply Agreement includes: ----------

a. All invoices TGM claims YPF in this arbitration for the Price of the Transportation Service Agreement accrued during the Relevant Period (as set forth in Part VIII.A above), plus interest as from the date of the default payment of each of those obligations to the date of actual payment, plus the comprehensive compensation for all damages suffered by TGM or that TGM may suffer

in the future for YPF non-compliance with its obligations under the Transportation Service Agreement, as long as they have not been remedied through the claim for interest. ----------

b. All Irrevocable Contributions owed by YPF to TGM under the Memorandum of Agreement during the Relevant Period (as set forth in Part VIII.A above), plus interest as from the date of the default payment of each of those obligations to the date of actual payment, plus the comprehensive compensation of all damages suffered by TGM or that TGM may suffer in the future for YPF non-compliance of its obligations under the Memorandum of Agreement, as long as they have not been remedied through the claim for interest. ----------

c. All damages that the early termination of the Transportation Service Agreement and of the Memorandum of Agreement have caused or may cause in the future to TGM, plus its interest as from the date of early termination of said agreements and to the date of actual payment, whose amount determination shall be established during the second phase of this arbitration. ----------

d. All damages that YPF fraudulent non-compliance with its obligations under the Gas Supply Agreement have caused or may cause in the future to TGM, plus its interest as from the date of non-compliance and to the date of actual payment, and whose determination and calculation shall be established during the second phase of this arbitration. TGM states that these damages shall be remedied as long as they have not been totally and actually paid by YPF within the framework of the other claims made by TGM in other categories of this arbitration. ----------

2. YPF Position ----------

1678. Since the majority of the Tribunal has sustained AESU and Sulgás claim and has determined that the liability for the termination of the Gas Supply Agreement corresponds to YPF, the Tribunal shall only deal with YPF allegations in relation to the first alternative of early termination of the Gas Supply Agreement suggested by TGM. ----------

1679. As indicated in the different parts of this Award, YPF denies that the AESU and Sulgás termination was performed by its own non-compliance with the Gas Supply Agreement. In relation to the non-compliances specifically alleged by TGM, YPF denies having failed to comply with section 15.5 of the Gas Supply Agreement for not having deposited in escrow the amount of DOP penalty claimed by AESU and Sulgás (T-Replication, ¶¶ 312-322). ----------

1680. However, in consistency with its allegations on the unified system of liability under the Gas Supply Agreement, YPF does not deny that, in case this Tribunal decides that YPF is liable for the termination of the Gas Supply Agreement, YPF shall be liable before TGM for the damages caused by this early termination. ----------

3. Analysis----------

a. The liability system of the Gas Supply Agreement ----------

1681. YPF has consistently held during this arbitration that the Parties and Participants of the Gas Supply Agreement agreed upon a unified system of liability (established in section 14.2 of the Gas Supply Agreement and related sections), by virtue of which the termination of the Gas Supply Agreement shall be necessarily reflected, in relation to liability, on the other Related Agreements (including the Transportation Service Agreement with TGM). Specifically, YPF affirms that the fault of one or more Parties and/or Participants in the termination of the Gas Supply Agreement made them responsible for the recovery of the damages suffered by the other Parties and Participants, including those suffered by the impossibility of continuity of their Related Agreements. ----------

1682. Although TGM denied the admissibility of the termination of the Transportation Service Agreement carried out specifically by YPF, TGM has accepted, in its complaints against YPF for its liability under the Gas Supply Agreement (and, subsidiarily, in its complaints against AESU and Sulgás), that the Party or Participant responsible for the termination of the Gas Supply Agreement is liable for the damages suffered by the other Parties and Participants. ----------

1683. The Tribunal confirms that the Gas Supply Agreement establishes a liability system, according to which the Party or the Participant held responsible for the termination of the Gas Supply Agreement shall be held liable before the other Parties or Participants which have not been liable. The foregoing is confirmed by the following provisions of the Gas Supply Agreement: -

a. Section 14.2.1 of the Gas Supply Agreement, which establishes that if YPF exercises its right to terminate the Agreement based on Petrobras (currently, Sulgás) breach, "PETROBRAS or the corresponding PARTICIPANT pursuant to the terms of Section 14.2.5 and 14.2.6 […] shall compensate YPF and, if applicable, PETROBRAS and/or other PARTICIPANTS for all the damages that said termination for breach of the agreement has generated". ----------

b. Section 14.2.2 of the Gas Supply Agreement, which establishes that if Petrobras (currently Sulgás) exercises its right to terminate the Agreement based on YPF breach, "YPF or the corresponding PARTICIPANT pursuant to the terms of Section 14.2.5 and 14.2.6 […] shall compensate PETROBRAS for all the damages that said termination for breach of the agreement has generated to PETROBRAS and/or the other PARTICIPANTS". (Emphasis added). ----------

c. Section 14.2.5 of the Gas Supply Agreement, which states that: ----------

"None of the PARTIES shall be responsible before the other PARTY and/or the other PARTICIPANTS for the termination of the AGREEMENT carried out pursuant to the terms of Sections 14.2.1, 14.2.2 and 14.2.3, when the termination is caused by acts or omissions performed by a PARTICIPANT (the "BREACHING PARTICIPANT") whose purpose was to place a PARTY under an objective situation of arrears. Said objective situation of arrears includes any breach of a PARTY which causes the termination of the AGREEMENT, but which is not a voluntary breach of said PARTY. In such a case, the damages caused to the PARTIES for said termination shall be directly and exclusively compensated by the BREACHING PARTICIPANT against whom the PARTIES shall file the appropriate actions, being the PARTIES among them and in relation to the PARTICIPANTS released from any liability". ----------

d. Section 14.2.6 of the Gas Supply Agreement, which states that: ----------

"In the cases of termination of the AGREEMENT which, under the terms of Section 14.2.5, arise from acts or omissions performed by the BREACHING PARTICIPANT, the compensation for damages experienced by the remaining PARTICIPANTS as a result of the termination of the respective RELATED AGREEMENTS (as defined below) derived from the termination of the AGREEMENT, shall be directly and exclusively borne by the BREACHING PARTICIPANT against whom the corresponding actions shall be filed. For the purposes of this Section, the term "RELATED AGREEMENT" indistinctly refers to […] (ii) the TGM FIRM TRANSPORTATION SERVICE AGREEMENT for 2,800,000 of M3/day for the stretch Aldea Brasilera-Uruguayana, […] and (v) any other agreement to be entered into in the future in substitution of some or all of the ones mentioned in (i), (ii), (iii) and (iv). [...] " ----------

1684. Both YPF and TGM have asserted that these sections establish the liability of the breaching Party or Participant for the damages caused by the early termination of the Gas Supply Agreement to the other Parties and Participants, who may directly act against the breaching Party or Participant to file a claim for said damages. The Tribunal confirms said understanding. ----

b. YPF liability in relation to TGM for the early termination of the Gas Supply Agreement ----------

1685. Section 14.2.2 of the Gas Supply Agreement establishes in its relevant part: ----------

"14.2.2) TERMINATION BY PETROBRAS [SULGÁS] ----------

If YPF: ----------

(i) Notwithstanding the compliance with its duty to DELIVER OR PAY (pursuant to section 14.1.1.1), *does not comply with its duty to make the GAS* available by virtue of this AGREEMENT

for a term equal or exceeding sixty (60) consecutive days or seventy five (75) alternate days in a term of one year; or ----------

(ii) notwithstanding the provisions of section 14.1.2.3 above, *does not comply, when necessary, with its duty to pay the outstanding amount for the GAS not available (DELIVER OR PAY)* (provided that YPF does not pay said sum, plus interest, subject to the potential reimbursement or held in escrow pursuant to section 15.5), within one hundred and eighty (180) days after the date of expiration of the corresponding debit note, therefore, in any of the cases, **PETROBRAS {currently Sulgás} may terminate this AGREEMENT** through FORMAL NOTICE to YPF, and ***YPF*** or the PARTICIPANT that may correspond pursuant to the provisions of sections 14.2.5 and 24.2.6 ***shall compensate PETROBRAS {currently Sulgás} for all the damages that such termination for breach may cause to PETROBRAS and/or the PARTICIPANTS ----------***

[...]" ----------

(Emphasis added)----------

1686. Both YPF and TGM agree that this provision establishes that, in case Sulgás exercises its right to terminate the Gas Supply Agreement for YPF non-compliance, the latter shall compensate Sulgás and all the Participants "for all the damages which said termination for breach of the agreement may cause to PETROBRAS and/or to the PARTICIPANTS". ----------

1687. Although this provision refers to two specific grounds for termination (lack of gas provision and lack of payment of DOP penalties), the Tribunal considers that it establishes a general principle which expands YPF liability in case Sulgás terminates the Gas Supply Agreement for other non-compliances attributable to YPF, as long as said non-compliances, pursuant to applicable law, are sufficient to constitute grounds for termination. This liability principle before Sulgás and the Participants (including TGM) is particularly applied in case Sulgás decides to terminate the Gas Supply Agreement as a consequence of YPF guilty repudiation of the non-compliance attributable to the latter. This is consistent with YPF allegation, in the sense that the Gas Supply Agreement establishes a global and single liability system, pursuant to which the responsible for the termination of the Gas Supply Agreement is the one responsible for the payment of the "damages" caused to all the Parties and Participants. This construction consists of the general principle of liability which holds that the breaching party has the duty to remedy all the consequences of its breach. ----------

1688. The Tribunal majority has determined that the liability for the termination of the Gas Supply Agreement is attributable to YPF based on its guilty repudiation of the Gas Supply

Agreement (see Part VII.A *supra*). Therefore, pursuant to section 14.2.2, YPF shall compensate TGM, in its capacity as Participant, for all the damages caused by the termination of the Agreement. ----------

1689. However, the Tribunal has also determined that YPF shall compensate TGM for the damages generated by the termination of the Transportation Service Agreement. Therefore, YPF compensation to TGM under the Gas Supply Agreement shall include the damages caused to TGM for the early termination of the Gas Supply Agreement, as long as said damages have not been compensated by YPF within the framework of its liability for the termination of the Transportation Service Agreement. ----------

C.TGM ACCESORY CLAIM AGAINST AESU AND SULGÁS FOR THE EARLY TERMINATION OF THE GAS SUPPLY AGREEMENT ----------

1690. TGM claim against AESU and Sulgás for the termination of the Gas Supply Agreement is subsidiary to its claim against YPF for said termination. Since the Tribunal has sustained TGM claim against YPF, the Tribunal does not need to deal with the claim against AESU and Sulgás. ------

X. DISPUTE BETWEEN YPF AND AESU/SULGÁS: ISSUES RELATED TO TRANSPORTATION ----------

1691. The Tribunal shall now consider certain claims between YPF and AESU/Sulgás related to transportation. ----------

1692. On the one hand, YPF states that, as from September 15, 2008, AESU and Sulgás failed to pay the price of Segment B of Transportation, which may constitute an infringement of their obligations under the Gas Supply Agreement (modified by the Payment Agreement). AESU and Sulgás hold that they were not responsible for the payment of said amounts, since as from September 15, 2008 they suspended or "kept hold of" the compliance with all their obligations pursuant to law. ----------

1693. On the other hand, AESU and Sulgás state that YPF failed to comply with the Transportation Service Agreements, which constitutes a breach of its obligations under the Gas Supply Agreement. ----------

A.YPF CLAIM FOR THE PAYMENT OF SEGMENT B OF TRANSPORTATION ----------

1. YPF Position ----------

1694. As indicated in Part VIII.A above, YPF states that the Importer was the main obligor to pay the price of Segment B of Transportation to TGM. Although, pursuant to the corresponding

transportation service agreements, YPF was the one which paid the price for the transportation capacity to TGN and TGM carriers, YPF states that the Gas Supply Agreement established a transfer mechanism of this price to the Importer. In this regard, YPF points out that the price paid by the Importer under the Gas Supply Agreement included a component for the gas price and another component for the transportation price, while the Gas Supply Agreement contemplated the filing of a direct collection action by TGM against the Importer. According to YPF, the terms of the Transportation Service Agreement confirmed that the Importer was the main obligor to the transportation price, since YPF payment to TGM of the price of the Transportation Service Agreement depended on the fact that the Importer may have previously paid this component to YPF under the Gas Supply Agreement (section 5.10 of the Transportation Service Agreement). -----

1695. YPF points out that, on September 15, 2008, the Importer suspended the compliance with all of its obligations. As a consequence of this suspension (which YPF considered illegitimate), the Importer stopped paying for Segment B of Transportation to YPF. ----------

1696. Given this situation, pursuant to the condition set forth in section 5.10 of the Transportation Service Agreement, YPF stopped paying the Price of the Transportation Service Agreement to TGM. ----------

1697. In this context, YPF states that it is the Importer who failed to comply with the payment of Segment B of Transportation under the Gas Supply Agreement as from September 15, 2008. It was, as from said non-compliance, that YPF was accused by TGM under the Transportation Service Agreement for the failure to pay the price of transportation under said Agreement. However, as the Importer had failed to pay the price of Segment B of Transportation to YPF under the Gas Supply Agreement, for the application of section 5.10 of the Transportation Service Agreement, YPF states that it has no debt with TGM in relation to the Price of the Transportation Service Agreement. According to YPF, AESU and Sulgás are the ones who shall pay said Price to TGM. ----------

1698. YPF points out that, in the Payment Agreement, the Importer assumed that it would pay YPF for Segment B of Transportation in any case or under any circumstance, even in case of a force majeure event which prevents YPF from exporting gas. Even under the terms of the original Gas Supply Agreement, YPF states that AESU and Sulgás were obliged to pay Segment B of Transportation even if they did not nominate gas (see Part VIII.A *supra*). Therefore, YPF requests that AESU and Sulgás be ordered to pay the invoices claimed by TGM to YPF under the Transportation Service Agreement. ----------

1699. YPF also points out that the Importer incurred in arrears of its payment obligations of Segments A and B of Transportation before September 15, 2008. ----------

a. YPF affirms that between May and August (inclusive), 2005, the Importer interrupted the payment to YPF of Segment B of Transportation (which YPF also paid to TGM) during the months from May to August (inclusive), which made YPF assume a monthly cost of US$ 2,293,142 (approximately US$ 9,000,000 in total) to avoid controversies with TGM. YPF states that as from July 1, 2005, the Importer incurred in arrears of this debt in relation to YPF under the terms of section 14.1.1 of the Gas Supply Agreement, that is the reason why YPF might have been permitted to terminate the Gas Supply Agreement according to section 14.2.1. Based on this accrued debt of AESU in relation to YPF, for the payment of Segment B of Transportation and for an amount of US$ 9,817,923.51, YPF and AESU entered into a Payment Agreement to settle said debt. ----------

b. YPF also alleges that, during almost two years (as from November 2006), the Importer had a debt of US$ 4,063,136.21 for Segment A of Transportation, which was paid some weeks after September 15, 2008. Therefore, YPF affirms that it is not true that the Importer had duly paid all the invoices related to transportation accrued before September 15, 2008. ----------

2. AESU and Sulgás Position----------

1700. AESU and Sulgás dismiss YPF allegation in the sense that they would be the last responsible parties for the payment of the Price of the Transportation Service Agreement (A/S-MC, ¶¶ 838 and ss). According to AESU and Sulgás, YPF obligation was to provide gas at the Point of Delivery. To comply with this obligation, YPF was responsible for the transportation of the gas to said point. For said purpose, YPF entered into both transportation service agreements with TGN and TGM. The fact that the price paid by YPF to carriers was part of the total price that Sulgás shall pay to YPF pursuant to section 13 of the Gas Supply Agreement shall not modify that YPF was obliged to pay the price to TGM and TGN under the Transportation Services Agreement. AESU and Sulgás allege that what was agreed upon by YPF and TGM under the Transportation Service Agreement (including the conditionality alleged by YPF in section 5.10 of the Transportation Service Agreement) is not enforceable against them. ----------

1701. AESU and Sulgás also dismiss YPF allegation that in the Payment Agreement they would have committed to pay all Segment B even in the case of an act of God or force majeure event or non-compliance by YPF. Sulgás was bound under section 4 of the Payment Agreement to pay YPF all Segment B, "even in case of an ACT OF GOD OR FORCE MAJEURE event of any of the parties,

or for any reason whatsoever", but AESU and Sulgás deny that the reference made to "any reason" may include YPF non-compliances. ----------

1702. In this sense, AESU and Sulgás point out that section 507 of the Civil Code of Argentina prohibits the exemption of future fraud when assuming an obligation, and considering that YPF breaches are fraudulent, it cannot be construed that AESU and Sulgás could not have accepted the fraud consequences. Even if YPF breaches were only negligent, it cannot be construed that this provision constitutes an AESU and Sulgás waiver to exercise its rights, since waivers are restrictive, shall be express and are not presumed. Finally, they state that the fact that they have paid all Segment B until September 15, 2008, does not prove, according to AESU and Sulgás, that they have done so for any reason. ----------

1703. In any case, AESU and Sulgás state that, subsequent to the suspension of their obligations under the Gas Supply Agreement, they did not have to pay any amount in relation to Segment B of transportation until YPF does not remedy its breaches. AESU and Sulgás add that they never incurred in default, so this conclusion remains intact. ----------

1704. AESU and Sulgás deny that they have been in default in payment for Segment A of Transportation before September 15, 2008. AESU and Sulgás affirm that they paid the amount claimed by YPF as owed until September 15, 2008, but they expressly subject said payment to potential reimbursement pursuant to section 15.5 of the Gas Supply Agreement (letter dated September 12, 2008 Annex A15/S15), which showed disagreement between debtor and creditor on the credit in question. ----------

3. Analysis----------

1705. In Part VIII.A above, the Tribunal determined that YPF owed the payment of the Price of Segment B of Transportation to TGM under the Transportation Service agreements, and that, therefore, YPF is liable before TGM for the amounts claimed. ----------

1706. That does not prevent, at the same time, AESU and Sulgás from the possibility of being liable for the payment of Segment B of Transportation under the Gas Supply Agreement and the Payment Agreement (see paragraph 1509 and ss. above). YPF does not expressly request that AESU and Sulgás be ordered to pay YPF the price of Segment B of Transportation, but, to the extent that said petition arises from YPF allegations, the Tribunal dismisses it. ----------

1707. It is true that, pursuant to section 4 of the Payment Agreement (set forth in paragraph 1603 above), Sulgás undertakes to pay YPF all Segment B "even in case of an ACT OF GOD OR FORCE MAJEURE EVENT of any of the parties, or for any reason". However, the Tribunal majority

has determined that AESU and Sulgás suspended the compliance with their obligations under the Gas Supply Agreement pursuant to law, exercising the remedy granted by section 71 of the Vienna Convention (see Part VII.A.5 above). This suspension of AESU and Sulgás obligations includes the obligation to pay Segment B of Transportation. Since said suspension extended its effects to the period between September 15, 2008 to the date of the termination of the Gas Supply Agreement, AESU and Sulgás owe no amount to YPF in relation to the price of Transportation of Segment B for this period. ----------

1708. In relation to YPF allegation that AESU and Sulgás may have incurred in arrears of payment of Segments A and B of Transportation before September 15, 2008, YPF complaint for damages is limited to the obligations accrued after September 15, 2008. In any case, YPF does not argue that those amounts were paid (Segment B, accrued on the year 2005, was paid as a consequence of the Payment Agreement, while Segment A ,accrued during the years 2006-2008, was paid on September, 2008, subject to potential reimbursement). Finally, in relation to *exceptio non adimpleti contractus*, the Tribunal majority has determined that AESU and Sulgás had not incurred in arrears of payment of Segment A of Transportation as of September 15, 2008 (see Part VII.A.5 above). ----------

B.BREACH OF THE TRANSPORTATION SERVICE AGREEMENTS ----------

1. AESU and Sulgás Position----------

1709. AESU and Sulgás affirm that YPF obligation to provide gas was complied with by the provision of gas at the Point of Delivery, which requires the gas to be transported to that place. For said purpose, YPF entered into gas Transportation Service Agreements with TGN (Segment A) and TGM (Segment B). (Annexes Y-2, Y-3 and T-I-5). ----------

1710. Pursuant to section 16.1.1 of the Gas Supply Agreement, YPF was responsible for the gas transportation. This is ratified by sections 4.2, 7 and 11 of the Gas Supply Agreement, which set forth that the gas is owned by YPF and any risk of damage or loss of said gas is borne by YPF up to the moment in which it is provided to Sulgás at the Point of Delivery. According to AESU and Sulgás, that means that everything related to the Transportation Service Agreement shall be borne by YPF. As a consequence of that, if for a non-compliance of said agreements, YPF cannot comply with its obligations to provide the gas at the Point of Delivery, YPF is responsible for said non-compliance before AESU and Sulgás under the Gas Supply Agreement. ----------

1711. AESU and Sulgás note that in this arbitration, TGM requests YPF to compensate TGM for the damages caused by the termination of the Transportation Service Agreement, which was terminated by TGM based on YPF breaches. As a result of the termination of the Transportation Service Agreement, YPF could not provide gas at the Point of Delivery. In case TGM allegations are correct, AESU and Sulgás hold that YPF shall be held liable- ----------

1712. AESU and Sulgás also point out that TGN has filed a complaint against YPF before the Courts of Argentina under the TGN Transportation Service Agreement. AESU and Sulgás ensure that said complaint is based on a breach of the Transportation Service Agreement.----------

2. YPF Position ----------

1713. YPF denies being responsible for the breach of the Transportation Service Agreements, in relation to both TGM and to TGN. ----------

1714. In relation to TGM, YPF acknowledges to have failed to pay the invoices of the Transportation Service Agreement as from September 2008, but alleges that it does not constitute a breach of said agreement. YPF position in relation to this issue is summarized in Part VIII.A above, in the context of the dispute with TGM under the Transportation Service Agreement. ----------

1715. YPF briefly alleges that the main obligor to the payment of the price of Segment B of Transportation towards TGM was the Importer. Although it was YPF the one which paid the price for the transportation capacity to TGN and TGM carriers pursuant to the respective transportation service agreement, YPF states that the Gas Supply Agreement established a transfer mechanism of this price to the Importer. According to YPF, the terms of the Transportation Service Agreement confirm that the main obligor to the transportation price was the Importer, since YPF payment to TGM of the price of the Transportation Service Agreement was subject to the condition that the Importer may have previously paid this component to YPF under the Gas Supply Agreement (section 5.10 of the Transportation Service Agreement). ----------

1716. In this context, YPF states that it was the Importer who failed to comply with the payment of Segment B of Transportation under the Gas Supply Agreement as from September 15, 2008. It was, as from said non-compliance, that YPF was accused by TGM under the Transportation Service Agreement for the failure to pay the price of transportation under said Agreement. However, as the Importer had failed to pay the price of Segment B of Transportation to YPF under the Gas Supply Agreement, for the application of section 5.10 of the Transportation Service

Agreement, YPF states that it has no debt with TGM in relation to this matter under the Transportation Service Agreement. ----------

1717. YPF adds that the Transportation Service Agreement was terminated after it was not complied with and terminated the Gas Supply Agreement due to the Importer's fault. YPF affirms that, during the history of the Transportation Service Agreement, YPF had never suspended the payment of Segment B of Transportation in relation to TGM, even when the Importer failed to comply with the payment of Segment B of Transportation during the year 2005[273]. ----------

1718. In relation to Segment A of Transportation and TGN Transportation Service Agreement, YPF acknowledges that there are two disputes between TGN and YPF (before ENARGAS and the Courts of Argentina). However, YPF affirms that the dispute between them is related to the TGN lack of legal feasibility to provide a public transportation service in a continuous and uninterrupted or firm manner and for the total of the hired transportation capacity (2,800,000 m3/day). ----------

3. Analysis ----------

1719. Section 16.1.1 of the Gas Supply Agreement states that: ----------

"YPF shall be responsible before PETROBRAS {later SULGÁS} for the GAS transportation, subject matter of this AGREEMENT, from NEUQUÉN BASIN to the POINT OF DELIVERY, having, for said purpose, to execute and/or keep in force the FIRM TRANSPORTATION SERVICE AGREEMENTS as from the DATE OF THE FIRST NOMINATION and to the termination of the AGREEMENT". ----------

1720. YPF does not argue that this provision places YPF under the responsibility of keeping these Transportation Service agreements in force. However, YPF alleges that it did not fail to comply with said agreements. ----------

1721. In relation to the Transportation Service Agreement entered into with TGM, YPF expressly denies having failed to comply with it. On the contrary, YPF states that TGM did not receive the payment of the Price of the Transportation Service agreement since AESU and Sulgás had not previously paid YPF the price of Segment B of Transportation. The Tribunal understands that YPF

[273] YPF affirms that, on 2005, the Importer had interrupted the payment to YPF of Segment B of Transportation (which YPF also paid to TGM) during the months from May to August (inclusive), which made YPF assume a monthly cost of US$ 2.293.142 to avoid controversies with TGM (approximately US$ 9.000.000 in total). YPF adds that the Importer was in arrears of this debt in relation to YPF under the terms of section 14.1.1 of the Gas Supply Agreement as from July 1, 2005, YPF being able to terminate the Gas Supply Agreement according to section 14.2.1. YPF points out that based on AESU accrued debt in relation to YPF for Segment B of Transportation for the value of US$ 9.817.923,51, YPF and AESU signed the Payment Agreement to establish a stabilization scheme of said debt.----------

allegation is, therefore, that it is not responsible in relation to AESU and Sulgás under section 16.1.1. ----------

1722. The Tribunal decided in Part VIII.A above that YPF failed to comply with the Transportation Service Agreement with TGM. The Tribunal also decided that TGM duly terminated the Transportation Service Agreement for YPF non-compliances. Therefore, YPF is liable before AESU and Sulgás under section 16.1.1 of the Gas Supply Agreement. However, the Tribunal observes that AESU and Sulgás terminated the Gas Supply Agreement through letter dated March 20, 2009 (valid as of March 25, 2009, date in which YPF was given notice about said termination). On the other hand, the termination of the Transportation Service Agreement by TGM became valid as of April 7, 2009. Therefore, as of the date of termination of the Transportation Service Agreement (event which may cause YPF liability under section 16.1.1 of the Gas Supply Agreement), the Gas Supply Agreement has already been terminated. As a consequence, although YPF is liable for the breach of the Transportation Service Agreement before TGM, the Tribunal decides that YPF is not liable before AESU and Sulgás for the non-compliance with section 16.1.1 of the Gas Supply Agreement. ----------

1723. As regards the Transportation Service Agreement with TGN, AESU and Sulgás shall prove that YPF failed to comply with this agreement and that said non-compliance causes YPF liability under section 16.1.1 of the Gas Supply Agreement. AESU and Sulgás have not proved that YPF had failed to comply with this agreement in order to cause YPF liability under section 16.1.1 of the Gas Supply Agreement. Therefore, the Tribunal dismisses AESU and Sulgás petition in this sense. ----------

XI. RECAPITULATION ----------

1724. The following recapitulation summarizes the Tribunal conclusions about each complaint of the parties in relation to this Partial Award on liability. ----------

A. AESU AND SULGÁS COMPLAINT AGAINST YPF ----------

1725. AESU and Sulgás claims against YPF are the following[274]: ----------

a. On the one hand, AESU and Sulgás request the Tribunal "to order that the termination of the {Gas Supply} Agreement was for YPF non-compliance with its obligations under the {Gas Supply} Agreement and its repudiation of said agreement, the foregoing for YPF's negligence, gross

[274] AESU and Sulgás restated their petitions indicated in sub-paragraphs (a), (b) and (d) in their subsequent pleadings (A/S-MC, ¶ 982, A/S-Replication, ¶769; A/S-Rejoinder, ¶564, A/S-AF, ¶1220-1222). ----------

negligence and/or fraud" (Addendum to Mission Statement, Item 4.1 (A)). Likewise, in its Opening Brief, AESU and Sulgás request the Tribunal "to decide that the termination of the {Gas Supply Agreement} that Sulgás decided with AESU participation was pursuant to law and that YPF, for its non-compliances, is liable in relation to AESU and Sulgás for said termination, and for the consequences and damages arising from said termination and/or which were caused to the Parties and Participants of the [Gas Supply Agreement]". (A/S-MD, ¶ 1026). ----------

b. Furthermore, AESU and Sulgás request the Tribunal "to state that YPF incurred in, before AESU and Sulgás, and is liable for all non-compliances described in Chapter VII of this brief and for the consequences and damages caused by said non-compliances". (A/S-MD, ¶ 1026). ----------

c. In the Mission Statement, AESU and Sulgás identified some damages caused by YPF to AESU and Sulgás, and they request to be compensated for them, plus interest as from the moment of default in every non-complied obligation to the date of actual payment (Addendum to Mission Statement, Item 4.1 (B) and (C)). ----------

d. AESU and Sulgás also request that YPF be ordered to pay the Tribunal costs and fees, as well as the costs of AESU and SULGÁS legal representation and other expenses (A/S-MD, ¶ 1026) ----------

1726. In relation to AESU and Sulgás requests detailed in the foregoing paragraph, and based on the abovementioned enumeration, the Tribunal has concluded that: ----------

a. The termination of the Gas Supply Agreement was caused by YPF non-compliance with its obligations under the Gas Supply Agreement, particularly, its guilty repudiation of said Agreement. The termination of the Gas Supply Agreement by AESU and Sulgás, through letter dated March 20, 2009, was performed pursuant to law, as detailed in Part VII.A above. As a consequence of the foregoing, YPF is liable before Sulgás (in its capacity as Party to the Gas Supply Agreement), and AESU and TGM (in their capacity as Participants to said Agreement) for the damages caused by said termination. Therefore, AESU and Sulgás request set forth in sub-paragraph (a) of the foregoing paragraph is duly grounded[275]. The Tribunal decision related to this request is set forth in sub-paragraphs (b) and (c) of the Tribunal decision included in paragraph 1735 below. The corresponding compensation amount shall be determined in the stage of damages of this arbitration, as set forth in sub-paragraph (j) of the Tribunal decision included in paragraph 1735 below. The determination about whether YPF non-compliances were fraudulent was postponed to the following procedural stage on damages calculation, as

[275] The arbitrator Prof. Roque J. Caivano has disagreed in relation to this issue.----------

established in the Tribunal decision, in sub-paragraph (h) of the Tribunal decision included in paragraph 1735 below. ----------

b. YPF has incurred in, before AESU and Sulgás, and is liable for the following non-compliances of the Gas Supply Agreement: ----------

i. YPF obligation to provide gas included in section 3.4 of the Gas Supply Agreement, as detailed in Part VII.B.1 above. ----------

ii. YPF obligation to pay 10% of DOP penalty of the year 2006 billed through Debit Note Nº COM/001/2008, as detailed in Part VII.B.3 *supra*. The Tribunal has also determined that YPF failed to comply with its obligation to pay the controversial amount subject to reimbursement or to deposit in an escrow account, pursuant to section 15.5 of the Gas Supply Agreement (see paragraph 565 *supra).* ----------

iii. YPF obligation to make a consultation procedure prior to the transfer to Sulgás of new taxes on natural gas export (section 13.1 of the Gas Supply Agreement). That does not change the Tribunal conclusion that Sulgás was anyway obliged under the agreement to bear the cost of these new taxes (see Parts VII.A.6 and VII.B.4 *supra*). ----------

iv. Therefore, AESU and Sulgás request set forth in sub-paragraph (b) of the foregoing paragraph is grounded in relation to those two specific non-compliances, but it lacks grounds in relation to the other non-compliances alleged by AESU and Sulgás. The Tribunal decision on this request is set forth in sub-paragraph (d) of the Tribunal decision included in paragraph 1735 *infra*. The corresponding compensation amount shall be determined in the stage of damages of this arbitration, as set forth in sub-paragraph (j) of the Tribunal decision included in paragraph 1735 *infra.* The determination about whether YPF non-compliances were fraudulent was postponed to the following procedural stage on damages calculation, as established in the Tribunal decision, in sub-paragraph (h) of the Tribunal decision included in paragraph 1735 *infra.* ----------

c. The Tribunal shall deal with these requests detailed in sub-paragraphs (c) and (d) of the foregoing paragraph in the stage of damages of this arbitration, as indicated in sub-paragraphs (j) and (k) of the Tribunal decision set forth in paragraph 1735 *infra*. ----------

B. YPF COMPLAINT AGAINST AESU AND SULGÁS ----------

1727. In relation to the complaint against AESU and Sulgás, YPF requests the Tribunal[276]: ----------

[276] YPF restates these petitions in its subsequent pleadings (Y-MC, Prayer; Y-Replication, ¶ 339, Y¬Rejoinder, ¶ 436, Y-AF, Prayer).----------

a. To declare that “the suspension of the Gas Supply Agreement carried out by AESU and Sulgás on September 15 was unlawful, unjustified and untimely performed” (Y-MD, ¶588(i)). ----------

b. To declare That the “invoices for Segment B of transportation subsequent to September 15, 2008 shall be paid to TGM by AESU and Sulgás, based on the application of Section 5.10 of the Transportation Service Agreement, Sections 4.3.7, 4.3.8, 4.3.9 of the Transportation Service Agreement {*rectified*: Gas Supply Agreement} and Section 4 of the Payment Agreement” (Y-MD, ¶ 588(ii)). The foregoing is consistent with YPF request set forth in the Mission Statement that "the exclusive liability of the Importer for any sum deemed payable to TGM in relation to the Transportation Service Agreement, as well as regarding all damages that YPF has suffered or may suffer for the Importer’s fault, including interest and including, but not limited to, any sum to be paid by YPF to TGM in relation to or as a result of any TGM claim under the Transportation Service agreement" be ordered. (Mission Statement, Item 4.5.1, (b)(ii)). ----------

c. To declare that “AESU and Sulgás are liable for damages that said behavior has caused to the other Parties (including YPF) and Participants to the Gas Supply Agreement, plus interest to the date of actual payment, including damages to TGM” (Y-MD, ¶588(iii)). ----------

---

d. To declare that “the subsequent termination of the Gas Supply Agreement carried out by AESU and Sulgás on March 25 was unlawful, unjustified and untimely performed” (Y-MD, ¶588(i)). Likewise, in the Mission Statement, YPF requests the Tribunal to “order that the termination of the Agreement notified by the Importer to YPF through letter dated March 20, 2009 was due to the Importer's fault” (Mission Statement, Item 4.5.1 (a)). ----------

e. To declare "AESU and Sulgás liability for the damages caused to the other Parties (including YPF) and Participants for the guilty termination of the Gas Supply Agreement, plus interest to the date of actual payment, including damages caused to TGM for the termination of the Transportation Service Agreement, by the application of Sections 14.2.1, 14.2.5 and 14.2.6 of the Gas Supply Agreement" (Y-MD, ¶588(iv))”. This is consistent with YPF request in the Mission Statement in which it requests the Tribunal to “expand to the Importer the liability and the consequences which correspond before YPF, TGM and other Parties and Participants of the Agreement pursuant to sections 14.2.1, 14.2.5, 14.2.6 and related sections of the Agreement and to Section 13.2 and related sections of the Transportation Service Agreement, which implies, but not limited to, (i) the Arbitral Tribunal decision as regards the Importer’s fault in the vicarious termination of the Transportation Service Agreement; and (ii) the exclusive liability of the

importer for any sum deemed payable to TGM in relation to the Transportation Service Agreement, as well as regarding all damages that YPF has suffered or may suffer for the Importer's fault, including interest and including, but not limited to, any sum to be paid by YPF to TGM in relation to or as a result of any TGM claim under the Transportation Service agreement. (Mission Statement, Item 4.5.1(b)).----------

f. "In any case, that the Defendants be requested to pay these proceeding costs, including the Arbitral Tribunal fees and costs, and the costs of YPF legal representation and other costs (Y-MD, ¶ 588(viii)). Likewise, in the Mission Statement, YPF requests the Tribunal to "order the Importer pay the costs of this arbitration, including the Arbitral Tribunal fees and costs, and the costs of YPF legal representation and other expenses". (Mission Statement, Item 4.5.1(e)). ----------

1728. In relation to YPF requests detailed in the foregoing paragraph, and based on the abovementioned enumeration, the Tribunal has concluded that[277]: ----------

a. The suspension of the Gas Supply Agreement by AESU and Sulgás, through letter dated September 15 was performed pursuant to law, as detailed in Part VII.A.5 above. Therefore, YPF request set forth in letter (a) of the foregoing paragraph lacks grounds. The Tribunal decision on this request is set forth in sub-paragraph (l) of the Tribunal decision included in paragraph 1735 below. ----------

b. The Tribunal has determined that the invoices of Segment B of transportation subsequent to September 15, 2008 shall be paid to TGM by YPF, as detailed in Part VIII.A *supra*. Therefore, YPF request set forth in letter (b) of the foregoing paragraph lacks grounds. The Tribunal decision on this request is set forth in sub-paragraph (l) of the Tribunal Decision included in paragraph 1735 *infra*. ----------

c. As a consequence of the decisions included in the foregoing subparagraph (a), AESU and Sulgás are not liable for the damages that the suspension of the Gas Supply Agreement has caused to the other Parties (including YPF) and Participants (including TGM) to the Gas Supply Agreement. Therefore, YPF request set forth in letter (c) of the foregoing paragraph lacks grounds. The Tribunal decision on this request is set forth in sub-paragraph (l) of the Tribunal decision included in paragraph 1735 *infra*. ----------

d. The termination of the Gas Supply Agreement established by AESU and Sulgás through letter dated March 20, 2009, notified to YPF on March 25, 2009, was performed pursuant to law, as detailed in Part VII.A *supra*. Therefore, YPF request set forth in letter (d) of the foregoing

[277] The arbitrator Prof. Roque J. Caivano has disagreed in relation to these issues.----------

paragraph lacks grounds. The Tribunal decision on this request is set forth in sub-paragraph (l) of the Tribunal decision included in paragraph 1735 *infra*. ----------

e. As a consequence of the decisions included the foregoing subparagraph (d), AESU and Sulgás are not liable for the damages caused to the other Parties (including YPF) and Participants (including TGM) for the termination of the Gas Supply Agreement. The Tribunal has also determined that the Transportation Service Agreement was duly terminated by TGM, therefore, it is not appropriate to attribute to AESU and Sulgás the liability for its vicarious termination. Therefore, AESU and Sulgás are not liable before TGM and YPF for TGM claims pursuant to the Transportation Service Agreement. Therefore, YPF request set forth in letter (e) of the foregoing paragraph lacks grounds. The Tribunal decision on this request is set forth in sub-paragraph (l) of the Tribunal decision included in paragraph 1735 *infra*. ----------

f. The Tribunal shall deal with these petitions detailed in sub-paragraph (f) of the foregoing paragraph in the stage of damages of this arbitration, as indicated in sub-paragraph (k) of the Tribunal decision set forth in paragraph 1735 *infra*. ----------

C. TGM COMPLAINT AGAINST YPF ----------

1729. In relation to the complaint against YPF, TGM requests the Tribunal[278]: ----------

a. In the Mission Statement, TGM requests that "YPF be, exclusively or jointly with AESU and/or SULGÁS, ordered to compensate TGM for the damages, whether present or future, suffered by TGM for the failure to comply with […] the Firm Transportation Service Agreement". (Addendum to the Mission Statement, Item 4.3(2)). More specifically, in its Opening Brief, TGM requests the Tribunal that: ----------

i. "YPF be ordered to pay all invoices claimed by TGM in this Arbitration and identified under the numbers: 0001-000000292, 0001¬000000294, 0001-000000296, 0001-000000298, 0001-000000299, 0001-000000300 Y 0001-000000301 {the later shall be paid in its proportional part}, for the services rendered by TGM to YPF under the Firm Transportation Service Agreement during the months of September 2008, October 2008, November 2008, December 2008, January 2009, February 2009 and from March 1 to March 23, 2009 {date of the termination of the Firm Transportation Service Agreement by TGM due to YPF breach}, plus interest as from the date of default in payment of each of those obligations, calculated to the date of actual payment". (T-MD, ¶ 717(i)). Likewise, in the Mission Statement, TGM requests that "YPF be ordered to pay the amount of U$S 17,192,237.18 (seventeen million one hundred and ninety two thousand two

[278] TGM restates these petitions in its subsequent pleadings (T-MC, ¶ 619; T-Replication, ¶ 631, T-Rejoinder, ¶ 306, T-AF, ¶ 965).----------

hundred and thirty seven American Dollars with 18/100) arising from the invoices corresponding to the price for the natural gas firm transportation service rendered during the months from September to December, 2008, January and February, 2009 and the first 23 days of March, 2009, pursuant to the Transportation Service Agreement as well as the non-capitalized irrevocable contributions corresponding to the same period pursuant to the Memorandum of Agreement, plus accrued interest and those accrued as from the expiration of each one of the obligations and as of the date of actual payment". (Addendum to the Mission Statement, Item 4.3(6)(i)). ----------

ii. "YPF be ordered to pay the full compensation for all damages suffered by TGM, or that TGM may suffer in the future, as a result of YPF non-compliance with its obligations under the Firm Transportation Service Agreement, as long as they have not already been remedied through the claim for interest. ----------

iii. "YPF be ordered to pay the non-capitalized irrevocable contributions owed by YPF to TGM under the Memorandum of Agreement corresponding to the months of September 2008, October 2008, November 2008, December 2008, January 2009, February 2009 and from March 1 to March 23, 2009 {date of termination of the Memorandum of Agreement by TGM due to YPF breach}, plus interest as from the date of the payment in arrears of each of those obligations, calculated to the date of actual payment". TGM adds that those damages shall be determined and calculated at the appropriate procedural stage (T-MD, ¶ 717 (ii)). ----------

iv. "YPF be ordered to pay the full compensation for all damages suffered by TGM, or that TGM suffers in the future, as a result of YPF non-compliance with its obligations under the Memorandum of Agreement, as long as they have not already been remedied through the claim for interest. TGM adds that those damages shall be determined and calculated at the appropriate procedural stage (T-MD, ¶ 717 (ii)). ----------

b. In the Mission Statement, TGM requests to "declare that the Transportation Service Agreement and the Memorandum of Agreement have been terminated by the creditor's power to act, that is to say TGM, and due to YPF non-compliance, effective as of March 23, 2009". (Addendum to the Mission Statement, Item 4.3(6)(ii)). Likewise, in its Opening Brief, TGM requests the Tribunal to "order that the termination of the Firm Transportation Service Agreement and the Memorandum of Agreement carried out by TGM, by authority of the creditor, was performed pursuant to law, and due to YPF non-compliance (T-MD, ¶ 717(iii)). ----------

c. In the Mission Statement, TGM requests that "YPF be, exclusively or jointly with AESU and/or SULGÁS, ordered to compensate TGM for the damages, whether present or future, suffered by

TGM […] for the termination of the Firm Transportation Service Agreement" (Addendum to the Mission Statement, Item 4.3(2)). Likewise, in its Opening Brief, TGM requests that "YPF be ordered to compensate TGM for the damages that the termination of the Firm Transportation Service Agreement and the Memorandum of Agreement by TGM power to act and due to YPF non-compliance {which is fraudulent}, caused or which may be caused in the future to TGM, plus interest as from the date of termination of said agreements, {that is to say, March 23, 2009} to the date of actual payment; damages whose determination and calculation shall be established during the second phase of this Arbitration". (T-MD, ¶ 717(iv)). More specifically, in the Mission Statement, TGM requests that "YPF be ordered to compensate TGM for the damages of any kind, direct or indirect, present or future, caused by the termination of the Transportation Service Agreement and the Memorandum of Agreement {damages initially estimated in the amount of U$S 366,375,903 (three hundred and sixty six million three hundred and seventy five thousand nine hundred and three American Dollars) and/or the damages arising from evidence}, plus interest as from the date of termination of the Transportation Service Agreement and Memorandum of Agreement, to the date of actual payment". (Addendum to the Mission Statement, Point 4.3(6)(iii)). ----------

d. In the Mission Statement, TGM requests that "YPF be, exclusively or jointly with AESU and/or SULGÁS, ordered to compensate TGM for the damages, whether present or future, suffered by TGM for the non-compliance with the Gas Supply Agreement" (Addendum to the Mission Statement, Item 4.3(2)). More specifically, TGM requests the Tribunal that: ----------

i. "YPF be ordered to compensate TGM for the damages that YPF fraudulent non-compliance with its obligations under the Gas Supply Agreement {as defined below} has caused or may cause to TGM in the future, plus interest as from the date of non-compliance to the date of actual payment; damages whose determination and calculation shall be established during the second phase of this Arbitration". TGM states that "this decision shall have effect as long as said damages have not been totally and actually paid by YPF within the framework of other claims made by TGM in other categories of this Arbitration" (T-MD, ¶ 717(v)). ----------

ii. "That the broadest and absolute enforceability against TGM of the Complementary and Modification Agreements and of its provisions and its consequences, be ordered, including, but not limited to, (1) the obligations and rights, whether directly indirectly, created through the Complementary and Modification Agreements; (2) the modifications, whether directly or indirectly, included through the Complementary and Modification Agreements to the obligations,

rights and powers set forth in the Gas Supply Agreement, including the modifications included into the system of suspension, early termination and liability for the early termination of the Gas Supply Agreement; (3) the compliance or the non-compliance with the obligations and/or the exercise of rights or powers, whether directly or indirectly, created through Complementary and Modification Agreements and the compliance or non-compliance with the obligations, rights and powers set forth in the Gas Supply Agreement or indirectly modified by the Complementary and Modification Agreements and all its consequences; (4) the disputes between YPF, AESU and SULGÁS in relation to the Complementary and Modification Agreements, its scope, its compliance or non-compliance or regarding any of the subjects indicated in the foregoing sub-paragraphs (2) and (3); and (5) the termination, by any means, of the disputes indicated the foregoing sub-paragraph (4); as long as any of said acts, facts, events or subjects are, whether directly or indirectly, invoked or submitted as {factual or legal} basis or alleged basis of any defense of YPF against any claim of TGM in this Arbitration and/or as {factual or legal} basis or alleged basis of any claim of YPF against or against third parties with negative effects on TGM and/or in any other form affects TGM". (T-MD, ¶ 717(vi)). ----------

iii. Subsidiary to what was requested in the foregoing sub-paragraph (i)[279], "YPF be ordered to compensate TGM for the damages suffered by TGM for YPF liability for the early termination of the Gas Supply Agreement in violation of TGM rights, plus interest up to the date of actual payment; damages whose determination and calculation shall be established during the second phase of this Arbitration. This decision shall have effect as long as said damages have not been totally and actually paid by YPF within the framework of other claims made by TGM in other categories of this Arbitration". (T-MD, ¶717(vii)). ----------

e. In the Mission Statement, TGM requests that "YPF be ordered to pay all expenses, costs and litigation expenses of this Arbitration, including the fees and expenses of the Arbitral Tribunal and of TGM legal representation as well as any other cost, expense, fee or litigation expense related to in any way this proceeding". (Addendum to the Mission Statement, Item 4.3 (6)(iv)) Likewise, in its Opening Brief, TGM requests the Tribunal that "YPF be ordered to pay all costs, litigation expenses, fees and expenses of this Arbitration, including the fees and expenses of the Arbitral Tribunal and of TGM legal representation as well as any other costs, litigation expenses, fees and expenses incurred in as a result of this Arbitration or caused by this proceeding" (T-MD, ¶ 717(viii)). ----------

[279] The reference is made to ¶ 717(v) of its Opening Brief.----------

1730. In relation to TGM requests detailed in the foregoing paragraph, and based on the above-mentioned enumeration, the Tribunal has concluded that:[280] ----------

a. YPF owes to TGM the invoices for the Price of the Transportation Service Agreement and the Irrevocable Contributions accrued during the Relevant Period. Specifically, the Tribunal has concluded that: ----------

i. YPF owes TGM all the invoices claimed by TGM in this Arbitration and identified under the numbers: 0001-000000292, 0001-000000294, 0001¬000000296, 0001-000000298, 0001-000000299, 0001-000000300 and 0001¬000000301 (the latter shall be paid in its proportional part), for the services rendered by TGM to YPF under the Firm Transportation Service Agreement as from September 1, 2008 to March 23, 2009, as detailed in Part VIII.A above. Therefore, TGM request set forth in letter (a.i) of the foregoing paragraph is duly grounded. The Tribunal decision on this request is set forth in sub-paragraph (e) of the Tribunal decision included in paragraph 1735 below. ----------

ii. As a consequence of the terms of sub-paragraph (i), YPF shall compensate TGM for the damages suffered by TGM, or that TGM may suffer in the future, as a result of YPF non-compliance with its obligation to pay the invoices indicated in said sub-paragraph. Therefore, TGM request set forth in letter (a.ii) of the foregoing paragraph is duly grounded. The Tribunal decision on this request is set forth in sub-paragraph (e) of the Tribunal decision included in paragraph 1735 below. The compensation amount shall be determined in the stage of damages of this arbitration, as set forth in sub-paragraph (j) of the Tribunal decision included in paragraph 1735 below. ----------

iii. YPF owes TGM the Irrevocable Contributions accrued under the Memorandum of Agreement as from September 1, 2008 until March 23, 2009, as indicated in Part VIII.A above. Therefore, TGM request set forth in letter (a.iii) of the foregoing paragraph is duly grounded. The Tribunal decision on this request is set forth in sub-paragraph (f) of the Tribunal decision included in paragraph 1735 below. ----------

iv. As a consequence of the terms of sub-paragraph (iii), YPF shall compensate TGM for the damages suffered by TGM, or that TGM may suffer in the future, as a result of YPF non-compliance with its obligation to pay the Irrevocable Contributions indicated in said sub-paragraph. Therefore, TGM request set forth in letter (a.iv) of the foregoing paragraph is duly grounded. The Tribunal decision on this request is set forth in sub-paragraph (f) of the Tribunal

[280] The arbitrator Prof. Roque J. Caivano has disagreed in relation to some conclusions indicated in this paragraph.----------

decision included in paragraph 1735 *infra*. The compensation amount shall be determined in the stage of damages of this arbitration, as set forth in sub-paragraph (j) of the Tribunal decision included in paragraph 1735 *infra.* ----------

v. The determination about whether YPF non-compliances were fraudulent was postponed to the following procedural stage on damages calculation, as established in the Tribunal decision, in sub-paragraph (h) of the Tribunal decision included in paragraph 1735 below. ----------

b. The termination of the Firm Transportation Service Agreement and the Memorandum of Agreement carried out by TGM by authority of the creditor was performed pursuant to law and due to YPF non-compliance, as detailed in Part VIII.B above. The Tribunal dismisses TGM claim that said termination becomes effective as of March 23, 2009, and orders, whereas, that said termination became effective as of April 7, 2009. Therefore, TGM request set forth in letter (b) of the foregoing paragraph is duly grounded. The Tribunal decision in relation to TGM request set forth in letter (b) of the foregoing paragraph is included in letter (g) of the Tribunal decision included in the paragraph 1735 *infra*. ----------

c. As a consequence of the terms of the foregoing letter (b), YPF shall compensate TGM for the damages that the termination of the Transportation Service Agreement and the Memorandum of Agreement has caused or may cause in the future to TGM. Therefore, TGM request set forth in letter (c) of the foregoing paragraph is duly grounded. The Tribunal decision on this request is set forth in sub-paragraph (g) of the Tribunal Decision included in paragraph 1735 below. The compensation amount shall be determined in the stage of damages of this arbitration, as set forth in sub-paragraph (j) of the Tribunal decision included in paragraph 1735 below. ----------

d. In relation to TGM request that "YPF be, exclusively or jointly with AESU and/or SULGÁS, ordered to compensate TGM for the damages, whether present or future, suffered by TGM for the non-compliance of the Gas Supply Agreement", the Tribunal has concluded that: ----------

i. YPF complied with its obligation under section 18.4 of the Gas Supply Agreement and, therefore, it is not appropriate to order YPF to pay any compensation in this regard (see Part IX.A *supra*). Therefore, TGM request set forth in letter (d.i) of the foregoing paragraph lacks grounds. The Tribunal decision on this request is set forth in sub-paragraph (l) of the Tribunal decision included in paragraph 1735 *infra*. ----------

ii. The Complementary Agreements are unenforceable against TGM for the purposes of this arbitration, as detailed in Part IX.A above. Therefore, TGM request set forth in letter (d.ii) of the

foregoing paragraph is duly grounded. The Tribunal decision on this request is set forth in sub-paragraph (i) of the Tribunal decision included in paragraph 1735 below. ----------

iii. YPF is liable for the early termination of the Gas Supply Agreement, as detailed in Parts VII.A and IX.B above. Therefore, TGM request set forth in letter (d.iii) of the foregoing paragraph is duly grounded. As a consequence, YPF shall compensate TGM for the damages suffered by TGM for said early termination as long as said damages have not been totally and actually paid by YPF within the framework of other claims made by TGM in other categories of this arbitration. The Tribunal decision on this request is set forth in sub-paragraph (b) and (c) of the Tribunal decision included in paragraph 1735 below. The compensation amount shall be determined in the stage of damages of this arbitration, as set forth in sub-paragraph (j) of the Tribunal decision included in paragraph 1735 below. ----------

e. The Tribunal shall deal with these petitions detailed in sub-paragraph (e) of the foregoing paragraph in the stage of damages of this arbitration, as indicated in sub-paragraph (k) of the Tribunal decision set forth in paragraph 1735 below. ----------

D. YPF COMPLAINT AGAINST TGM ----------

1731. In relation to the complaint against TGM, YPF requests the Tribunal[281]: ----------

a. That it orders that the "invoices for Segment B of transportation subsequent to September 15, 2008 be paid to TGM by AESU and Sulgás, based on the application of Section 5.10 of the Transportation Service Agreement, Sections 4.3.7, 4.3.8, 4.3.9 of the Transportation Service Agreement {*rectified*: Gas Supply Agreement} and Section 4 of the Payment Agreement" (Y-MD, ¶ 588(ii)). The foregoing is consistent with YPF request set forth in the Mission Statement that it be ordered that "the exclusive liability of the Importer for any sum deemed payable to TGM in relation to the Transportation Service Agreement, as well as regarding all damages that YPF has suffered or may suffer due to the Importer's fault, including interest and including, but not limited to, any sum to be paid by YPF to TGM in relation to or as a result of any TGM claim under the Transportation Service Agreement." (Mission Statement, Point 4.5.1, (b)(ii)). ----------

b. That it be ordered that "the validity of the vicarious termination indicated in the Transportation Service Agreement established by YPF on April 8, 2009, through the application of Section 13.2 of the Transportation Service Agreement" (Y-MD, ¶ 588(vi)). In the Mission Statement, YPF requests "the Arbitral Tribunal to determine the Importer's fault in the vicarious

[281] YPF restates the petitions set forth in paragraphs (a) to (d) of this paragraph in its subsequent pleadings (Y-MC, Prayer, Y-Replication, ¶339, and Y-Rejoinder, ¶436; Y-AF, ¶323).----------

termination of the Transportation Service Agreement" (Mission Statement, Point 4.5.1, (b)(i)); the Tribunal considers that such request has been replaced by the petition filed by YPF in its Opening Brief in relation to TGM. ----------

c. That "[t]he termination with no liabilities of the Memorandum of Agreement" be ordered (Y-MD, ¶ 588(vii)). ----------

d. that TGM be requested to pay these proceeding costs, including the Arbitral Tribunal fees and costs, and the costs of YPF legal representation and other costs (Y-MD, ¶ 588(viii)). ----------

e. Additionally, in the Mission Statement, YPF requests the Tribunal that, subsidiary to its main claims[282] "TGM recovery of damages be inadmissible since it was prevented from providing the firm transportation services due to the Government of Argentina measures". (Mission Statement, Point 4.5.1). In YPF pleadings herein, it seems that YPF has waived to file this petition as positive claim, and has decided to file this allegation as a defense against TGM claims. ----------

f. Also in the Mission Statement and subsidiary to its main claims (as identified in the note 282) and the claim set forth in the above-mentioned letter (e), YPF requests the Tribunal that "the termination of the Transportation Service Agreement be ordered for the excessive onerous burden supervening in YPF payment obligations of the Price of the Transportation Service Agreement". (Mission Statement, Point 4.5.1). ----------

1732. In relation to YPF requests detailed in the foregoing paragraph, and based on the above-mentioned enumeration, the Tribunal has concluded that[283]: ----------

a. It is YPF, and not AESU and Sulgás, which shall pay TGM the invoices for the Price of the Transportation Service Agreement (equivalent to the price of Segment B of Transportation), accrued after September 15, 2008 (see Parts VIII.A and X.A above). Therefore, YPF request set forth in letter (a) of the foregoing paragraph lacks grounds. The Tribunal decision on this request is set forth in sub-paragraph (l) of the Tribunal decision included in paragraph 1735 below. ---------

[282] The reference is made to points (a) and (b) of Point 4.5.1 del of the Mission Statement, in which YPF requests the Tribunal to: "**(a)** Order that the termination of the Agreement notified by the Importer to YPF through letter dated March 20, 2009,be for the Importer's fault; **(b)** Extend to the Importer the liability and the consequences in relation to YPF, TGM and other Parties and Participants of the Agreement pursuant to sections 14.2.1, 14.2.5, 14.2.6 and related sections of the Agreement and to section 13.2 and related sections of the Transportation Service Agreement, which implies, but not limited to, (i) the Arbitral Tribunal determination of the Importer's fault in the vicarious termination of the Transportation Service Agreement; and (II) the exclusive liability of the Importer for any sum deemed payable to TGM in relation to the Transportation Service Agreement, as well as regarding all damages that YPF has suffered or may suffer for the Importer's fault, including interest and including, but not limited to, any sum to be paid by YPF to TGM in relation to or as a result of any TGM claim under the Transportation Service Agreement. The damages amount shall be credited at the corresponding procedural stage, […]".----------

[283] The arbitrator Prof. Roque J. Caivano has disagreed with some conclusions indicated in this paragraph. --

b. YPF was not entitled to vicariously terminate the Transportation Service Agreement, since YPF failed to comply with the Gas Supply Agreement. The Transportation Service Agreement was effectively terminated by TGM effective as from April 7, 2009 based on YPF non-compliance (see Part VIII.B *supra*). Therefore, YPF request set forth in letter (b) of the foregoing paragraph lacks grounds. The Tribunal decision on this request is set forth in sub-paragraph (l) of the Tribunal decision included in paragraph 1735 *infra*. ----------

c. As a consequence of the provisions in the abovementioned letter (b), the Tribunal majority has decided that the Memorandum of Agreement was terminated due to YPF non-compliance, thus YPF shall be held liable (see Part VIII.B *supra*). Therefore, YPF request set forth in letter (c) of the foregoing paragraph lacks grounds. The Tribunal decision on this request is set forth in sub-paragraph (l) of the Tribunal decision included in paragraph 1735 *infra*. ----------

d. The Tribunal shall discuss YPF request set forth in letter (d) of the foregoing paragraph at the damages stage of this arbitration, as indicated in sub-paragraph (j) of the Tribunal decision included in paragraph 1735 *infra*. ----------

e. In relation to the request set forth in letter (e) of the foregoing paragraph, the Tribunal notes that, pursuant to YPF pleadings in this arbitration, YPF seems to have waived to said petition as a claim, and has decided to file this allegation as a defense against TGM claims. In case said petition is still considered valid, the Tribunal concludes that it lacks grounds since the Tribunal has concluded that TGM was not prevented from providing firm transportation services due to the Government of Argentina measures (see Part VIII.A *supra*). The Tribunal decision on this request is set forth in sub-paragraph (l) of the Tribunal decision included in paragraph 1735 *infra*. ----------

f. In relation to the request set forth in letter (f) of the foregoing paragraph, the tribunal notes that, during the course of the Arbitration, YPF has neither dealt with said requests nor included them in its prayer. Therefore, the Tribunal considers that YPF has waived them. In case said petition is considered in force, the Tribunal concludes that it lacks grounds, since YPF has failed to comply with the burden of proof of the facts alleged. The Tribunal decision on this request is set forth in sub-paragraph (l) of the Tribunal decision included in paragraph 1735 *infra*. ----------

E. TGM COMPLAINT AGAINST AESU AND SULGÁS----------

1733. In relation to TGM's complaint against AESU and Sulgás, TGM requests the following[284]: -----

[284] TGM restates these petitions in its subsequent pleadings (T-MC, ¶ 619; T-Replication, ¶ 632, T-Rejoinder, ¶ 307, T-AF, ¶ 966).----------

a. In the Mission Statement, TGM requests that "AESU and SULGÁS be, exclusively or jointly with YPF, ordered to compensate TGM for the damages, whether present or future, suffered by TGM for their failure to comply with the Gas Supply Agreement" (Addendum to the Mission Statement, Point 4.3(3), first part). More specifically, in its Opening Brief, TGM requests the Tribunal that "AESU and SULGÁS {each one individually and for the full amount, although jointly between them and, as the case may be, with YPF (*in solidum*)} be ordered to compensate TGM for the damages which SULGÁS and AESU fraudulent non-compliance with their corresponding obligations under the Gas Supply Agreement have caused or may cause in the future to TGM, plus interest as from the date of the non-compliance to the date of actual payment; damages whose determination and calculation shall be established during the second phase of this Arbitration. This decision shall be complied with as long as said damages have not been totally and actually paid by YPF within the frameworks of other claims made by TGM in other categories of this Arbitration" (T-MD, ¶ 718(i)). ----------

b. "That the broadest and absolute enforceability against TGM of the Complementary and Modification Agreements [...] and of its provisions and its consequences, including, but not limited to, (1) the obligations and rights, whether directly indirectly, created through the Complementary and Modification Agreements; (2) the modifications, whether directly or indirectly, included through the Complementary and Modification Agreements to the obligations, rights and powers set forth in the Gas Supply Agreement, including the modifications included to the system of suspension, early termination and liability for the early termination of the Gas Supply Agreement; (3) the compliance or the non-compliance with the obligations and/or the exercise of rights or powers, whether directly or indirectly, created through Complementary and Modification Agreements and the compliance and non-compliance with the obligations, rights and powers set forth in the Gas Supply Agreement or indirectly modified by the Complementary and Modification Agreements and all its consequences; (4) the disputes between YPF, AESU and SULGÁS in relation to the Complementary and Modification Agreements, its scope, its compliance or non-compliance or regarding any of the subjects indicated in the foregoing sub-paragraphs (2) and (3); and (5) the termination, by any means, of the disputes indicated the foregoing sub-paragraph (4); as long as any of said acts, facts, events or subjects is, whether directly or indirectly, invoked or submitted as {factual or legal} basis or alleged basis of any defense of SULGÁS and/or of AESU against any of TGM claims in this Arbitration and/or which in any other form affects TGM" (T-MD, ¶ 718(ii)). ----------

c. Furthermore, in the Mission Statement, TGM requests that "subsidiarily, and in the hypothetical case that the claim to terminate the GAS Supply Agreement based on AESU/SULGÁS liability is sustained, AESU and SULGÁS be held jointly and severally liable for the compensation (exclusively or jointly with YPF) of TGM for all the damages caused by said non-compliance to TGM including those arising from the termination of the Firm Transportation Service agreement and of the Memorandum of Agreement". (Addendum to the Mission Statement, Point 4.3(3), second part). TGM restates this petition in its Opening Brief, where TGM requests the Tribunal that "subsidiarily to the foregoing § (i)[285], SULGÁS and AESU (each one individually and for the full amount, although jointly between them and, as the case may be, with YPF (*in solidum*)), be ordered to compensate TGM for the damages suffered by TGM for SULGÁS liability and AESU liability in the early termination of the Gas Supply Agreement in violation of TGM rights, plus interest accrued to the date of actual payment; damages whose determination and calculation shall be established during the second phase of this Arbitration. This sentence shall be complied with as long as said damages have not been totally and actually paid by YPF within the framework of other claims made by TGM in other categories of this Arbitration" (T-MD, ¶ 718(ii)). ----------

d. Finally, TGM requests the Tribunal that "SULGÁS and AESU, each one individually and for the full amount, although jointly between them and, as the case may be, with YPF (in solidum), be ordered to pay all costs, litigation expenses, fees and expenses of this Arbitration, including the fees and expenses of the Arbitral Tribunal and of TGM legal representation as well as any other costs, litigation expenses, fees and expenses incurred in as a result of this Arbitration or caused by this proceeding" (T-MD, ¶ 718(iii) see also Addendum to the Mission Statement, Point 4.3(5)). -

1734. In relation to TGM requests detailed in the foregoing paragraph, and based on the above-mentioned enumeration, the Tribunal has concluded that[286]: ----------

a. AESU and Sulgás complied with their obligation under section 18.4 of the Gas Supply Agreement and, therefore, it is not appropriate to order them to pay any compensation in this regard (see Part IX.A *supra*). Therefore, TGM request set forth in letter (a) of the foregoing paragraph lacks grounds. The Tribunal decision on this request is set forth in sub-paragraph (l) of the Tribunal decision included in paragraph 1735 *infra*. ----------

[285] The reference is made to paragraph 718(i) of TGM Opening Brief, set forth in sub-paragraph (a) of the paragraph 1733 *supra*. ----------

[286] The arbitrator Prof. Roque J. Caivano has disagreed in relation to some conclusions indicated in this paragraph. ----------

b. The Complementary Agreements are unenforceable against TGM for the purposes of this arbitration, as detailed in Part IX.A *supra*. Therefore, TGM request set forth in letter (b) of the foregoing paragraph is duly grounded. The Tribunal decision on this request is set forth in sub-paragraph (i) of the Tribunal decision included in paragraph 1735 *infra*. ----------

c. The responsible for the early termination of the Gas Supply Agreement is YPF, not AESU and Sulgás (see Parts VII.A and IX.B *supra*). Therefore, TGM request set forth in letter (c) of the foregoing paragraph lacks grounds. The Tribunal decision on this request is set forth in sub-paragraph (l) of the Tribunal decision included in paragraph 1735 *infra*. ----------

d. The Tribunal shall deal with these petitions detailed in sub-paragraph (d) of the foregoing paragraph at the stage of damages of this arbitration, as indicated in sub-paragraph (k) of the Tribunal decision set forth in paragraph 1735 *infra*. ----------

XII. DECISION ----------

1735. Based on the facts and legal arguments previously stated, the Tribunal renders the following Partial Award on liability: ----------

a. It is ordered that the suspension of the Gas Supply Agreement by AESU and Sulgás through letter dated September 15, 2008 was performed pursuant to law. ----------

b. It is ordered that the termination of the Gas Supply Agreement was caused by YPF non-compliance with its obligations under the Gas Supply Agreement, particularly by YPF guilty repudiation to said Agreement, and that the termination of the Gas Supply Agreement by AESU and Sulgás, made through letter dated March 20, 2009, was performed pursuant to law. ----------

c. It is ordered that, as a consequence of the foregoing sub-paragraph (b), YPF is liable before AESU, Sulgás and TGM for the damages that said termination has caused or may cause in the future to AESU, Sulgás and TGM. ----------

d. It is ordered that YPF has incurred in, before AESU and Sulgás, and is liable for the following non-compliances of the Gas Supply Agreement: ----------

i. YPF obligation to provide gas included in section 3.4 of the Gas Supply Agreement. ----------

ii. YPF obligation to pay 10% of DOP penalty of the year 2006 billed through Debit Note Nº COM/001/2008.----------

iii. YPF obligation to perform a consultation procedure prior to the transfer to Sulgás new taxes on natural gas export. ----------

e. It is ordered that YPF owes TGM all the invoices claimed by TGM in this Arbitration and identified under the numbers: 0001-000000292, 0001¬000000294, 0001-000000296, 0001-

000000298, 0001-000000299, 0001-000000300 and 0001-000000301 (the latter shall be paid in its proportional part), for the services rendered by TGM to YPF under the Transportation Service Agreement as from September 1, 2008 to March 23, 2009. YPF shall compensate TGM for the damages suffered by TGM, or that TGM may suffer in the future, as a result of this non-compliance. ----------

f. It is ordered that YPF owes to TGM the Irrevocable Contributions accrued under the Memorandum of Agreement as from September 1, 2008 to March 23, 2009. YPF shall compensate TGM for the damages suffered by TGM, or that TGM may suffer in the future, as a result of this non-compliance. ----------

g. It is ordered that the termination of the Transportation Service Agreement and the Memorandum of Agreement established by TGM for the creditor's authority was performed pursuant to law and for YPF guilty non-compliance, valid as from April 7, 2009, and that YPF shall compensate TGM for the damages caused or which may be caused in the future by these terminations. ----------

h. The determination of whether YPF non-compliances of the Gas Supply Agreement, of the Transportation Service Agreement and the Memorandum of Agreement were fraudulent is determined at the stage of damages of this arbitration. ----------

i. For the purposes of this arbitration, the broadest and absolute unenforceability of the Complementary Agreement against TGM is ordered.----------

j. The consequences of the foregoing decisions, including the damages amount arising from them, shall be determined at the stage of damages of this arbitration. ----------

k. Any other decision, including the one related to the arbitration costs, is reserved for one or more future awards. ----------

l. All other claims of the parties in relation to the liability stage are dismissed. ----------

Subject to the dissenting opinion of the co-arbitrator Prof. Roque J. Caivano. ----------

Place of the arbitration: Montevideo, Uruguay----------

Date: May 8, 2013----------

[Signature]----------

In partial dissent ----------

Prof. Roque J. Caivano----------

Co-arbitrator----------

[Signature]----------

Prof. Alejandro M. Garro ----------

Co-arbitrator----------

[Signature]----------

Prof. Gabrielle Kaufmann-Kohler ----------

President----------

THE FOREGOING IS A TRUE TRANSLATION INTO ENGLISH (IN FOLIOS NUMBERED, CORRELATIVELY, FROM 1 TO 581, WITHOUT BACK PAGES) OF THE CERTIFIED COPY OF ITS ORIGINAL IN SPANISH THAT I HAVE HAD BEFORE ME. IN THE CITY OF BUENOS AIRES, ON SEPTEMBER 27, 2013----------
(THE ABOVE PARAGRAPH IS TRANSLATED BELOW INTO SPANISH FOR ARGENTINE ADMINISTRATIVE PURPOSES ONLY) ----------
LO QUE ANTECEDE ES TRADUCCIÓN FIEL AL INGLÉS (EN FOLIOS NUMERADOS, CORRELATIVAMENTE, DEL 1 AL 581, SIN SUS REVERSOS) DE LA COPIA CERTIFICADA DE SU ORIGINAL EN IDIOMA ESPAÑOL QUE HE TENIDO ANTE MÍ. EN LA CIUDAD AUTÓNOMA DE BUENOS AIRES, A LOS 27 DÍAS DEL MES DE SEPTIEMBRE DE 2013. ----------