

# Legal aspects concerning allocation procedure

*General principles & compensatory measures in cases of metering errors*

# AGENDA

- ❖ **Introduction:** placing allocation in a metering context
- ❖ **What:** factual and legal framework
- ❖ **Why:** operational, commercial and legal reasoning
- ❖ **How:** negotiation and execution
- ❖ **Resolving disputes:** re-visiting allocation procedures in cases of error

# INTRODUCTION

*“If you can **measure** something, you can **understand** it. If you can understand it, you can **control** it. If you can control it, you can **improve** it”*

- H. James Harrington

- Use of data (**measurement**), as a decision-making foundation (**understanding**) for shared fluid transport systems, to optimize the attribution of ownership (**control**)..  
.. and in cases of flow/control discrepancy, the method of re-allocation and value adjustment (**improvement**)
- *“Allocation is the process by which produced hydrocarbons are apportioned to the owners of the assets of the production unit, through matching cumulative volumetric or mass production measurements at various locations in the production process”*

- Dr. Bruno Pinguet

# WHAT: FACTUAL AND LEGAL FRAMEWORK

- Apportionment of ownership
- *Petroleum Act* («PA») sections 1-1 and 1-3: state ownership and rights
- PA section 3-3:  
*«A production licence entails an exclusive right to survey, exploration drilling and production of petroleum deposits in areas covered by the licence. The licensee becomes the owner of the petroleum which is produced»*
- Joint Operating Agreement, art. 6: ideal share, equal to the participating interest.
- Tie-in, unitization, transportation and processing - legal, commercial, and technical documents

## 19 MEASUREMENT, TESTING, SAMPLING, ALLOCATION AND VALUE ADJUSTMENT

19.1 Measurement, testing, sampling, allocation, re-allocation and value adjustment shall be performed in accordance with relevant laws and regulations and in accordance with fair and prudent principles and standards. The Groups shall endeavour to establish and agree the main principles for the aforesaid by **date**. The main principles in Appendix **X** [Measurement, Testing, Sampling, Allocation and Value Adjustment] shall form the basis for the detailed procedures, to be agreed no later than six (6) Months prior to the Commencement Date.

19.2 The **A Group** shall meter the total **A and B Group** commingled stream of oil/condensate and rich gas at the Shared Facilities to a fiscal standard. A dedicated metering system to meter oil/condensate, rich gas and water out of the **B Field** inlet separator shall be installed.

19.3 The Groups agree that the metering and allocation procedure pursuant to Article 19.1 shall not result in a lasting systematic gain or loss to either Group. In the event either Group is of the opinion that such gain/loss situation has occurred, the Groups shall meet with the view of resolving the matter and, if required, make any amendments to the metering and allocation procedures in Appendix **X** [Measurement, Testing, Sampling, Allocation and Value Adjustment] as required.

19.4 With respect to allocation, the **A Group's** obligations are restricted to the allocation of **B Oil** and **B Gas** to the **B Joint Venture**

19.5 Notwithstanding Article 19.4, the **A Group** is also prepared, upon request from the Operator of the **PL X** Group, to provide an additional service to the **B Joint Venture** of sub-allocating **B Oil** and **B Gas** between the **PL X** Group and **PL Y** Group according to a procedure to be agreed between such Groups. The **A Group** shall have no liabilities towards the **PL Y** Group or the **PL X** Group related to this service.

19.6 The **A Group** shall, upon request from the **B Joint Venture** give notice reasonably in advance to enable the **B Joint Venture** to witness calibration and meter proving and to observe the operation of all relevant equipment and/or facilities used for measurement, testing, sampling, allocation and value adjustment. The **A Group** shall also make available to the **B Joint Venture** at its request and for its audit, any and all metering data and other test information applicable to said equipment and/or facilities reasonably necessary to verify the measurement, testing, sampling, allocation, reallocation and value adjustment. Audits by the **B Joint Venture** shall be at the **B Joint Venture** own cost and expense.

### «in accordance with laws and regulations»

- Petroleum Act, Petroleum Tax Act, Act re. CO<sub>2</sub> taxation in petroleum sector
- Regulations to Act relating to petroleum activities, “*petroleumsforskriften*”
- Regulations relating to measurement of petroleum for fiscal purposes and for calculation of CO<sub>2</sub>-tax (the measurement regulations), “*måleforskriften*”
- Third-Party Access (TPA) Regulations, «*tredjepartsforskriften*»
- Terms and Conditions for Third Party Use of Installations, “*GTC*”

### «in accordance with fair and prudent principles and standards»

- Standards: ISOs, Standard Test Methods, API Recommended Practices, American Gas Association Reports, NORSOK/Standard Norge
- Principles: “*fair*” for who? Based on what?

### «shall not result in a lasting systematic gain or loss to either Group»

- No Gain, No Loss – itself a fair principle ..
- .. and mirrored in TPA Regulation § 4, and Petroleum Act § 4-8

# WHY: OPERATIONAL, COMMERCIAL AND LEGAL REASONING

- Multi-field production arrangements are common: production facilities processing hydrocarbon fluids of various quantity and quality from several fields, through a single production conduit (commingling)
- **Operational:** intra/inter-group production arrangements
- **Commercial:** fields/reservoirs have different qualities, participants, and regulations/tax regimes if cross-border
- **Legal:** Safeguard ownership, mechanisms for co-operation, stepwise resolution of technical or commercial disagreement, dispute resolution

# HOW: NEGOTIATION AND EXECUTION

- Mutual factual basis – blue skies
- «Getting the right people to the table» - for what regards competencies and authorizations
- Swiss watch or logrolling?
- Step-wise escalation of controversies/disputes: informal discussions, formal exchange of letters, mediation, expert/arbitration ..
- .. or fast track into dispute resolution?
- Maintaining integrity of the project group to the execution phase; both what regards personnel and notoriety

# RESOLVING DISPUTES

- LG-2010-186968 (the «*Statfjord case*»)
- Legal question: foundation for compensation or other monetary claims
- Statute of limitations
- Sound structures of metering error remediation always in question



Thank you

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