

Practical Guide to Asian LNG Price Review

February 27, 2020

Part 1

There are currently substantial commercial incentives for Asian buyers to seek price adjustments under their long-term LNG contracts. But whether an adjustment can be achieved at all, and if so the process and the outcome are likely to be dependant on the terms of each price review clause. It is therefore critical that the operation of these clauses is well understood.

We outline below the three main elements typically found in price review clauses.

1. The trigger

Typically, there is one or more specified 'trigger' that the requesting party must show has been satisfied.

Frequently this may be the passing of a period of time: for example, a first review might occur after a set number of years from the date of the first delivery under the contract, and subsequent reviews at stated intervals thereafter (for example, every four or five years). Since a party will have to wait a fixed number of years before it may trigger the clause, this limits the number of times a review may occur and may cause hardship in the interim.

Triggers often also require satisfaction of other elements. For example, they may require that a "significant" or "substantial" change in the buyer's market occur before the review date, and that such change be beyond the control of the affected party and impact the market value of gas in the buyer's market.

Disputes are common about whether all of the different elements of the trigger are satisfied. The risk of such disputes can be reduced the more specific the drafting and the more objectively clear the stated criteria.

2. The process

Effective price review clauses set out in clear terms the process that parties should follow once a price review has been requested.

Typically, there will be a requirement for negotiation over a stated period of time. In some older Asian contracts, nothing is said about what should happen if negotiations

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do not result in agreement. Depending on the wording, this may mean that the requesting party has no further recourse, or it may mean there is a dispute that can be referred to arbitration under the general arbitration clause.

In many modern Asian LNG contracts, absent an agreed resolution there is a specific entitlement to refer a request for price review to arbitration.

3. The methodology

It is likely to significantly increase the prospects of achieving an agreed resolution if the price review clause clearly states the methodology by which price adjustment is to be undertaken. Equally, it may not be possible for an arbitral tribunal to determine a price review dispute unless a methodology for the review is stated.

Stated methodologies might be directly with reference to the buyer's economic position - for example, requiring that the price allow the buyer 'economically to market' the gas purchased. Alternatively, the methodology might require review by reference to prices under 'comparable contracts', or in the end-user market, or of comparator hydrocarbons.

Again, the more specific the drafting and the more objectively clear the stated criteria, the greater the prospect of a dispute being resolved amicably.

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