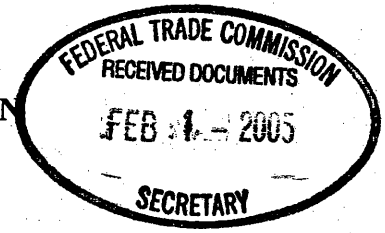


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



_____)
In the Matter of _____)
_____)
CHICAGO BRIDGE & IRON COMPANY N.V.)
a foreign corporation, _____)
_____)
CHICAGO BRIDGE & IRON COMPANY _____)
a corporation, _____)
_____)
PITT-DES MOINES, INC., _____)
a corporation. _____)
_____)

Docket No. 9300

PUBLIC

**PETITION TO RECONSIDER THE OPINION AND ORDER IN LIGHT OF
ENTRY AFTER THE CLOSE OF THE RECORD AND OVERBREADTH**

Respondents¹ petition the Commission to reconsider the Opinion and Order in light of evidence of significant new entry following the close of the record and to re-open the record to consider this additional evidence. Respondents also move the Commission to reconsider certain provisions of its Order as being unnecessarily overbroad. Respondents further request a stay pending resolution of this Petition and a tolling of the statutory time to file an appeal.²

**I.
POST-RECORD COMPETITION CONFIRMS
THE EXISTENCE OF NEW AND EFFECTIVE ENTRY**

A. Introduction.

Limited by the record as it existed when it closed in January 2003, the Commission made certain predictions regarding the likelihood and significance of entry in the four alleged markets at issue in this dispute. While the Commission set the bar at "whether a sea-change has occurred

¹ Respondents Chicago Bridge & Iron Company N.V. and Chicago Bridge & Iron Company are referred to herein collectively as "Respondents" or "CB&I."

² Respondents are also filing contemporaneously a Petition for Clarification or, in the Alternative, For a Stay.

in these markets," its analysis was by necessity constrained by the evidence presented to the Administrative Law Judge ("ALJ") at trial. Since that date, the competitive landscape has, in fact, undergone a sea-change, rendering inaccurate the Commission's predictions. The best illustration of this can be seen in the context of the LNG tank business.³

The marketplace the ALJ was presented with approximately two years ago was essentially dormant – there was little demand for LNG field-erected tanks in the United States, and no demand for the larger terminal projects. While the record reflects early indications of a changing market environment, the Commission apparently was not persuaded that the competitive landscape would change. Recent developments in the energy market, primarily in the form of sustained higher natural gas prices, have caused the demand for LNG tanks to mushroom, thus creating a market opportunity.⁴ This natural experiment, *i.e.*, a spike in demand, much of which occurred shortly after the record in this case was closed, severely undermines the Commission's prediction that skilled foreign and smaller domestic tank builders could not enter and successfully compete against CB&I.

Instead, the same international competitors dismissed by the Commission as hopelessly disadvantaged in the U.S. market, on their own or in association with U.S. construction and engineering firms, today are successfully competing against CB&I for these new LNG tank

³ Respondents request that if the Commission grants the request to re-open the record, it also allow Respondents to present post-acquisition evidence in the LPG and LIN/LOX/LAR businesses as well. Respondents submit that while the sporadic nature of the post-acquisition activity in the production of LPG and LIN/LOX/LAR tanks does not evidence as dramatic a transformation as is demonstrated in the LNG industry, it does support Respondents' position that actual entry is sufficient to constrain CB&I. For example, as predicted by a witness from MG Industries, Matrix and AT&V were prequalified for and competed in the bidding for MG's Westlake LIN/LOX tank.

⁴ Changes in U.S. natural gas prices made imported LNG (and the need for import facilities) realistic for almost the first time shortly after the merger. See *Petroleum Economist, Fundamentals of the Global LNG Industry, 2004*, at 89.

projects. Undaunted by the CB&I/PDM acquisition, and maybe even spurred by it, these firms are invested in winning United States tank construction projects. The objective fact is that CB&I *is* losing tank competitions to new entrants.

Accordingly, Respondents request that the Commission reconsider its decision in view of materially changed circumstances and rescind its order of divestiture.⁵ Respondents respectfully urge that the Commission re-open the record to take additional evidence regarding the market conditions and competition since the close of the record in January 2003. Respondents further request that the Commission stay the finality of its Order pursuant to 15 U.S.C. § 45(c) and 16 C.F.R. § 3.55 pending the exhaustion of proceeding on this Petition.

B. Post-Record Competition Disproves The Commission's Projections Regarding New and Effective Entry.

On appeal from the ALJ's decision, the Commission specifically found that the "markets have not seen competitively significant new entry or expansion post-acquisition," (Op. at 35 n.214), that CB&I had an "*insurmountable* advantage . . . at least for the foreseeable future," (Op. at 41) (emphasis added), that "entry conditions . . . are likely to foreclose new entrants and smaller incumbents from winning bids," (Op. at 48), and that "[f]oreign suppliers do not present a credible entry scenario." Op. at 69. While Respondents do not agree that these conclusions are supported by the record, there can be no dispute that post-record evidence proves that these conclusions and other predictions by the Commission were entirely incorrect.

As the discussion below illustrates, CB&I's competitors, firms that had essentially been written off by the Commission as unable to establish a successful presence in the United States

⁵ See 15 U.S.C. § 45(b); 16 C.F.R. §§ 3.55, 3.72(a) (2005); see also *In re Novartis Corp.*, 128 F.T.C. 233 (1999) (noting that the Commission may in its discretion modify an order on its own initiative pursuant to 16 C.F.R. § 3.72(a) in light of the issues raised in a petition for reconsideration).

"in the foreseeable future,"⁶ are winning competitive bids for U.S. tank construction projects, proving that CB&I not only has no *insurmountable advantage*, but that there is in fact a *credible entry scenario* taking place today.

1. Post-Acquisition Activity is Particularly Probative and Relevant Here.

Prior to the acquisition, the LNG industry (and thus the tank-building business) in the United States was essentially dormant. In the 10 years leading up to acquisition, there were only nine LNG tank projects awarded for construction in the United States, either for peak shaver facilities or terminal expansions, and no new terminals were built. Tr. at 3046, 3052-54.⁷ Indeed, as of 2001, there were only four LNG import terminals in the entire United States.

Since the acquisition, however, there has been significant growth in U.S. LNG tank projects. As one publication noted:

US and foreign companies launched proposals during 2003 to site up to 15 new import terminals. . . . The number of proposed sites more than doubled during 2003 to over 30. This exuberance in the market underscores the opportunity for development of US LNG import terminals.

Petroleum Economist, *Fundamentals of the Global LNG Industry, 2004*, at 89. The unprecedented competition to develop new LNG import terminals in the United States has led to an influx of international contractors well known to the U.S. developers from their work in the international arena. These contractors are qualified, ready, able, and determined to take on construction of LNG tanks in the United States.

In this type of situation, post-acquisition evidence tending to diminish the probability or impact of anticompetitive effects on the relevant market is probative and reliable. Here, the

⁶ Op. at 57.

⁷ This was in sharp contrast to other countries, where a multitude of firms were gaining significant tank-building experience during this same time period. In many cases, it is these firms who today are CB&I's most formidable competitors in the United States.

evidence of an increase in the scope and number of LNG projects and the number and strength of new competitors since the acquisition must be considered.⁸ Because the LNG tank market is even more competitive today than it was when the acquisition occurred, it is apparent that the acquisition "did not short circuit the operation of the natural market forces," and consequently, there is no reason to order divestiture in this case. *United States v. Syufy Enters.*, 903 F.2d 659, 665 (9th Cir. 1990).

The post-record market activity further aligns this case with *United States v. Baker Hughes, Inc.*, 908 F.2d 981 (D.C. Cir. 1990). Previously, the Commission distinguished *Baker Hughes* on the basis that there was no evidence here that new entrants or smaller incumbents could expand their presence in the LNG tank market and that the LNG tank market was characterized by "a reluctance on the part of customers to take a chance on firms with no experience." Op. at 35. Here, however, the post-record awards prove the customers' willingness not only to entertain bids from new entrants, but to actually contract with them.

2. Expansion in the LNG Market Has Drawn Formidable and Successful Competitors.

The Commission concluded that "to compete effectively with CB&I – and thus sufficiently constrain it – bids from these new entrants must also be taken seriously by the customers in these markets and present the customers with credible alternatives." Op. at 32-33. The corollary to this premise is that if customers are taking the new bidders seriously, then the competition is "sufficiently constraining" CB&I. However, in its Opinion, the Commission repeatedly expressed concerns over the preliminary nature of many of the then-pending U.S.

⁸ The fact that the LNG business is taking off in the United States and has attracted a multitude of competitors is not the type of evidence subject to manipulation by the merged companies. See *United States v. General Dynamics Corp.*, 415 U.S. 486, 506 (1974).

construction projects, and ultimately predicted that the new entrants would not present the customers with credible alternatives. For example, the Commission stated:

As evidence of entry, Respondents also point to the fact that the new entrants have contacted a number of customers with projects in the very early stages of development. While this fact may be credible evidence that the new entrants have a desire to compete, it does not establish that meaningful entry has occurred. Simply put, evidence that new entrants are soliciting business (or are even providing some services to the market) is not itself evidence that they are now, or will be in the near future, firms that can sufficiently constrain CB&I.

Op. at 61. The Commission's Opinion reflects its belief that the new bidders for U.S. jobs would not be able to win bids.⁹ We now know that was simply wrong.¹⁰ In the short time since the record closed, CB&I has lost three significant LNG tank awards on a competitive bidding basis and a number of Engineering, Procurement and Construction, or "EPC," contracts, which, as everyone must recognize, can be the opening to winning a tank project.¹¹

- a. **After the Record Closed, CB&I Lost the Hackberry Project EPC Contract Once and the Tank Subcontract Twice to Competitors Described by the Commission as Ineffective Competitors.**

⁹ See, e.g., Op. at 32, 39, 41 ("In essence, a new entrant faces a conundrum: its lack of experience and inability to build a reputation place it at a competitive disadvantage in terms of winning a bid, which is the very thing it needs to gain experience and build a reputation.").

¹⁰ The record reflects that new entrants have assessed the market, have seen competitive opportunities, and have launched themselves into the competitive fray. Preparation of a bid package for a major LNG tank project involves significant expense. It simply strains credulity to assume that these companies are submitting bids that they are destined to lose because CB&I has the LNG tank business locked. Instead, these companies are bidding because they have the experience and the ability to be competitive in the United States. They obviously see an opportunity to profit and are not intimidated by the presence of CB&I.

¹¹ As the Commission noted, "an EPC contractor can perform the entirety of the work itself." Op. at 16. The Hackberry Project described herein where the EPC contractor will also perform the tank work is illustrative of this result.

At the time of trial, Dynegy was in the process of selecting a tank subcontractor for a new LNG import terminal it planned for Cameron Parish, Louisiana (the "Hackberry Project").¹² Shortly after the record closed, Dynegy selected U.K.-based Skanska/Whessoe as the tank subcontractor for the tank construction job.¹³ See Declaration of Michael E. Miles, dated February 1, 2005, attached at App. 2 (the "Miles Decl."). *This was the first tank award after the CB&I/PDM transaction and the largest LNG tank contract ever awarded in the United States, and it went to a firm whose reputation the Commission questioned.*¹⁴ Op. at 52 n. 323.

After the selection of Skanska/Whessoe, Dynegy sold the project to Sempra Energy International ("Sempra"), who decided to send the entire project out for re-bidding for an EPC turnkey contract. Besides CB&I, who initially joined with Bechtel Corporation ("Bechtel") to pursue the EPC contract, the other firms who bid on this business included Aker Kvaerner of Norway with Ishikawajima-Harima Heavy Industries ("IHI") of Japan; Skanska with Technip; Black & Veatch with Zachry; and Toyo Kanetsu KK ("TKK") of Japan, with Keiwit and

¹² The early bidding history on this project is discussed in the Opinion at pp. 30, 58-59. CB&I had attempted to obtain the contract to perform as EPC contractor on this terminal. CB&I lost that effort to the joint venture of Skanska/Whessoe and Black & Veatch. Tr. at 4568. The Commission originally discounted the potential of an award to Skanska/Whessoe for the tank construction on Hackberry project as probative of the competitive environment because Dynegy refused to accept CB&I's request to submit a late bid. See Op. at 58-9. Nonetheless, Dynegy accepted the offer of the foreign competitor, despite CB&I's interest in seeking the job. If Dynegy gave the same weight to construction experience within the United States as the Commission predicted it would, surely Dynegy would have accepted CB&I's late bid rather than select from a field of foreign competitors.

¹³ Dynegy's William Puckett testified at trial that Dynegy itself selected the firms that bid the project after conducting a "worldwide search" for firms qualified to perform both the PC and tank work. Tr. at 4544-4558. Puckett went on to say that after interviewing the competitors, Dynegy was satisfied that "they were all qualified to perform the service." Tr. at 4547. Similarly, El Paso's Robert Bryngelson testified at trial that he had "no reason to think" that international competitors CB&I faces in bidding on El Paso projects would not be equally *qualified to build in the United States* and that all *could do so at a competitive price*. Tr. at 6125, 6130, 6132.

¹⁴ Notably, Skanska/Whessoe was also part of the joint venture formed to serve as the EPC contractor. Tr. 4547-48.

Mustang. CB&I lost the EPC contract with its tank business to Aker Kvaerner/IHI, a company described in the Opinion as not an effective competitor because of its lack of FERC experience.¹⁵

See Miles Decl.

b. After the Record Closed, CB&I Lost the Cheniere Freeport EPC Contract and Tank Contract to a Firm Described by the FTC as Lacking Any LNG Tank Building Experience.¹⁶

After CB&I's acquisition of PDM, CB&I began negotiations with Cheniere Energy, Inc. ("Cheniere"), with the goal of obtaining the EPC contract for the LNG import terminal Cheniere planned for Freeport, Texas. *See Miles Decl.* The planned facility would include two full containment LNG tanks. CB&I was unsuccessful in this attempt. Instead, Cheniere engaged for their front end engineering and design work, or "FEED," Technip, a French firm, who today holds itself out as "a major player in the LNG industry, notably in the United States, where many LNG terminal projects will be developed in the years to come."¹⁷

After its selection as EPC, Technip pre-qualified CB&I, Technigaz of France with Zachry, Skanska/Whessoe, TKK/AT&V, and S&B/Daewoo, a Korean company, for the LNG tank work. *Id.* Again, CB&I lost, and the tank subcontract was awarded to Technigaz/Zachry.¹⁸ Not surprisingly, Technigaz's parent boasts that that Technigaz is a "front-ranking player" in the LNG tank business and has set up a cooperation agreement with Zachry, its construction partner

¹⁵ The conclusions reached by the Commission as expressed in the Opinion would suggest that CB&I's name, reputation, and local experience would trump the competition. This award demonstrates that this was not the case. Customers chose primarily on the basis of the bid and price.

¹⁶ *Op.* at 53, n. 323.

¹⁷ *See App. 3* (Jan. 14, 2005 press release by Technip).

¹⁸ Interestingly, the Commission appeared to place great weight on testimony that CB&I was confident it would obtain the award for the Freeport LNG project. *See Op.* at 61. CB&I's optimism was misplaced.

for the United States.¹⁹ Clearly, with this significant win under its belt and its ability to work with a "construction partner in the United States," Technigaz can no longer be "question[ed] whether it has the skills to transmit [LNG tank building] knowledge to Zachry." Op. at 53 n.323.

c. After the Record Closed, CB&I Lost Cheniere's Corpus Christi and Sabine Pass Project EPC Contracts to Bechtel.

Cheniere is currently developing two new LNG import terminals planned for Corpus Christi and Sabine Pass, Texas. Each terminal will include three single containment tanks. CB&I unsuccessfully attempted to negotiate a sole source contract for the EPC position. See Declaration of Ronald E. Blum, dated February 1, 2005, attached at App. 5 (the "Blum Decl.").

In the early stages of development on both Cheniere projects, CB&I offered to provide technical services for Cheniere's FERC application for the two projects in exchange for Cheniere's commitment to negotiate exclusively with CB&I for the full EPC contract for each project. *Id.* Cheniere declined CB&I's proposal and hired Black & Veatch for FERC assistance and FEED. *Id.* Clearly, Cheniere did not feel compelled to knuckle under to CB&I, as the Opinion would suggest.

In 2003, Black & Veatch solicited proposals for the tank work subcontract on both of the Cheniere projects. *Id.* CB&I's competition at that time was MHI, in association with Matrix, and TKK, in association with AT&V. *Id.* Cheniere ultimately selected Bechtel as the EPC for both projects, and Bechtel subsequently asked CB&I and others to submit new bids for LNG tank construction on both projects. *Id.* CB&I again submitted a proposal for this work, this time to Bechtel. *Id.*

¹⁹ See *Saipem Today* at p.8, attached at App. 4.

After CB&I submitted a bid to Bechtel, Cheniere announced that MHI/Matrix had been selected as the tank subcontractor on both projects in the United States. MHI also issued a press release announcing the selection, stating:

In view of the robustness of the American LNG tank market, MHI has signed a comprehensive agreement with Matrix and strengthened its marketing activities in the U.S. [Cheniere's selection of MHI] was based on a high evaluation of MHI's performance in LNG tank construction in Egypt, Qatar, Taiwan and Korea, in addition to marketing efforts by MHI/Matrix.

See App. 6.

Despite this announcement, Bechtel, in December 2004, requested that CB&I update its proposal for the Sabine Pass project, indicating that MHI/Matrix and CB&I are still in competition with each other. It is CB&I's understanding that Bechtel will make a selection between MHI/Matrix and CB&I in the near future. There can be no doubt in this situation that CB&I and MHI/Matrix are competing head to head for this opportunity.²⁰

d. After the Record Closed, CB&I Lost the Mitsubishi Long Beach Project EPC Contract.

Mitsubishi recently chose Kellogg Brown & Root ("KBR") to perform the preliminary engineering work and to provide assistance in the FERC filing process for Mitsubishi's planned LNG import terminal in Long Beach, California. See Miles Decl. CB&I expects an invitation to bid for the tank subcontract in competition with MHI and TKK. It strains credulity to suggest that Mitsubishi would agree that its affiliate MHI is unqualified to build an LNG tank.

3. Further Expansion in the LNG Market is Expected to Draw Similar Competition.

²⁰ Indeed, even unsuccessful bidders can serve as effective competitors as the Supreme Court pointed out in *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, 661 (1964) ("Unsuccessful bidders are no less competitors than the successful one. The presence of two or more suppliers gives buyers a choice.").

In addition to those projects in which contract awards have been made, a number of projects are on deck to bid. For example, Exxon/Mobil, which has proposed to build two LNG import terminals at Sabine Pass and Corpus Christi, Texas, has pre-qualified CB&I, Skanska/Whessoe,²¹ IHI, and Technigaz as bidders for the tank work on the two proposed terminals. *See* Miles Decl. And just days ago, CB&I faced Black & Veatch, Mitsubishi Heavy Industries, Washington Group, and Whessoe at the bid walk for a peak shaving facility planned by Washington Gas Co. in Maryland. *See* Declaration of Eric Frey, dated January 31, 2005, attached at App. 8 (the "Frey Decl.").

Despite the Commission's predictions, "new entrants" are effectively competing and are actually winning bidding contests for U.S. LNG tank construction jobs. Moreover, many of the "new entrants" are the very foreign suppliers – Skanska/Whessoe and Technigaz, to name just a few – that the Commission stated would not "confront CB&I with competition sufficient to constrain it from raising prices." *Op.* at 52.

II. **REQUEST TO RE-OPEN THE RECORD**

Respondents urge that the Commission re-open the record to take additional evidence regarding the market conditions and competition since the close of the record. Respondents note that upon an appeal of the Order they intend to ask the court of appeals for leave to adduce additional evidence. 15 U.S.C. § 45(c). However, as the Commission may in its discretion modify or set aside an order prior to the filing of the record in the court of appeals, Respondents request that the Commission in its discretion re-open the record for the presentation of additional evidence in light of the changed market conditions for the purposes of this Petition to Reconsider

²¹ ExxonMobil acknowledges that Skanska Whessoe operates worldwide to design and build tanks and terminals for the LNG/LPG market. *See* App. 7.

as it could after the order became final. *See In re Novartis Corp.*, 128 F.T.C. 233 (1999) (exercising discretion to modify an order on petitioner's petition for rehearing asserting that factual developments since the record closed undermined factual predicates of the Commission's order); 15 U.S.C. § 45(b) ("[T]he Commission may at any time, upon such notice *and in such manner as it shall deem proper*, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.") (emphasis added). The evidence regarding market conditions after the close of the record is material, as demonstrated above, and, obviously, was unavailable at the time the record closed.

Attached in the Appendix to this Petition are the Declarations of Eric Frey ("Frey"), Michael E. Miles ("Miles"), and Ronald E. Blum ("Blum") (collectively, the "Declarations"). Frey, Miles, and Blum are business development managers with CB&I intimately involved in the ongoing competition and negotiations for U.S. tank construction projects. In their Declarations, Frey, Miles, and Blum discuss the competitive conditions for LNG tank construction projects in the United States since the close of the record. The Declarations are offered to demonstrate to the Commission that sufficient evidence now exists to refute the Commission's predictions about the LNG tank market and that the record should be re-opened for the taking of new evidence. Once the Commission re-opens the record for additional evidence, formal submission of evidence can occur through the discovery process and at such formal proceeding that the Commission directs.

III REQUEST FOR RECONSIDERATION AND CLARIFICATION DIRECTED TO CERTAIN PROVISIONS OF THE ORDER

Respondents further request that the Commission reconsider and clarify certain portions of the remedy imposed by its Order.

A. The Remedial Provisions of the Order Raise New Issues That Respondents Had No Opportunity To Address Previously.

The Commission imposed a remedy that far exceeds the relief necessary to restore competition in the Relevant Product markets, and also is inconsistent with the Commission's discussion of remedies in its Opinion and the relief originally ordered by the ALJ and requested by Complaint Counsel.²² The ALJ's Initial Decision required Respondents to divest only those assets acquired from PDM, including contracts obtained in the acquisition, and to refrain from interfering with attempts by an acquirer to employ CB&I personnel. Initial Decision at 128, 130. Complaint Counsel asked only that the Commission amend the ALJ's order to include the division of current contracts to reflect PDM's contracted business at the time of the merger and to include certain technical provisions.²³ Answer & Cross App. Br. Counsel Supp. Compl. at 72-79.

The Order expanded the remedy proposed by the ALJ to include not only assets acquired from PDM, but also assets owned by CB&I pre-acquisition and assets acquired post-acquisition. And, inconsistent with the Commission's Opinion that it is requiring a divestiture of "not only those assets necessary to build the four relevant products, but also those necessary to build water tank products" (Op. at 95), the Order inexplicably goes further and requires the divestiture of the "Relevant Business," a defined term in the Order which goes *way beyond* the product markets at issue.

²² The FTC Rules of Practice permit any party to seek reconsideration of a Commission decision when the decision raises new questions that the petitioner had no opportunity to argue before the Commission. 16 C.F.R. § 3.55.

²³ For example, Complaint Counsel requested that CB&I (1) be required to take *affirmative* steps to encourage key employees to transfer to and continue working for an acquirer; and (2) be ordered to provide transitional technical assistance and administrative services at the request of an acquirer.

Because neither the Initial Decision nor the remedy requested by Complaint Counsel gave Respondents reason to anticipate the breadth of the remedy imposed by the Commission, Respondents never had the opportunity to address the propriety of such relief.²⁴ Consequently, Respondents respectfully request that the Commission reconsider its Order.

1. The Remedy Ordered Does Not Bear a Reasonable Relationship to the Alleged Violations.

Divestiture is a harsh remedy that should not be ordered without an opportunity for the presentation and consideration of less drastic alternative forms of relief appropriate to cure the antitrust violation. *See United States v. E. I. Du Pont de Nemours & Co.*, 366 U.S. 316, 326-27 (1961). Where divestiture is ordered as a remedy for a merger, a divestiture plan should strive to place the acquired company in "the same or comparable competitive position" that the company was in before the merger. *See Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129, 138 (1967); *see also In re Internorth, Inc.*, 106 F.T.C. 312, 319 (1985), quoted in *West Texas Transmission, L.P. v. Enron Corp.*, 907 F.2d 1554, 1557 (5th Cir. 1990) (ordering divestiture "to ensure the continuation of the assets as ongoing, viable enterprises engaged in the same business in which the [p]roperties are presently employed and to remedy the lessening of competition resulting from the [a]cquisition as alleged in the Commission's complaint"); *Yamaha Motor Co. v. FTC*, 657 F.2d 971, 984 (8th Cir. 1981). The divestiture remedy ordered by the Commission here has no reasonable relation to the antitrust violations found to exist.

The Order drastically exceeds both the Commission's own purported rationale and the legal precedents upon which it relies. The Commission repeatedly affirmed that its purpose in

²⁴ The FTC Rules of Practice permit any party to seek reconsideration of a Commission decision when the decision raises new questions that the petitioner had no opportunity to argue before the Commission. 16 C.F.R. § 3.55.

creating a remedy was "to replace the competition lost from CB&I's acquisition of PDM." Op. at 93; *see also* Op. at 94 (relief should be designed to "*eliminate the effects* of the acquisition offensive to the statute"); Op. at 97 (monitor trustee must determine whether and to what extent technical services are "*necessary to restore the competition* lost through the acquisition.") (emphasis added); Op. at 99 ("[T]he Order should thus insert a competitive acquirer into the market and help *replicate the competition* lost from the acquisition.") (emphasis added). Yet, in crafting its relief, the Commission assumed without evidence, argument, or specific analysis that an equal division of the broadly defined "Relevant Business" was necessary to achieve that goal.

In other words, while the Commission offered a rationale for its conclusion that certain types of additional assets might be included in its remedy, specifically the water business, it made no findings and cited no evidence supporting its conclusions as to the *quantity* of such additional relief necessary to restore competition.

2. The Order Requires Respondents to Divest Assets Beyond Those Engaged in the Relevant Lines of Commerce.

The Commission found that CB&I's acquisition of the assets of PDM's Water and Erected Construction Divisions violated Section 7 of the Clayton Act and Section 5 of the FTC Act in four relevant lines of commerce in the United States: (1) field-erected LNG storage tanks, (2) field-erected LPG storage tanks, (3) field-erected LIN/LOX storage tanks, and (4) field-erected TVCs ("Relevant Lines of Commerce"). *See* Op. at 2, 93.

In devising the remedy ordered, the Commission tied the breadth of the Order to the Relevant Lines of Commerce as well as the water business because of its counter-cyclicity. But the Order goes way beyond this already broad scope of relief by requiring Respondents to divest essentially one-half of the "Relevant Business," which includes "all assets of every description . . . engaged, directly or indirectly, in all aspects of engineering, designing,

estimating, bidding, procuring, fabricating, erecting, rehabilitating, or selling any: water storage tank or system; industrial process system . . . ; flat bottom tank; pressure vessel or sphere; low temperature or cryogenic tank or system; vacuum chamber or system; steel plate fabrication; and specialty structure, including the Relevant Products." Order at 3-4. This incredibly broad remedy flies in the face of the Opinion where the Commission described the assets to be divested to be related to the Relevant Lines of Commerce and the water business. Op. at 95 ("We have included in the assets to be divested not only those assets necessary to build the four relevant products, but also those necessary to build water tank products"); Op. at 103 (noting its decision to include in the remedy ordered "additional water tank assets," a division of current contracts, provisions to encourage the transfer of employees, and technical assistance and support).

On its face, the definition of the Relevant Business is virtually limitless. Potentially every project CB&I constructs (in its other businesses having nothing to do with water or the Relevant Lines of Commerce) is custom designed, engineered and fabricated, and therefore could be construed as a "specialty structure." Although the Order leaves open the possibility that the presumption in favor of divesting such additional assets may be rebutted if the acquirer, with the concurrence of the Monitor Trustee, determines they are *not* necessary to "achieve the purposes of th[e] Order,"²⁵ Respondents respectfully suggest that the purposes of the Order are best achieved by eliminating the unrelated assets and reversing the presumption of divestiture and requiring the acquirer to justify the divestiture of assets beyond those acquired from PDM.

B. Respondents Request That the Commission Modify Its Order To Exclude Foreign Assets From Divestiture.

Both the ALJ and the Commission found that the United States was the relevant geographic market for evaluating the effects of the acquisition. Initial Decision at 5; Op. at 8.

Neither the Commission nor the ALJ made factual findings that Respondents' business and assets outside of the United States (1) were engaged in constructing the Relevant Products in the United States or (2) were acquired from PDM. Notwithstanding the fact that the Commission specifically focused on the Relevant Lines of Commerce *in the United States* and specifically rejected as irrelevant evidence of competition in the those businesses outside of the United States,²⁶ the Order as it is currently drafted has no express geographical limitation on the Relevant Business or Customer Contracts. Respondents respectfully request that the Commission modify its Order, pursuant to Section 5(b) of the FTC Act, to make clear that the relief therein does not reach beyond Respondents' domestic business and contracts.

C. Respondents Request That the Commission Modify Its Order to Exclude CB&I's Trademark from Divestiture.

The Order includes Intellectual Property in the assets to be divested. Order at I.P.5. "Intellectual Property" is defined in the Order to include, "without limitation, [] all trade names, registered and unregistered trademarks, service marks and applications, domain names, trade dress, copyrights, copyright registrations and applications." Order at I.J. This provision as written arguably would require Respondents to divest the "CB&I" trademark and associated intellectual property. This result is neither related to nor called for by the violations found by the Commission. Complaint Counsel have filed a Petition for Reconsideration to clarify this same provision, which Respondents affirmatively support.

²⁵ Order at IV.A.

²⁶ See, e.g., Op. at 62 (Rejecting evidence of projects in Trinidad and the Bahamas as "shed[ding] no significant light on the competitive landscape in the United States"); Op. at 8 (defining relevant geographic market for all product lines as "the United States"); Op. at 52-53 (discounting overseas LNG construction experience of new market entrants and concluding that U.S. customers will discount the applicability of overseas experience to U.S. construction projects).

Because the remedy ordered by the Commission is overly broad and therefore not reasonably related to the alleged unlawful conduct, the Respondents respectfully request that the Commission reconsider the remedy contained in its Order.

IV.
REQUEST FOR STAY

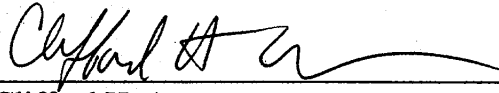
In the event the Petition to Reconsider is denied, Respondents intend to appeal to the appropriate court of appeals pursuant to 15 U.S.C. § 45(c). Accordingly, Respondents respectfully request that, pursuant to 16 C.F.R. § 3.55, the Commission enter an order staying the effective date of the Order and tolling the statutory time period to file an appeal until resolution of this Petition. Such an order would prevent the duplication of effort and confusion that would result from this Petition being considered simultaneously with a pending appeal.

V.
CONCLUSION

Claimants' Counsel argued in closing that "[g]iving buyers a choice is what the case is all about." Tr. at 8163. Accepting that premise, the Commission should reconsider its decision and conclude that no order of divestiture is required. The evidence today confirms that there are ample and adequate bidders to give customers competitive options, rendering divestiture unnecessary. In the alternative, the Commission should re-open the record to take additional post-acquisition, post-hearing evidence. In any event, the Commission should also stay the finality of its Order pending exhaustion of the proceeding on this Petition.

Dated: February 1, 2005

Respectfully submitted,



Clifford H. Aronson
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ATTORNEYS FOR RESPONDENTS
CHICAGO BRIDGE & IRON COMPANY N.V.
AND CHICAGO BRIDGE & IRON COMPANY


CERTIFICATE OF SERVICE

I, Ivy A. Johnson, hereby certify that on February 1, 2005, a true and correct copy of the foregoing was served on the following persons by hand delivery:

Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Rhett R. Krulla, Esq.
Assistant Director
Bureau of Competition
Federal Trade Commission
Room S-3602
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Steven L. Wilensky, Esq.
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Room S-3618
Washington, D.C. 20580


Ivy A. Johnson



**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

CHICAGO BRIDGE & IRON COMPANY N.V.
a foreign corporation,

CHICAGO BRIDGE & IRON COMPANY
a corporation,

PITT-DES MOINES, INC.,
a corporation.

Docket No. 9300

APPENDIX

1. Excerpt from Petroleum Economist, *Fundamentals of the Global LNG Industry, 2004*
2. Declaration of Michael E. Miles
3. Press Release Issued by Technip
4. Excerpt from *Saipem Today*
5. Declaration of Ronald E. Blum
6. Press Release Issued by MHI
7. Press Release Issued by ExxonMobil
8. Declaration of Eric Frey

A revitalised market

US LNG imports will rise at an average rate of 16% a year between 2002 and 2025, supported by a large number of import-terminal proposals. Although many proposals face permitting challenges, not least of which is local opposition, companies have responded with creative solutions. By Damien Gaul, industry economist, Energy Information Administration

A SURGE OF LNG imports in the US in 2003 appeared to confirm the revival of the country's LNG industry after two decades of struggling to compete with other sources of natural gas. Final data are expected to show that 2003 imports total the natural gas equivalent of over 0.5 trillion cubic feet (cf), more than doubling deliveries of 229bn cf in 2002 and the historical high of 253bn cf in 1979.

Undaunted by economic risk and other challenges, such as attaining the necessary permits, US and foreign companies launched proposals during 2003 to site up to 15 new import terminals, including projects with innovative uses of existing infrastructure, such as salt-cavern storage and floating offshore platforms. So far, regulators have consented to the construction of two new terminals – ChevronTexaco's Port Pelican and Sempra Energy's Cameron.

LNG was a marginal source of gas supply to US markets in the 1980s and 1990s. But it is again being sought as an integral part of the US supply mix – which it was in the late 1970s, when a perceived shortage of gas led to the construction of the country's four operating terminals. Following the large gas-price increase during winter 2000-2001, a first wave of renewed interest in LNG resulted in the recommissioning of the Cove Point, Maryland, and Elba Island, Georgia, terminals, as well as proposals to expand the Lake Charles, Louisiana, and Everett, Massachusetts, terminals. About a dozen projects to build new facilities also arose. Interest in LNG continued during 2002, even as prices declined for much of the year.

As high prices returned in 2003, interest in LNG became even stronger. Project sponsors gained confidence from a variety of changes in the outlook for LNG, including increased financing interest, regulatory flexibility and technological breakthroughs. However, the number of proposed LNG import terminals far exceeds the number that is likely to be built. The number of proposed sites more than doubled during 2003 to over 30 (see Table 1). This exuberance in the market underscores the opportunity for development of US LNG import terminals.

Supply and demand

Driving the development of US terminals is both a demand pull and a supply push. The recognition of a growing need for incremental baseload gas supplies is represented by prices at the Henry Hub averaging well above \$5/m Btu in 2003, more than double the prices for most of the 1990s. On the supply side, there is a growing number of countries looking to monetise their gas reserves, including several countries with their first liquefaction projects under construction. As of late 2003, this included Egypt, Russia and Norway, with countries such as Bolivia and Angola expected to announce firm plans to join the global marketplace.

Forecasting a long-term role in the US market, the EIA's *Annual Energy Outlook 2004* expects net LNG imports in 2010 to supply 8% of gas consumption, which, by then, is expected to have grown to 26 trillion cf/y. Through capacity increases at existing terminals and the projected construc-

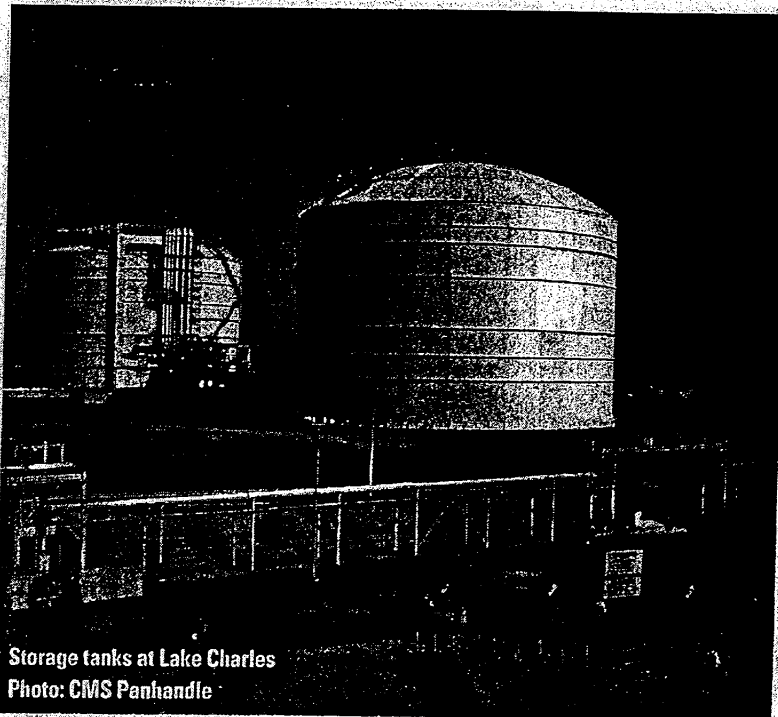
tion of four new terminals on the Atlantic and Gulf coasts between 2007 and 2010, LNG deliveries are forecast to reach 2.2 trillion cf in 2010. At this level, LNG's share of gas imports would rise from 5% in 2002 to 39% in 2010.

Imports at the four existing terminals are expected to reach 1.4 trillion cf in 2010, while around 0.8 trillion cf is forecast to be delivered to the four new terminals, which include two on the Gulf coast, one in the South Atlantic and one in the Bahamas. In addition to these new terminals, the EIA expects the construction of a terminal in Baja California, Mexico, which will result in deliveries of about 60bn cf to southern California from 2007. The deliveries will increase to about 180bn cf/y by 2010.

The growth in LNG imports since 2001 will continue over at least the next two decades. Total US imports, of both LNG and pipeline gas, will account for over 23% of supply in 2025, or 7.2 trillion cf. With more terminals expected to be built, LNG's share of net imports will rise to 66%, or 4.8 trillion cf by 2025.

Opportunities and issues

The stiff competition to build LNG facilities is taking place on many fronts. As of December 2003, the EIA has tracked 31 proposed terminals for North America. Many of these projects are already before regulators, and some have achieved success – with one receiving final approval from the Federal Energy Regulatory Commission (FERC). FERC's



Storage tanks at Lake Charles
Photo: CMS Panhandle

approval of Sempra's Cameron LNG terminal was the first regulatory approval for an LNG import terminal in 25 years. ChevronTexaco's Port Pelican project has been authorised by the US Coast Guard and, when construction is complete, it will be the world's first offshore regasification facility.

Generally, terminal proposals have been grouped in five geographic regions in North America: the Gulf of Mexico (GoM) region of the US and Mexico (onshore and offshore); the west coasts of Mexico and the US; the Bahamas; and the US and Canadian east coasts. Projects in Canada would move regasified product south through existing pipelines, while LNG deliveries to terminals in Mexico would either displace US exports to the country, or result in net imports to the US. Bahamas-based projects include proposals to build pipelines to Florida.

Drafting blueprints

Project sponsors have been creative in drafting blueprints for siting facilities. Terminals on the west and east coasts would provide direct access to markets otherwise served by long-haul pipelines. Because of transportation costs added to gas from the GoM, LNG gains a competitive edge, or at least it benefits as it competes with supply basins tapped by North American pipeline infrastructure. This was a key factor in planning the locations of three of the US' four operating terminals, and the reason that project sponsors tried for eight years to gain approvals to build a facility in California, before finally withdrawing the proposal as gas prices fell in the early 1980s.

The GoM's extensive pipeline infrastructure offers the opportunity to take advantage of economies of scale

The recognised need for baseload supplies in the US market, as well as cost reductions throughout the LNG supply chain, has expanded the opportunities to locate regasification terminals to the GoM. The EIA has tracked at least 14 proposed terminals for the GoM's onshore and offshore. The integration of the Mexican and US markets and, perhaps just as importantly, the decision of Mexican energy regulators to promote gas as a fuel for power generation, have contributed to opportunities for project sponsors in Baja, where at least three projects have been proposed. The growth of Florida's market, essentially for power generation, is a driving force behind the Bahamas' three proposed projects.

Pipeline infrastructure

The GoM region's extensive pipeline infrastructure offers an opportunity for a facility that can take advantage of economies of scale. The proposed terminals for the region generally have the capacity to deliver 1bn-2bn cf/d into the pipeline grid. For example, Freeport LNG has proposed building a facility that could deliver up to 1.5bn cf/d to Texas, giving their customers a choice of delivery to three major interstate pipelines and access to much of the eastern US. Sempra Energy's Cameron LNG facility would also have the capability to deliver as much as 1.5bn cf/d into the grid and, with nearly 9bn cf of storage capacity and two docks, the flexibility to handle two LNG shipments at a time.

One of Freeport LNG's owners, Cheniere Energy, is a small independent producer that has attracted attention for

its stated goal of a GoM, one at Corpus Christi would each Competitors 1 such as Exxon facilities, in 7 tonnes a year scheduled to

Projects in about \$0.6t depends heavily whether or not. Generally, the other US local and California smaller and r are about \$2 0.5bn-0.6bn These facilities for markets to price relative. With the base the Henry Hub Btu over the times spiking during the pipeline access. There is places with t as the District

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Table 1: Proposed US LNG import terminals

Project	Owners	Location	Start-up	Capacity (mcf/d)
West coast				
Terminal ONE Mar Adentro de BC	ChevronTexaco	Baja California, Mexico (offshore)	2007	0.75
Terminal Regional Energy Center	Marathon, Golar LNG, Grupo GGS	Baja California, Mexico	2006	0.75
Sumac Energy Solutions	Mitsubishi	Long Beach, California	2007	0.75
Energy Costa Azul LNG	Sempra Energy, Shell	Baja California, Mexico	2007	1.00
Cristal LNG	Crystal Energy	Oxnard, California (Offshore)	2006	0.50
Tractebel Mexico	Tractebel	Lazaro Cardenas, Mexico	2007	0.50
Chapultepec LNG	BHP Billiton	Oxnard, California (Offshore)	2008	1.00
Florida/Bahamas				
Dean Express LNG	AES	Ocean Cay, Bahamas	2006	0.50
Freeport	El Paso	Freeport Grand Island, Bahamas	2007	0.50
Cayman	Tractebel Bahamas LNG	Freeport Grand Cayman, Bahamas	2007	0.50
Gulf coast				
ExxonMobil LNG	ExxonMobil	Quintana Island, Texas	2007	1.00
Sabine Pass/Cheniere	Cheniere Energy	Sabine Pass, Louisiana	2008	2.00
Port Pelican	ChevronTexaco	Louisiana (offshore)	2007	1.50
Cameron LNG	Sempra Energy	Hackberry, Louisiana	2007	1.50
Altamira	Shell	Altamira, Mexico	2004	0.50
Corpus Christi LNG	Cheniere Energy	Corpus Christi, Texas	2008	2.00
ExxonMobil/Sabine Pass LNG	ExxonMobil	Sabine Pass, Texas	2008	1.00
Liberty	HNG Storage/Conversion Gas	Cameron, Louisiana	2007	1.00
Main Pass Energy Hub	Freeport-McMoRan Sulphur	Gulf of Mexico (offshore)	2006	1.00
Gulf Landing	Shell	West Cameron, Louisiana (offshore)	2008-9	1.00
Vermilion 179	Conversion Gas Imports	Louisiana	2008	1.00
Mobile Bay LNG	ExxonMobil	Mobile Bay, Alabama	2008	1.00
Freeport LNG	Freeport, Cheniere, Contango	Freeport, Texas	2006	1.50
Energy Bridge	El Paso	Floating Dock (offshore)	2005	0.50
East coast				
Canaport	Irving Oil/ChevronTexaco	Canaport, New Brunswick, Canada	2006	0.50
Weaver's Cove	Poten	Fall River, Massachusetts	2007	0.40
Access Northeast Energy	Access Northeast Energy	Bearhead, Nova Scotia	2008	0.50
Fairwinds LNG	TransCanada, ConocoPhillips	Harperswell, Maine	2009	0.50
Providence LNG	Keyspan, BG LNG Services	Providence, Rhode Island	2005	0.50
Crown Landing	BP	Logan Township, New Jersey	2008	1.25
Somerset LNG	Somerset LNG	Somerset, Massachusetts	2007	0.40

Source: EIA



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It's stated goals of building two more import terminals in the GoM, one at Sabine Pass, Louisiana, and the other at Corpus Christi, Texas. These two facilities, now before Ferc, would each have capacity to deliver up to 2.5bn cf/d. Competitors for onshore GoM facilities include supermajors such as ExxonMobil, which plans to build at least three facilities, in part to accept deliveries from its planned 7m tonnes a year (341bn cf/y) liquefaction plant in Qatar - scheduled to begin operations in 2008.

Projects in the GoM require a large capital investment, about \$0.6bn on average. But the investment amount depends heavily on site-specific considerations (including whether or not the terminal is designed for the offshore). Generally, these projects are larger than those planned for other US locations. In market areas such as the northeast and California, the proposed terminals are, generally, smaller and require less investment capital - average costs are about \$400m for a facility with deliverability of about 0.6bn-0.6bn cf/d.

These facilities are being proposed in markets that experience a premium relative to prices in the GoM. With the basis between Boston and the Henry Hub averaging over \$0.60/m Btu over the last five years and at times spiking to \$10/m Btu or more during the coldest winter days, when pipeline access is restricted, this premium can be substantial. There is also the economic option of storing LNG in places with high peak-winter heating requirements, much like the Distrigas facility has operated in Everett.

It is important to gain the acceptance of local groups for the proposal to avoid lengthy permitting delays

Permitting

LNG terminals are large industrial facilities, requiring deep-water accessibility and, to limit costs, an established harbor facility. Typically, project sponsors seek out tracts of land of 100 acres or more, although the facility itself occupies about 40 acres.

Siting a facility requires detailed studies on marine conditions and other logistical issues, as well as evaluating construction costs relative to the condition of the land tract and depth of the water passage. It is also important to gain the acceptance of local groups for the proposal to avoid lengthy permitting delays, or even rejection by government reviewers. One project proposed for Mare Island, California, the former site of a naval shipyard complex near San Francisco, has been withdrawn because of local opposition just six months after being tabled by its sponsors, Shell and BP. One local group involved in that battle has a website and is providing consultation to other local communities opposing proposed LNG terminals.

Locating new terminals in the GoM, with its existing industrial base and less resistance by the local population, is expected to reduce the length of time and difficulty in obtaining regulatory approval. However, even in the GoM, substantial opposition can occur. The day after receiving port authority backing to build a terminal in Mobile, Alabama, community groups filed lawsuits for allegedly circumventing the port approval process. And for onshore LNG, which has received preliminary environmental approval for its facility, was subjected to a last-minute wave of opposition to the project at Ferc by the Audubon Society, which was disturbed by the proximity of the facility to a nearby bird sanctuary.

In the northeast, local opposition has formed around the proposed Weaver's Cove project, outside Boston, Massachusetts, where the mayor of Fall River has mandated new studies on the safety of LNG as part of his

opposition to the project. Additionally, the Fairwinds LNG proposal, for Harpswell, Maine, has stalled, at least temporarily, as local fishermen and other groups have launched opposition. Fairwinds, proposed by TransCanada and ConocoPhillips, would deliver up to 0.5bn cf/d. The companies engaged the community surrounding the small town early in the process, detailing the benefits in dollars to the community over time, even stating up-front that the project was a non-starter if the town of Harpswell did not support it. At the time of writing, the town council's vote on the project had been delayed twice, but was expected to take place in January 2004, at the earliest.

The difficulty in siting terminals onshore is one reason behind about a dozen offshore proposals. In California, Crystal Energy has proposed the conversion of a former oil platform, about 15 miles off the coast of Ventura County, to an LNG terminal at a cost of about \$100m. Most recently, Australia's BHP Billiton has proposed an import terminal about 25 miles off the coast of southern

California, presumably to draw LNG from liquefaction projects in Australia. Both are before the US Coast Guard for approval.

Supply chain integration

Generally, regasification costs are as low as \$0.30-\$0.50/m Btu of the

supply cost, which can range between \$3 and \$4/m Btu to bring LNG to the US market. Import costs can vary widely depending on the distance and the cost of feedgas. However, with regasification costs a relatively small portion of the overall cost to market LNG, investment decisions are not necessarily dependent on, or even based on, the construction of regasification terminals. It is possible to conceive of multiple LNG regasification terminal projects moving forward without firm commitments in place for supplies.

However, supply chain integration has been a significant characteristic of the LNG industry because of the difficulty and risk in co-ordinating upstream supplies, including shipping. Additionally, financing is often contingent on long-term agreements throughout the value chain. Terminal owners also need to know whether, and where, long-term supplies are available. As a result, many industry observers say the projects backed by sponsors with good credit and ownership throughout the LNG supply chain have an advantage.

Btu content

Much attention has focused on the relatively high Btu content of LNG from various countries (Libya has the highest, at about 1,162/cf). Natural gas with such a high heat content is incompatible with many appliances and exceeds the US interstate pipeline standard of 1,035 Btu/cf with a range of plus or minus 50 Btu.

Although the heat content of LNG became a short-term concern, limiting LNG supplies during 2003, the industry is moving fast to address the issue. There are several solutions, more than one of which has been implemented. At Everett, Distrigas uses in-tank blending of pipeline gas with LNG to meet standards, while at Lake Charles, Southern Union mixes high heat content natural gas in with gas being transported in pipelines. El Paso is equipping its facility with air injection devices to dilute Btu content at the Elba Island facility. Lastly, Dominion is spending \$28m to equip Cove Point with a nitrogen separation plant, also to dilute LNG heat content. In the long-term, concerns over Btu content will fade. □

6.1

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)

CHICAGO BRIDGE & IRON COMPANY N.V.)
a foreign corporation,)

CHICAGO BRIDGE & IRON COMPANY)
a corporation,)

PITT-DES MOINES, INC.,)
a corporation.)

Docket No. 9300

**DECLARATION OF MICHAEL E. MILES IN SUPPORT OF
RESPONDENTS' PETITION TO RECONSIDER THE OPINION AND ORDER IN
LIGHT OF ENTRY AFTER THE CLOSE OF RECORD AND OVERBREADTH**

Michael E. Miles states as follows:

1. My name is Michael E. Miles, I am over the age of 18 years, and am competent to make this Declaration. This Declaration is based on my personal knowledge, obtained through my employment as a business development manager with Chicago Bridge & Iron Company ("CB&I").
2. As a business development manager, I have primary responsibility for identifying new projects, preparing proposals and negotiating contracts for new business for CB&I. Up through the end of 2004, I was focused on LNG projects in the United States. I am now focused on other petrochemical work in the Gulf Coast region of the United States. Specially, I have represented CB&I in its efforts to obtain awards on the following LNG projects:
 - Dynegey's proposed LNG import terminal planned for Cameron Parish, Louisiana (the "Hackberry Project") (project later sold to Sempra Energy LNG Corporation ("Sempra")). This terminal would include three full containment LNG tanks.
 - Freeport LNG's (Cheniere Energy owns 30%) proposed LNG import terminal planned for Freeport, Texas (the "Freeport LNG Project"). The Freeport Project would include two full containment LNG tanks.

- Sound Energy Solutions' (a wholly owned subsidiary of Mitsubishi Corporation) proposed LNG import terminal planned for Long Beach, California (the "Long Beach Project"). The Long Beach Project would include two full containment LNG tanks.
- Exxon/Mobil's proposed LNG receiving terminal planned for Sabine Pass, Texas (the "Exxon Sabine Pass Project"). The Exxon Sabine Pass Project would include three full containment LNG tanks.
- Exxon/Mobil's proposed LNG receiving terminal planned for Corpus Christi, Texas (the "Exxon Corpus Christi Project"). The Exxon Corpus Christi Project would include three full containment LNG tanks.

The Hackberry Project

3. In 2001 Dynegy interviewed six companies to act as the Engineering, Procurement, and Construction, or "EPC," contractor for the Hackberry Project. CB&I was one of these companies. Dynegy selected Skanska as the EPC contractor, with Black & Veatch as a subcontractor to Skanska. Skanska also owned Whessoe, a company that had long competed against CB&I in the design and construction of LNG tanks and facilities.
4. In late 2001, Dynegy sought bids for the tank work on the Hackberry Project. In February, 2002, CB&I initially declined to bid this project because the joint venture serving as the EPC, included a CB&I competitor. I understand that U.K.-based Skanska/Whessoe, a member of the EPC team, was the successful bidder for the tank work subcontract. At that time, this was the largest LNG tank subcontract to be awarded in the United States, and the first to be awarded on a competitive bid basis since CB&I acquired PDM.
5. In or around February, 2003, Dynegy sold the Hackberry Project to Sempra Energy LNG Corporation ("Sempra"). Shortly after that sale, CB&I learned that Sempra had been unable to complete the negotiations for the EPC contract with Skanska, and would re-bid for an EPC contractor to perform on a turnkey basis.
6. For this second chance at the EPC contract, CB&I joined with Bechtel Corporation ("Bechtel") at the pre-qualification stage. CB&I and Bechtel anticipated that, if successful, Bechtel would perform the systems design and procurement work, and CB&I would perform the LNG tank design and construction on a turnkey basis for Bechtel.
7. Bechtel advised CB&I prior to the pre-bid site meeting that it did not wish to pursue the project. CB&I decided that it would bid alone and sought and obtained requalification as a sole bidder. Attached as Exhibit A is a copy of CB&I's request to Sempra for requalification as a stand-alone bidder after Bechtel withdrew.
8. At the pre-bid walk-through, CB&I learned that its competition for the EPC contract would include four joint ventures: Aker Kvaerner with IHI; Skanska/Whessoe with Technip; Black and Veatch with Zachry/Technip; and TKK with Keiwit and Mustang.
9. In August 2004, CB&I submitted a bid for the EPC contract.

10. CB&I lost the EPC contract for the Hackberry Project to Aker Kvaerner/IHI. The tank subcontract went with the EPC contract to Aker Kvaerner/IHI.

The Freeport LNG Project

11. In the fall of 2003, I began work on the Freeport LNG Project. At that time, I understand that Cheniere had already engaged Technip, a French corporation, to do the front end engineering and design work, or "FEED," for the Freeport LNG Project and to act as the EPC contractor for the project.
12. On August 28, 2003, CB&I received an Inquiry of Interest/Capacity/Experience from Technip regarding the Freeport LNG Project. Attached as Exhibit B to this Affidavit is a copy of that inquiry. By the inquiry, Technip sought certain information from potential LNG tank subcontractors, including an expression of interest in providing a proposal and a list of relevant experience in the past three years.
13. On September 17, 2003, I attended a pre-bid meeting for the Freeport LNG Project on behalf of CB&I. Attached as Exhibit C is a copy of the pre-bid meeting list of attendees prepared by Technip regarding the meeting. I understand that the list included only those tank contractors that Technip had prequalified to bid. The list identifies the attendees as representatives for Technigaz/Zachry, Skanska/Whessoe, TKK/AT&V, and S&B/Daewoo and CB&I.
14. On November 20, 2003, CB&I submitted a bid for the LNG tank subcontract for the Freeport LNG Project.
15. In June 2004, CB&I learned that it lost the Freeport LNG Project subcontract for the LNG tank work to Technigaz/Zachry. I learned in January 2004 (after proposals had been submitted) that Technip also had been working in association with Zachry in the project's FEED stage and believe that Zachry's involvement in the FEED and EPC contract gave Technigaz/Zachry the advantage in the tank bid.

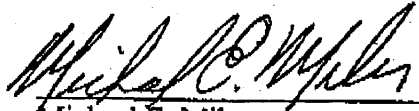
The Long Beach Project

16. I previously worked on CB&I's efforts to obtain the Long Beach Project. Mitsubishi hired KBR to perform the preliminary engineering work and to provide assistance in the FERC filing process for this project. KBR requested that CB&I, Mitsubishi Heavy Industries ("MHI"), and TKK each submit tank information for KBR's use in the FERC process. I understand that CB&I, MHI, and TKK will each be asked to submit a bid for the LNG tank work as the project proceeds. This project is at too preliminary a stage to accurately estimate the value of the contracts, but CB&I currently assumes that the EPC contract value may be from \$300 million to \$500 million, and the tank subcontract will comprise a substantial proportion of that total value.

The Exxon Sabine Pass Project and the Exxon Corpus Christi Project

17. Exxon/Mobil recently pre-qualified CB&I, along with Skanska/Whessoe, IHI, and Technigaz as bidders for the tank portions of the Exxon Sabine Pass Project and the Exxon Corpus Christi Project and is currently in the process of pre-qualifying EPC bidders. CB&I intends to pursue the EPC contracts on these two projects. Based upon preliminary information about the project, CB&I estimates that the value of the EPC contract for each project will be typical of large scale, multi-tank EPC projects.

I declare under penalty of perjury that the foregoing is true and correct.



Michael E. Miles
Date: 2/1/05



145691



2103 Research Forest Drive
The Woodlands, Texas 77380

Phone: (832) 513-1154
Fax: (832) 513-1505

May 11, 2004

Sempra Energy LNG Corporation

Attention: Mr. William B. Keller
Vice President
Engineering and Construction

Subject: Bid Acknowledgement and Intent to Bid
Cameron LNG Terminal

Dear Mr. Keller:

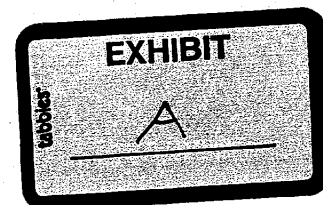
This is to confirm our conversation this morning regarding the change in the Bechtel/CB&I team bidding on the Cameron LNG project. Bechtel has decided not to participate in this project. However, CB&I still desires to actively pursue this project and would like to submit a bid as the EPC contractor.

In the pre-qualification information that we have already submitted, CB&I has demonstrated its capabilities and experience as an EPC contractor in successfully delivering turnkey LNG import terminals to clients. We are confident that we can do the same for the Cameron LNG Project. We will subcontract substantial site, civil, and marine work to qualified subcontractors, while self-performing the turnkey design, procurement and construction of the LNG tanks and major process systems. Though our worldwide resources, we will be able to provide the personnel, equipment and materials needed to execute this important project.

Please confirm your approval of CB&I submitting a proposal as the EPC Contractor. Let me know if you have any questions, need additional information or want to meet with any CB&I management people to assist you in your decision.

Regards,

Michael E. Miles
Business Development Manager





Technip

August 28, 2003

CB&I
2103 Research Forest Dr.
The Woodlands, TX 77380
Attn: Jeffrey Steimer
Phone: 832-513-1143

Re: Freeport LNG Storage Tanks
Inquiry of Interest/Capacity/Experience

Dear Jeffrey Steimer,

This letter is written to ascertain the interest of your company in bidding on the referenced Project, as well as your company's capacity during the Project time frame and experience at constructing similar Works.

This RFP package will be for the Design and Erection of two (2) LNG Storage Tanks at the proposed Freeport LNG Terminal on Quintana Island, near Freeport, Texas. The Client/Owner is Freeport LNG Development LP, having its principal office located at 1200 Smith Street, Suite 600, Houston, Texas 77002.

It is the intent of Technip USA to negotiate and finalize a firm contract with the winning bidder by December 1, 2003, with actual award and release to commence work contingent upon the signing of an EPC Contract between Technip USA and the Owner, to be confirmed prior to final negotiations.

Please respond to the following:

- I. Confirm your company's interest in providing a firm proposal for this Project to Technip USA, under the following assumptions:
 - Bids due nine (9) weeks after receipt of inquiry
 - Anticipated number of bidders – four (4)

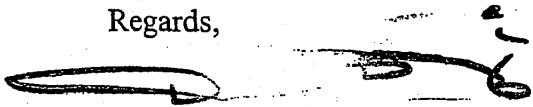
- II. Confirm which company will perform each of the major sections of Work (e.g. Engineering/Design, Civil, Concrete, Plate Welding, etc.).

Technip

- III. Pursuant to Question (II), provide a relevant experience list for the past three (3) years describing similar Works performed by the referenced companies.
- IV. Provide your Company's projected Workload over the next three and one-half (3-1/2) years.

Please respond no later than Tuesday, September 2, 2003.

Regards,



David Bolfig
Supervisor, Procurement & Subcontracts



Freeport LNG Storage Tank
Pre-bid Meeting Attendees
September 17, 2003

Bidding Entity
Name

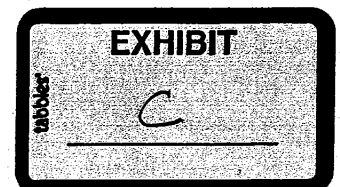
Company Name

Name

Technigaz-Saipem
CB&I
CB&I
Skanska/Whessoe
TKK/ATV
TKK/ATV
S&B/Daewoo
S&B/Daewoo
S&B/Daewoo
S&B/Daewoo
S&B/Daewoo
S&B/Daewoo

Zachry
CB&I
CB&I
Skanska/Whessoe
TKK
ATV
Daewoo
Daewoo
S&B
S&B
S&B
S&B

Mark Hunter
Mike Miles
David Gross
Dave Hope
M. Takeda, P.E.
W.T. Cutts
Hong-Sung Kim
Pan-Seop Lim
Allan Zirgulus
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Press Release

Source: Technip

Technip Led Joint Venture Awarded Contract for Freeport LNG Terminal in the USA

Friday January 14, 12:34 pm ET

PARIS--(BUSINESS WIRE)--Jan. 14, 2005--Technip (NYSE:TKP - [News](#)) in joint venture with Zachry Construction Corporation and Saipem has been awarded by Freeport LNG Development an EPC contract for a new Liquefied Natural Gas receiving terminal to be located in Quintana Island near Freeport, Texas (USA).

The Freeport LNG terminal, with a capacity of 1.5 billion cubic feet per day, is being developed in response to the growing need for new natural gas supplies for commercial, industrial and residential consumers in Texas.

The lump sum turnkey contract includes engineering, procurement, construction, pre-commissioning, commissioning and start up. This fast-track project is scheduled for completion in 2008. It has recently received the necessary approvals from the Federal Energy Regulatory Commission (FERC).

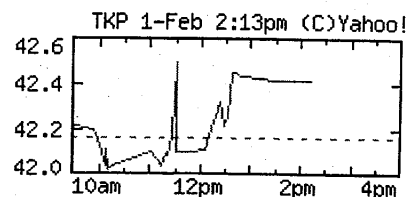
This significant project illustrates Technip's strategy to position itself as a major player in the LNG industry, notably in the United States where many LNG terminal projects will be developed in the years to come.

With a workforce of about 19,000 persons, Technip ranks among the top five corporations in the field of oil, gas and petrochemical engineering, construction and services. Headquartered in Paris, the Group is listed in New York and Paris. The Group's main engineering and business centers are located in France, Italy, Germany, the UK, Norway, Finland, the Netherlands, the United States, Brazil, Abu-Dhabi, China, India, Malaysia and Australia. The Group has high-quality industrial and construction facilities in France, Brazil, the UK, the USA, Finland and Angola as well as a world-class fleet of offshore construction vessels.

Contact:

Technip
Public Relations:
Laurence Bricq, +33 (0) 1 47 78 26 37

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- [Webcast Alert: Technip 2005 Guidance and IFRS Impact Conference Call Webcast](#) - PR Newswire (Fri Jan 28)
- [Technip 2005 Guidance and IFRS Impact Call scheduled for Wed, Feb 2](#) - CCBN (Fri Jan 28)
- [2005 Guidance and IFRS Impact Conference Call](#) - Business Wire (Tue Jan 25)

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daguez@technip.com

<http://www.technip.com>

• [Percent](#) - Associated Press (2:10 pm)

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[\(What's This?\)](#)

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Saipem Today



Saipem

Saipem Today

Saipem is among the world leaders in the oil & gas services sector, particularly concerning offshore engineering & construction.

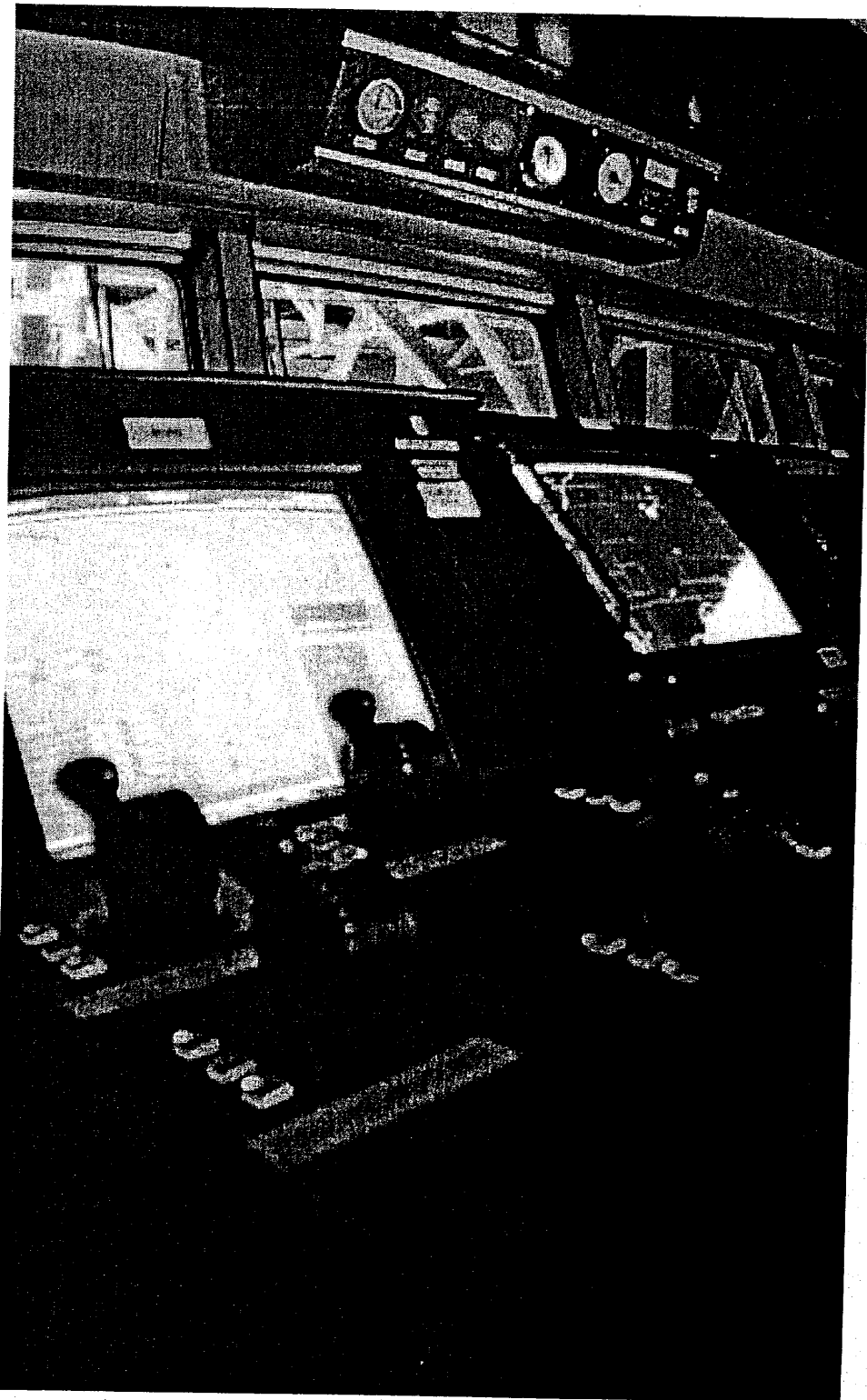
The Company began operations in the 1950s. During the 50s and 60s it accumulated competencies in onshore pipelaying, plant construction, and drilling, operating either as division within the Eni group or on a standalone basis; becoming definitively autonomous in 1969. Offshore operations commenced in the Mediterranean Sea in the early 1960s, and expanded into the North Sea in 1972.

The Company started offering its services to customers outside the Eni group in the early 1960s and has since widened its customer base to include almost all the supermajors, majors, major nationals and independent oil & gas companies worldwide. Saipem has been listed on the Milan Stock Exchange since 1984 (having previously been a wholly owned subsidiary of Eni). Eni currently owns approximately 43% of Saipem.

In the period 1998-2001 the Company invested more than Euros 1.2 Bil. to strengthen its offshore fleet, both in offshore construction - particularly in deepwater pipelaying and field development - and offshore drilling. As a result, Saipem's fleet is one of the most technologically advanced and efficient in the industry.

Having adapted its vessels and equipment to the strong 'frontier' market trend, in 2001, the Company started to reinforce its engineering & project management capabilities to cope with the other important market trend towards ever larger EPIC projects, through a number of acquisitions. In May 2002, Saipem SpA acquired Bouygues Offshore s.a. This has been the largest cross-border acquisition in Europe in the oil services sector, and has created a truly formidable global EPIC contractor.

The new group is organised in 6 worldwide business units. It enjoys a superior competitive position for the provision of EPIC services to the oil industry; with a particular focus on activities in remote areas, deepwater environments and gas-related projects. The new group is a truly global contractor, with strong local presence





in strategic and emerging areas such as West Africa, the former Soviet Union, Central Asia, North Africa, Middle East and South East Asia. The result of the integration with Bouygues Offshore, now Saipem s.a., is a powerful new reality that owns the key competencies to combine a low cost approach with significant local content, key assets (i.e. vessels and equipment), know-how, and distinctive engineering.

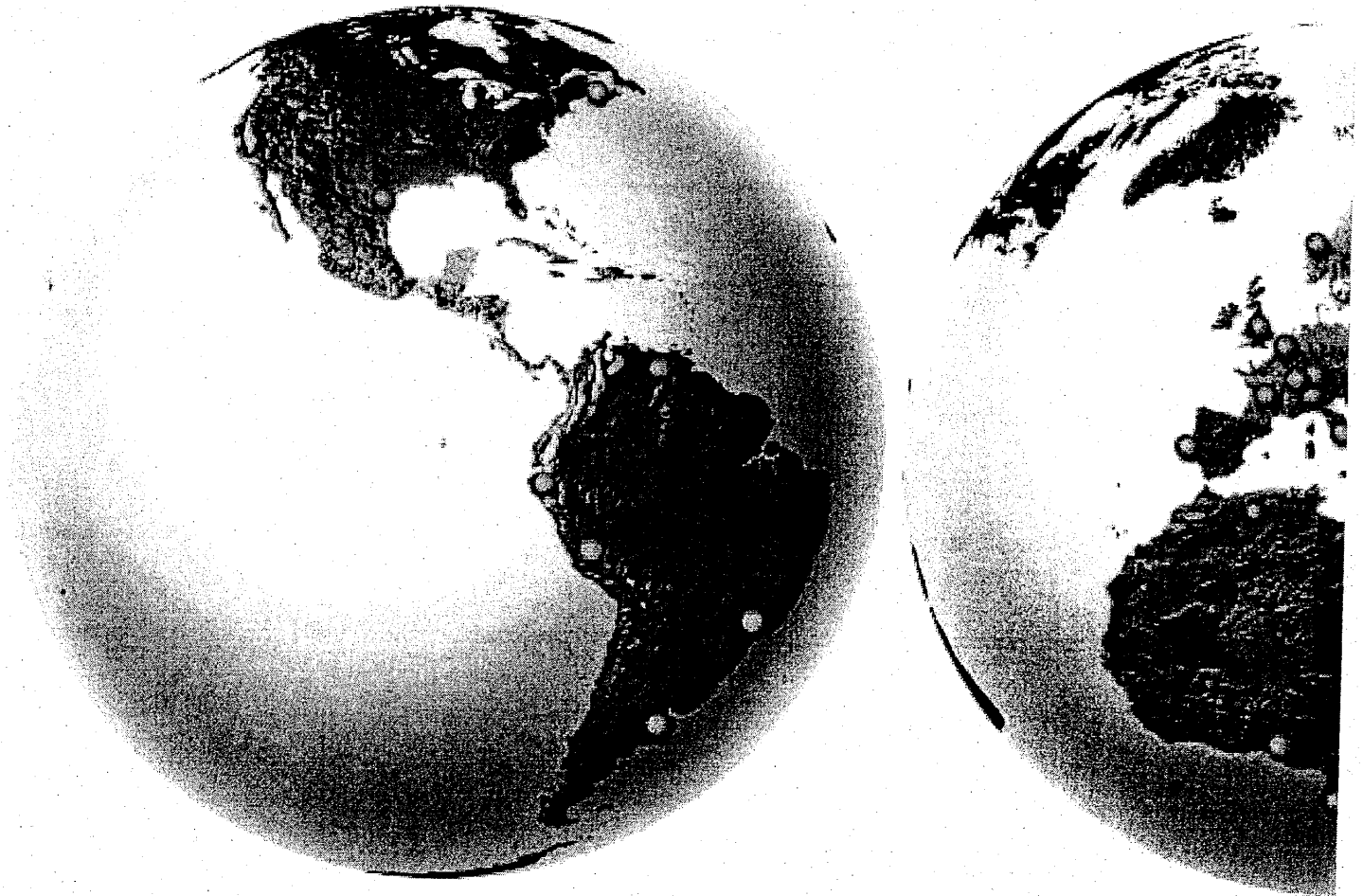
Our clients, and our people - in particular their Health and Safety - are the primary focus of all Saipem activity. Saipem has in place a Health & Safety Environment Management System and its Quality Management System has been granted ISO 9001:2000 certification by Lloyd's Register Certification.



Saipem Worldwide

Through its global involvement in record-setting projects offshore and onshore, its subsidiaries and branch offices on the five continents, its operational flexibility, and an international management always endeavouring to integrate local expertise, Saipem is a contractor that can truly claim a worldwide presence.

Saipem is present in the following countries:





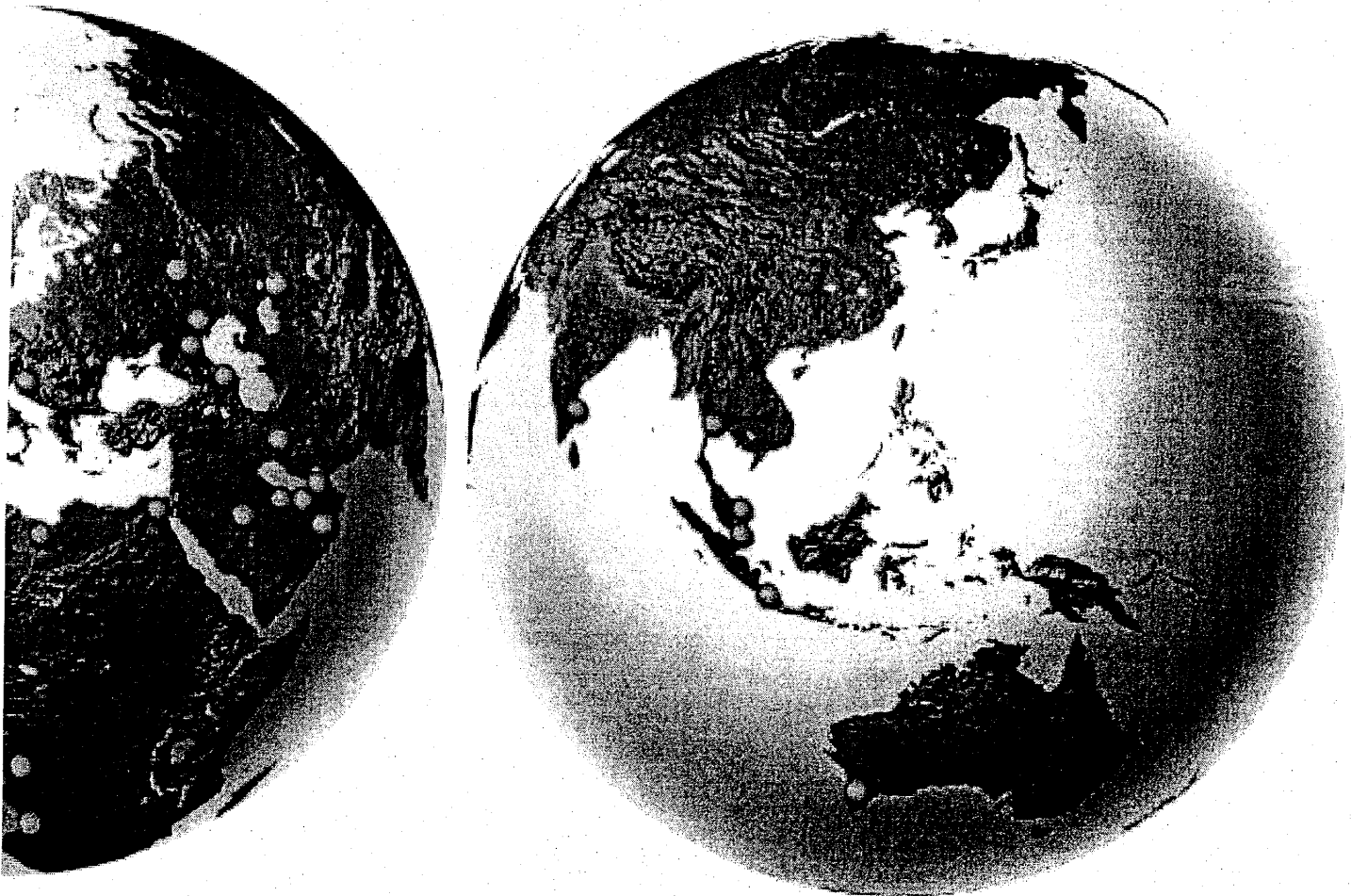
Saipem Mission and Core Values

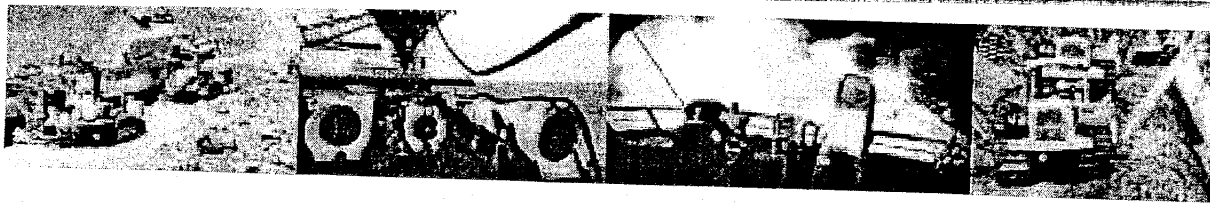
Mission Statement

Pursuing the satisfaction of our clients in the energy industry, we tackle each challenge with safe, reliable and innovative solutions. We entrust our competent and multi-local teams to provide sustainable development for our company and the communities in which we operate.

Our Core Values

Commitment to safety, integrity, openness, flexibility, integration commitment, innovation, quality, competitiveness, teamwork, humility, internationalisation





Offshore Construction

Crossing ocean and sea, Saipem's offshore activities arm has built a global reputation as one of the true innovators in its field.

From early projects such as the laying of a 600km Transmed gas pipeline in water depths down to 618m from Tunisia to Italy, through to the complex J-lay work at ExxonMobil's deepwater Diana Hoover development in the US Gulf, Saipem continues to respond to the offshore industry's changing demands. Having handled groundbreaking projects ranging from inter-field flowlines to major trunkline systems totalling some 20,000km in length since the late-1950s, the Company has continually updated and advanced its capabilities to anticipate the ever-greater demands of the market.

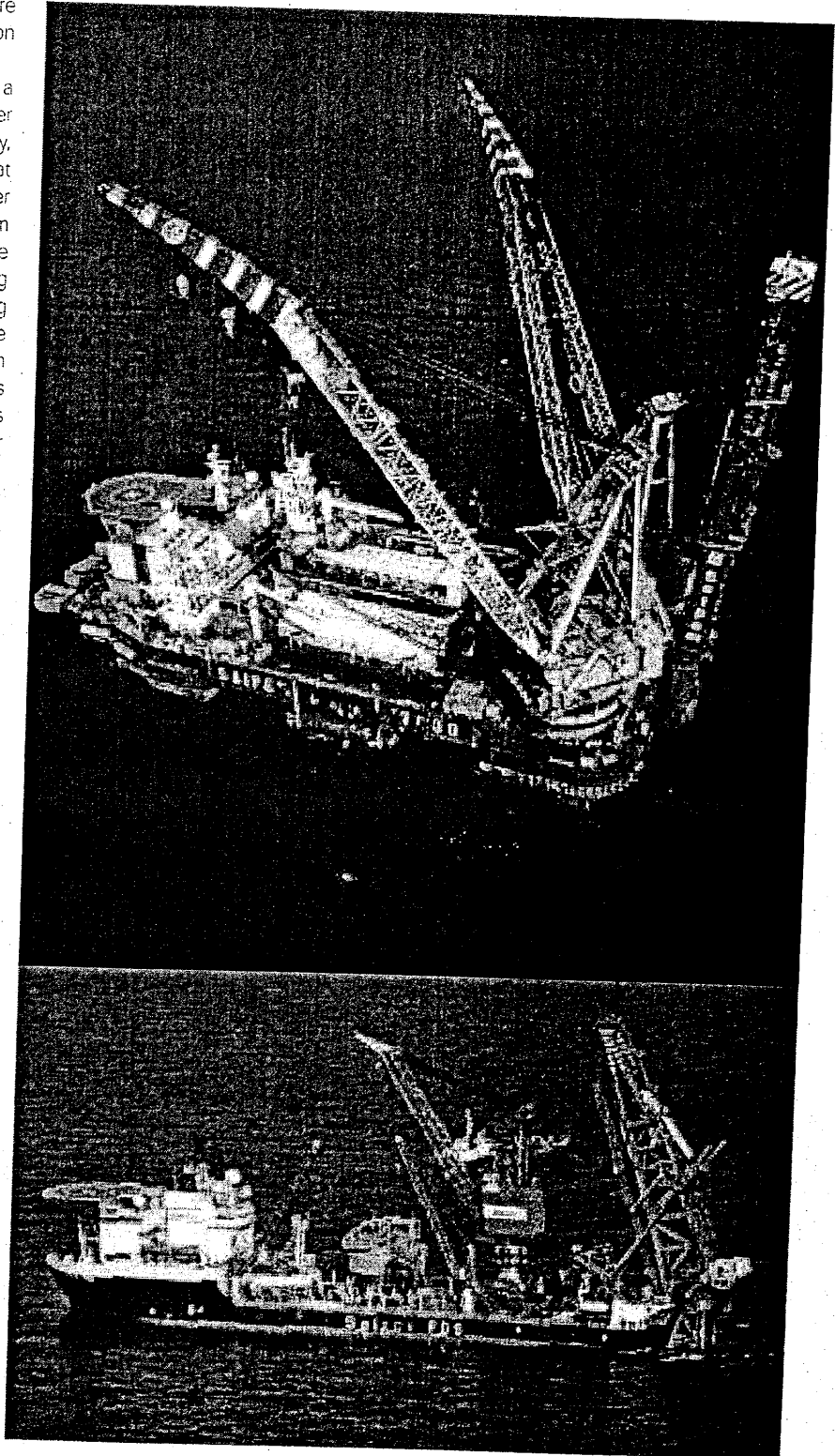
Laying over 700km of gas trunkline in water depths as great as 2,150m as part of the Blue Stream project has set a new standard for the sector.

Saipem's pioneering work in pipeline installation is matched by its experience installing offshore platforms around the world. Over the last ten years, Saipem has completed some 40 offshore construction projects – including modular deck drilling and production platforms, integrated deck platforms, wellhead platforms, and accommodation platforms – often in an integrated contractor role.

Since the 1970s, Saipem has also been involved in the construction of marine terminals, conventional buoy moorings, jetties and piers.

Recent acquisitions enabled a further development of engineering and project management expertise, significantly increasing the Group's capability to carry out EPIC (Engineering, Procurement, Installation, Construction) contracts.

The most significant of these acquisitions has been Bouygues Offshore. Through this operation Saipem has expanded its engineering and project management resources, that now amount to more than 3,000 people.



O nshore Construction

Land Pipelines

Land pipeline construction, particularly cross-country, has historically been one of the mainstays of Saipem's business. Saipem

ranks amongst the largest pipeline contractors in the world, having laid a record 60,000km of pipelines on five continents, including whole pipeline systems in Australia, New

Zealand, India, Argentina as well as Italy where the Company built over 10,000km of the country's Gas Pipeline Transmission System.

Projects of this geographic scope demand operations of great complexity. Pipelaying across the Alps, fording the Nile, Ganges and Rio Negro, crossing the Sahara and Arabian deserts or the swamps and jungles of West Africa, India and Asia, and laying in and around the most densely populated regions of the world have all been challenges met by Saipem.

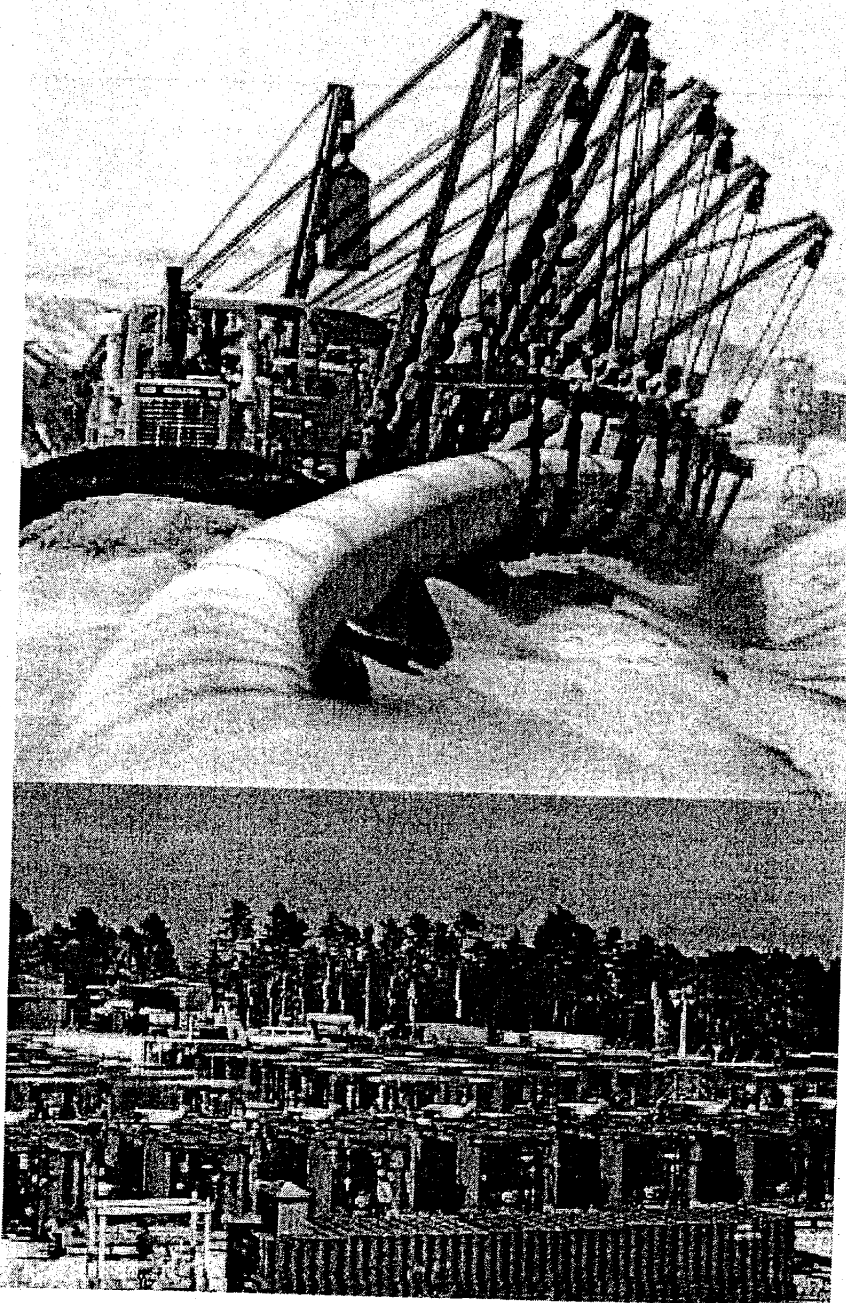
Upstream Oil & Gas Processing Plants and Terminals

Recent acquisitions permit the company to offer integrated solutions ranging from upstream engineering to turnkey delivery of facilities including onshore production treatment plants, pumping and compression stations and terminals. Among the most important realisations, the CPC marine terminal and the Blue Stream gas compression station in Russia, the ROD project in Algeria.

Involved in the plant and refineries construction sector for the last 35 years, Saipem has developed a broad scope of capabilities working for clients on a worldwide basis. The Company's far-ranging project experience in varied geographic locations includes construction of tens of refineries and a large number of plants for the chemical, petrochemical, treatment, nuclear, water, and industrial sectors.

Today with Sofresid within its organisation and the relevant expertise in chemical, refining and power generation plants, Saipem has furtherly broadened its initial role as mechanical contractor, developing and diversifying systems and management capabilities, from engineering to construction, that allow the Company to handle the whole project.

Saipem capability to provide services as an EPIC contractor along with its close-to-the-customer presence and international redeployment, makes it possible to meet the complete range of clients' requirements.



LNG - Liquefied Natural Gas

Leveraging its cryogenic storage membrane technology and recognised by its customers as a world expert, S.N. Technigaz, Saipem's wholly-owned subsidiary, is a front-ranking player in the Liquefied Natural Gas market. Technigaz uses its innovation capabilities to anticipate customer needs, developing and offering integrated solutions for onshore and offshore LNG import and export terminals (Gravity Base Structure, FPSO for LNG). The award of new contracts confirms Technigaz's position as the top-ranked turnkey builder of LNG storage tanks and import terminals and underscores the considerable potential of this market.

The Group is also an essential player on the LNG transport market through its two subsidiaries GTT and Moss Maritime. Both companies develop sea transportation technologies (spherical tanks for Moss Maritime and membrane tanks for GTT) which could be used as well for offshore technologies (LNG or FSRU).

In addition, Saipem's ability to set up partnerships strengthens its expertise and broadens its geographic scope and areas of competency.

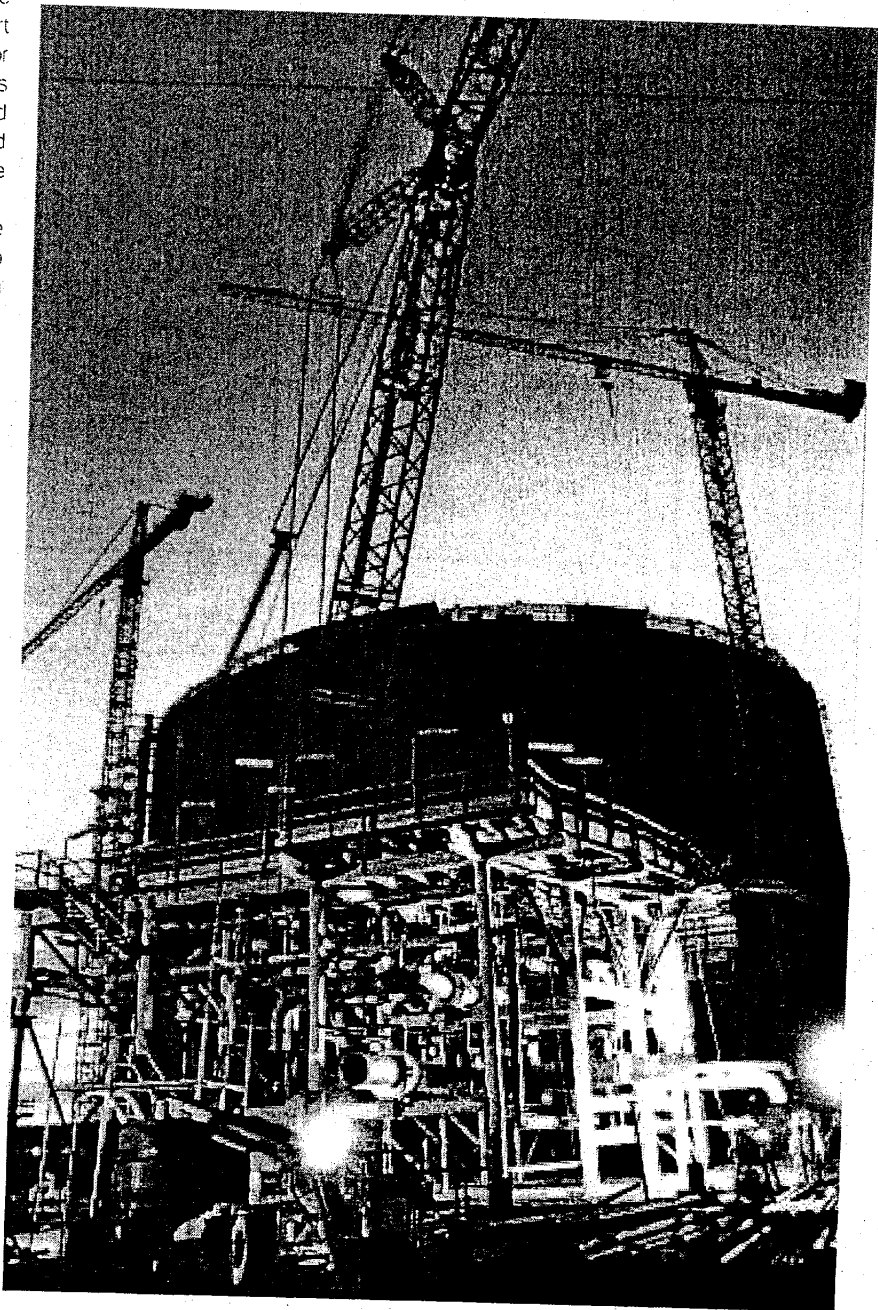
The design work completed for the Hazira project in India is one example of this strategy, and is the first tangible result of our Company's closed cooperation with Shell.

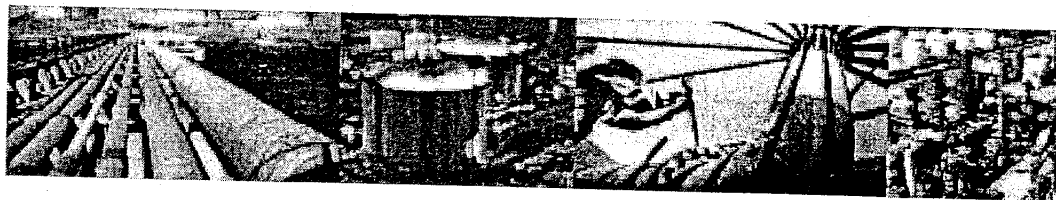
Saipem is optimistic about the outlook in the LNG segment as a result of its customers' selection of offshore solutions for LNG production and receiving units, its continued innovation and the success of its marketing initiatives in Central America, Spain, Italy, India and the United States, where Saipem has set up a cooperation agreement with Zachry, its construction partner for the United States.

The LNG business unit comprises also Saipem's skills in maritime works which are very often requested to deliver full integrated solutions for terminals. Carrying out many projects in maritime works has given the Company a recognised expertise in this activity including all types of harbours and marine terminals. Through its ability to harness offshore and maritime works techniques, its experience and capacity to develop innovative concepts, Saipem is a

preferred partner in high value-added maritime civil engineering projects, with a wide range of complementary technologies. The Company has also displayed the ability to continuously adapt to environmental constraints. The increasing integration of heavy maritime civil engineering component

into onshore and offshore oil and gas projects, such as the Bilbao LNG terminal project in Spain, the Hazira LNG terminal project in India and the CPC oil terminal in Russia, is opening up substantial new opportunities for the maritime works business.



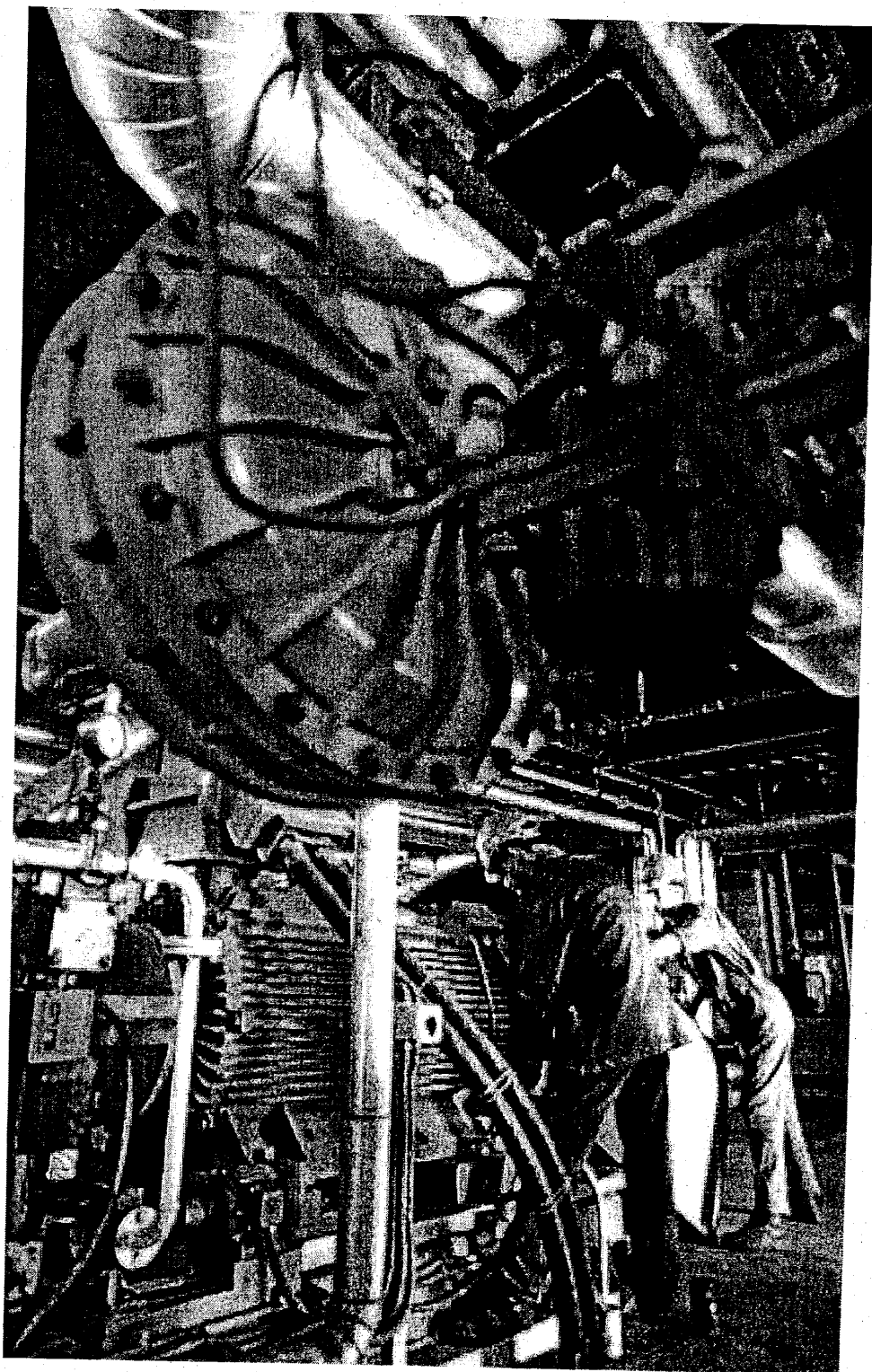


MMO - Maintenance Modification Operation

Through Camom in France and the Group's overseas subsidiaries, Saipem's presence in the last link of the value chain enables the Company to offer end-to-end solutions for energy services businesses. Saipem's involvement from the outset of projects allows to continuously integrate and improve operations and maintenance services on major projects. This ability to anticipate and meet customers' needs through engineering and maintenance services fosters closer, better-established relationships.

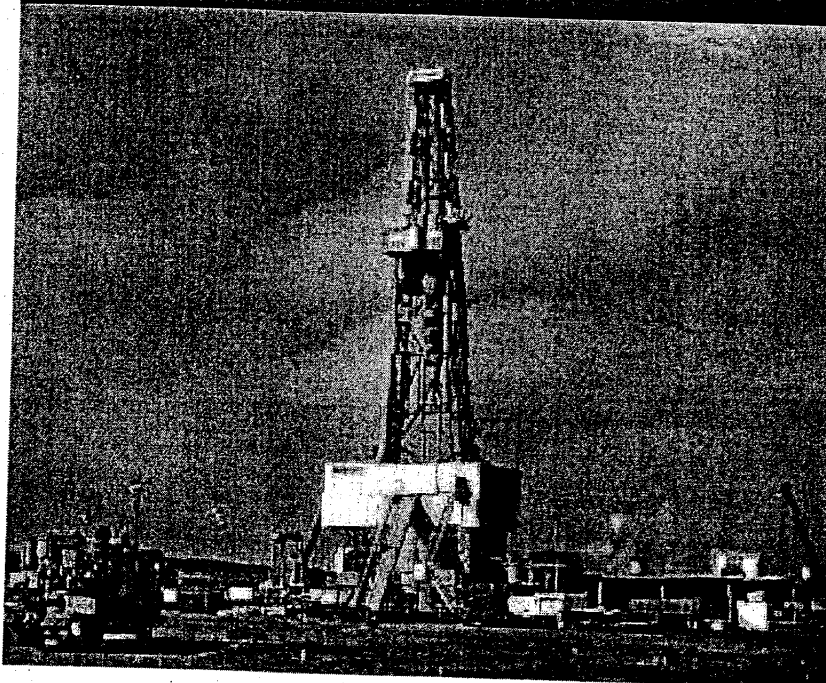
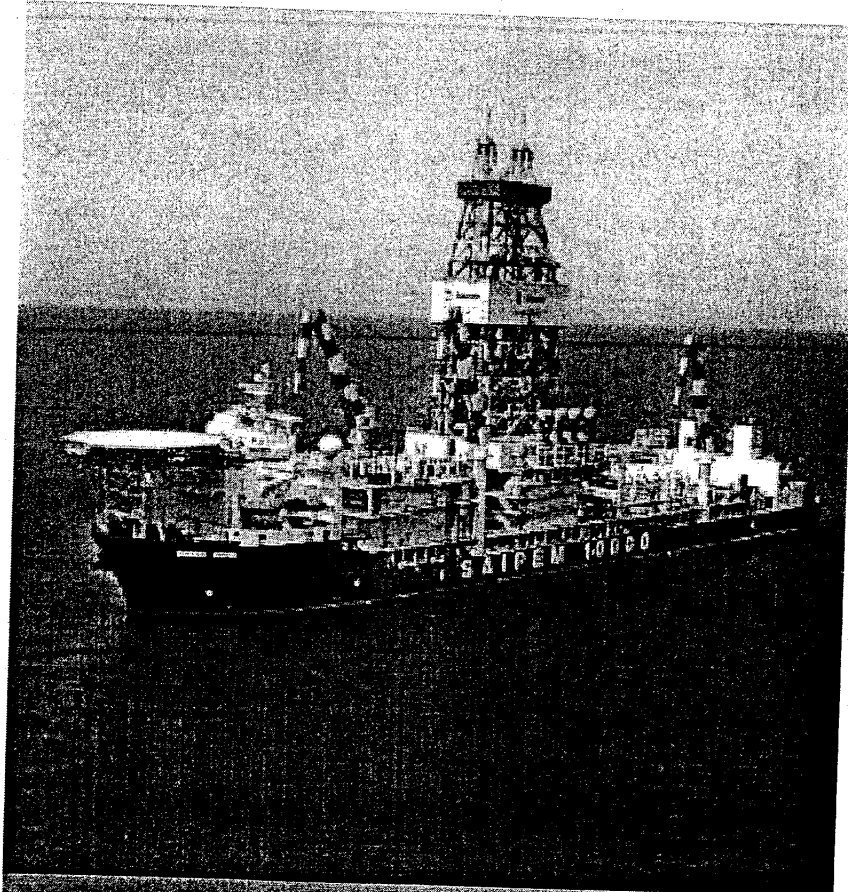
Leveraging these successes and the Group's capabilities, Saipem intends to pursue its diversification, consolidate its position as a major player in France, and strengthen its European partnerships in the field of industrial maintenance.

For export outside the European Union, Saipem intends to pursue the strategy of integrating maintenance into major projects and developing maintenance services through local or regional Group's offices. Maintenance engineering should also enable the Group to improve its processes, enhance productivity and propose concrete progress plans to its customers.





Drilling



As an international drilling contractor operating in some of the most hostile onshore and offshore environments, Saipem is presently contracted to major oil companies, carrying out important drilling programs in Africa, Europe, the Middle East, Asia Pacific, and the Americas.

Over many decades of activity Saipem has drilled over 6,200 wells, 1,400 of which have been offshore, totalling an overall depth of 13.7 million m.

In North West India alone, the Company has drilled close to 100 wells since 1989 on a footage basis.

During the last fifteen years in Italy, Saipem has drilled more than 30 HPHT wells deeper than 6,000m, and eight HPHT wells deeper than 7,000m. In 1999, Saipem reached a depth of 8,012m with the IDECO E 2100 AZ 5846 rig on the island of Gozo, Malta.

With the Company's fleet of state-of-the-art drilling vessels – including the ultra deepwater DP drillship, the Saipem 10000, and the upgraded fourth generation semisubmersible drilling rig the Scarabeo 7 – and its experienced and competent personnel, the Company aims to meet three key objects with every project it undertakes:

- zero accidents;
- no damages;
- excellence of performances.

Whenever possible Saipem seeks to maximise "local content" on a project by developing joint ventures with qualified local companies and by training personnel from around the world in the business of drilling and well control technology.

Leased FPSO

Saipem entered the leased FPSO business in 1996 via its involvement in the Aquila FPSO development in 850 m water depth offshore Italy, and has since gone on to develop FPSOs later leased for the Okono and the Okpoho fields development off Nigeria.

Through the successful development of these milestone projects and the strengthening of its engineering and project management

capabilities, Saipem is now ready to play a major role in this market, making the fullest use of the panoply of technologies and resources necessary to satisfy all clients' expectations on safety, quality, performance, schedule and budget.

The Saipem group can now, in fact, match multiple Company combinations with the right expertise and experience to meet the demands of any key development project

phase, from project management and engineering, through procurement, fabrication, installation and start-up, to operations and maintenance.

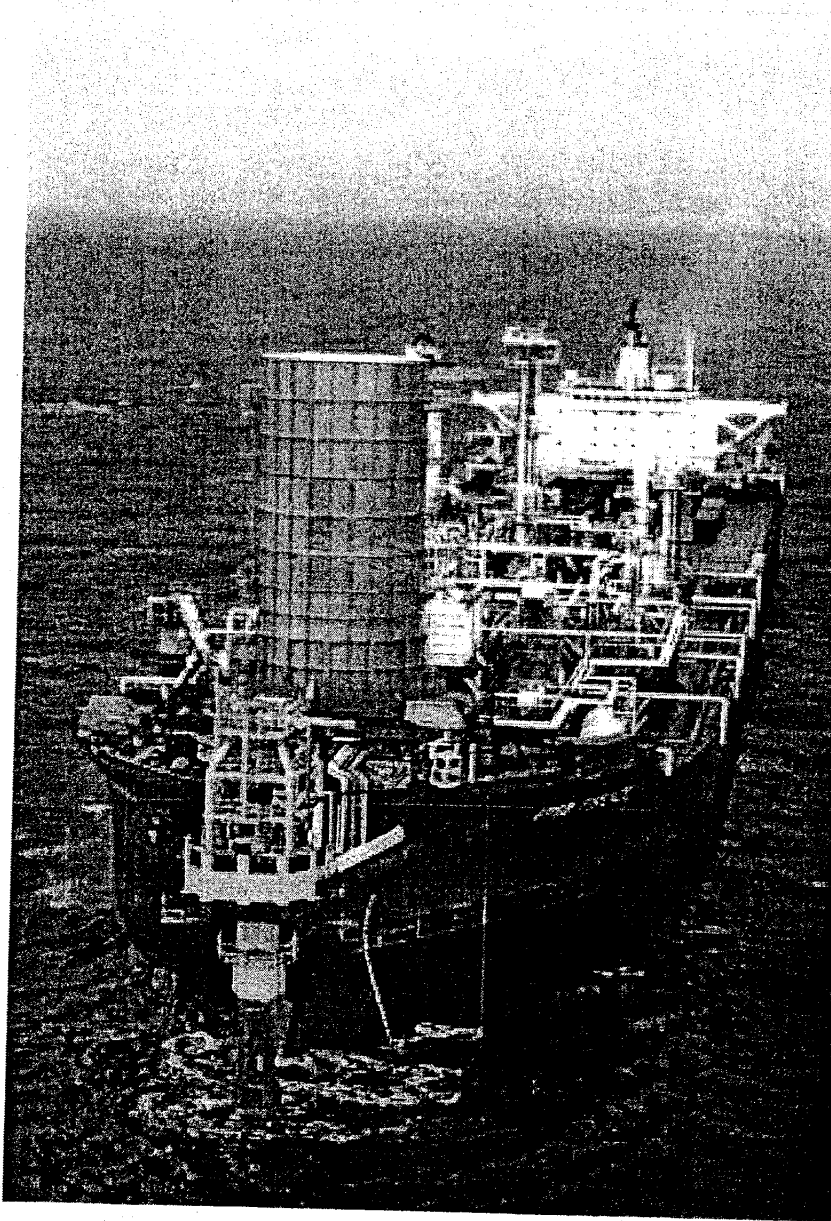
For an FPSO project, Saipem group can bring together project managers, procedures and standards from both its Milan-based Saipem S.p.A. technical services department as well as from Paris-based Saipem SA.

The top level engineering competencies offered by Saipem, as well as the specialised naval engineering support services of Saipem assets management department and from the fully owned subsidiary Moss Maritime the are all available to provide the full spectrum of engineering services required for a project. Procurement activities are supported by Saipem's existing procurement department which operates from several locations worldwide, and is integrated into a network, that provides a strong and reliable structure to carry out all aspects of procurement logistics in a global market.

A skilled team of construction managers, coordinators and inspectors within Saipem manages the project construction phases. Saipem is also in a position to offer fabrication activities in its yards in Italy as well as in other main logistic support bases such as in Rumuolumeni in Nigeria and Sharjah in the U.A.E.

Saipem's unique wholly-owned fleet enables the Company to provide a full range of installation, construction and transportation services suited to the most challenging floating system installations.

During the operation phase of an FPSO development, Saipem can call upon a wealth of experience, resources, systems and a network of working bases located around the globe to manage Saipem group's world-class fleet as well as its O&M business unit competencies.





Saipem

People, ideas, energy.

Saipem spa - Via Martiri di Cefalonia, 67 - 20097 San Donato Milanese (MI) - Italy - Tel. +39.02.520.1 - Fax +39.02.520.44415
www.saipem.eni.it



UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)

CHICAGO BRIDGE & IRON COMPANY N.V.)
a foreign corporation,)

CHICAGO BRIDGE & IRON COMPANY)
a corporation,)

PITT-DES MOINES, INC.,)
a corporation.)

Docket No. 9300

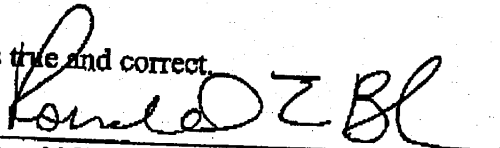
**DECLARATION OF RONALD E. BLUM IN SUPPORT OF
RESPONDENTS' PETITION TO RECONSIDER THE OPINION AND ORDER IN
LIGHT OF ENTRY AFTER THE CLOSE OF THE RECORD AND OVERBREADTH**

Ronald E. Blum states as follows:

1. My name is Ronald E. Blum, I am over the age of 18 years and am competent to make this Declaration. This Declaration is based on my personal knowledge obtained through my employment as Group Vice President, LNG Global Sales with Chicago Bridge & Iron Company ("CB&I").
2. In the course of my employment, I have responsibility for LNG facility sales in North America. In the course of my employment, I am familiar with CB&I's efforts to obtain awards on the following projects:
 - A new LNG import terminal planned for Corpus Christi, Texas, by Cheniere Energy (the "Cheniere Corpus Project")
 - A new LNG import terminal planned for Sabine Pass, Texas, by Cheniere Energy (the "Cheniere Sabine Pass Project")
3. The Cheniere Corpus Project and the Cheniere Sabine Pass Project will each include three single containment tanks.
4. In the early stages of development on both Cheniere projects, CB&I had discussions with Cheniere in regards to CB&I providing technical services for Cheniere's FERC application for the Sabine Pass and Corpus Christi projects in exchange for a

- commitment from Cheniere to negotiate exclusively with CB&I for the full engineering, construction, and procurement for each project. Instead, Cheniere hired Black & Veatch for FERC assistance and FEED. At that time, CB&I understood that Black & Veatch would have a preferred position with respect to obtaining the award of the EPC contract for both the Cheniere Corpus Project and the Cheniere Sabine Pass Project.
5. In 2003, Black & Veatch solicited proposals for the tank work subcontract on both of the Cheniere projects.
 6. Cheniere ultimately selected Bechtel as the EPC contractor, and negotiations between Bechtel and Cheniere commenced for the EPC contracts for the two projects. Even though Bechtel had been named EPC for both projects, Cheniere requested that CB&I's tank proposal be submitted to Black & Veatch and CB&I did so. CB&I understands that Mitsubishi Heavy Industries ("MHI"), in association with Matrix, and Toyo Kanetsu KK ("TKK"), in association with AT&V, also submitted bids for the tank work on the two projects.
 7. Apparently preferring its own specifications, Bechtel subsequently asked CB&I and others to submit new bids for LNG tank construction on both projects. CB&I again submitted a proposal for this work, this time to Bechtel. Based upon Bechtel's specifications for the bids, the value of the tank work subcontracts for the Cheniere Corpus Project and the Cheniere Sabine Pass Project would have been substantial, as each project included three LNG tanks with technical specifications unique to the project. After CB&I submitted a bid to Bechtel, Cheniere announced that MHI/Matrix had been selected as the tank subcontractor on the Sabine Pass Project and Corpus Christi Project.
 8. Bechtel has since executed a contract for the EPC work on the Cheniere Sabine Pass Project. Although Cheniere previously announced that MHI/Matrix had been selected as the tank subcontractor on this project, CB&I understands that the LNG tank contract has not actually been awarded. In December 2004, Bechtel requested that CB&I update its proposal for the Cheniere Sabine Pass Project. CB&I understands that Bechtel will make a selection between the short-listed companies, MHI/Matrix and CB&I. CB&I expects Bechtel to make an announcement in the near future.

I declare under penalty of perjury that the foregoing is true and correct.


Ronald E. Blum
Date: Feb 1, 2005





No.0998

MHI Selected for Engineering and Construction Of LNG Tanks at Two U.S. Sites --The First U.S. Order Placed to Japanese Company--

Tokyo, June 24, 2004 -- Mitsubishi Heavy Industries, Ltd. (MHI) and Matrix Service Company, a leading storage tank manufacturer in the U.S., were selected by Cheniere Energy, Inc. of the U.S. for engineering and construction of LNG tanks to be built at two LNG receiving terminals which Cheniere plans to build in Louisiana and Texas. Final negotiations with MHI/Matrix are expected to be complete in the next few weeks. This marks the first LNG tank construction work in the U.S. to be performed by a Japanese company.

The work will entail engineering and construction of six 160,000 cubic meter LNG storage tanks, three tanks at each site. Construction of the LNG receiving terminals is expected to start during the first quarter of 2005. These facilities are expected to start operation in 2007. Each facility is designed to have an initial natural gas processing capacity of 2.6 Bcf (billion cubic feet) per day.

In the U.S., as a part of diversification of energy sources, demand for natural gas is sharply increasing. As domestic natural gas reserves are in decreasing tendency, sharp increase in LNG import is expected. The construction of LNG terminals has been spurred as indicated by the remark of Secretary Spencer Abraham, U.S. Department of Energy, in late last year, mentioning necessity of at least 13 LNG receiving terminals in the United States by 2010.

In view of the robustness of the American LNG tank market, MHI has signed a comprehensive agreement with Matrix and strengthened its marketing activities in the U.S. Specifically, MHI has reinforced local marketing structure since March by dispatching several marketing and engineering personnel to Houston, Texas. The selection was based on a high evaluation of MHI's performance in LNG tank construction in Egypt, Qatar, Taiwan and Korea, in addition to marketing efforts by MHI/Matrix.

Cheniere Energy, Inc. is a Houston-based developer of LNG receiving terminals and oil and gas exploration and production company. Currently, Cheniere is developing LNG receiving terminals in Sabine Pass, Louisiana, and Corpus Christi, Texas. Cheniere also participates in the LNG receiving terminal project in Freeport, Texas.

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About Mitsubishi Heavy Industries

Mitsubishi Heavy Industries, Ltd. (MHI), headquartered in Tokyo, Japan, is one of the world's leading global heavy machinery manufacturers, with consolidated sales of 2,373 billion yen in fiscal 2003 (year ended March 31, 2004). MHI's diverse lineup of products and services encompasses

shipbuilding, steel structures, power plants, chemical plants, steel plants, environmental equipment, industrial and general machinery, aircraft, space rocketry and air-conditioning systems.

For more information, please visit the MHI website (<http://www.mhi.co.jp>).

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HOMEPAGE

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HOUSTON, Texas (January 9, 2004) - ExxonMobil Upstream Research Company announced today that it has licensed a patented liquefied natural gas (LNG) storage tank technology to U.K.-based Skanska Whessoe, a leading engineering, procurement and construction contractor with specialized, worldwide experience in storage and handling of low-temperature fluids. This new innovation in LNG storage technology, called modular tanks, offers the potential for significant cost savings and faster construction times for LNG import and export terminals.

The technology employs modern shipyard fabrication practices and a scalable, modular design to provide a full-containment LNG storage system. The tanks have been designed and rigorously evaluated for a wide range of conditions including earthquake prone areas of the Pacific-rim, North America, and Europe.

ExxonMobil's modular tanks are fully compatible with the design standards and criteria currently being considered for use at LNG import terminals worldwide. To provide a high degree of safety, the inner, nickel/steel, and the outer, reinforced, prestressed concrete tanks of the modular storage system are liquid and gas tight, and independently capable of containing the stored LNG.

The modular LNG storage tank system is another example of ExxonMobil's extensive LNG technology development program contributing to the company's expanding LNG business. While currently participating in the production of about 20 percent of the world's LNG, ExxonMobil is leveraging its LNG experience, technology and worldwide gas marketing processes to rapidly grow its LNG portfolio.

Significant new applications of LNG technology are being planned for ExxonMobil's joint venture projects with Qatar Petroleum that are developing resources from Qatar's giant North field. These include the world's largest liquefaction trains, each producing about 7.8 million tons annually (MTA) of LNG, surpassing the current industry-record 4.7 MTA trains in RasGas II, which is also a joint venture project between Qatar Petroleum and ExxonMobil. The LNG from these large trains will be transported to market via a new generation of very large LNG carriers.

ExxonMobil Upstream Research Company is the upstream research unit of Exxon Mobil Corporation (www.exxonmobil.com), a leading global oil, natural gas and petrochemicals company with operations in nearly 200 countries and territories. ExxonMobil leads the industry in upstream technology development and application.

From its U.K. base, Skanska Whessoe (www.skanska.co.uk) operates worldwide to design and build tanks and terminals for the LNG/LPG market and is also in the business of associated gas treatment, fluid handling and storage systems.

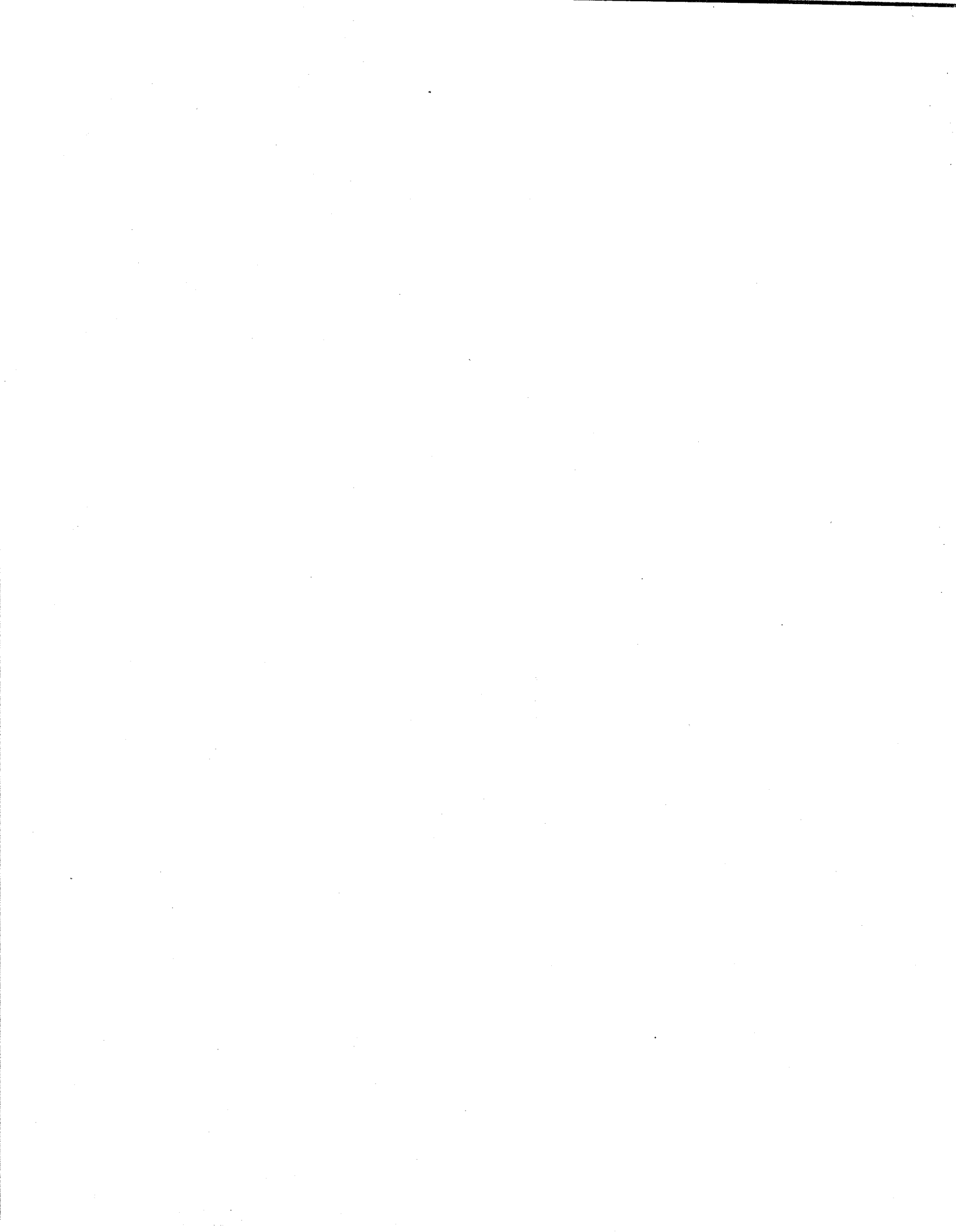
CAUTIONARY STATEMENT: Projections, estimates, expectations and business plans in this release are forward-looking statements. Actual future results, including technology application and project plans and schedules, and LNG production could differ materially due to changes in market conditions affecting the oil and gas industry; political actions; the outcome of commercial negotiations; developments involving competing technologies; and other factors discussed in our SEC filings. See in particular "Factors Affecting Future Results" under Item 1 of ExxonMobil's most recent Form 10-K. References to future quantities of LNG reflect volumes that are not yet classified as proved reserves but that we believe

will ultimately be produced.

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
)

CHICAGO BRIDGE & IRON COMPANY N.V.)
a foreign corporation,)
)

CHICAGO BRIDGE & IRON COMPANY)
a corporation,)
)

PITT-DES MOINES, INC.,)
a corporation.)
)

Docket No. 9300

**DECLARATION OF ERIC FREY IN SUPPORT OF
RESPONDENTS' MOTION FOR RECONSIDERATION AND
TO RE-OPEN THE RECORD TO ADDUCE ADDITIONAL EVIDENCE**

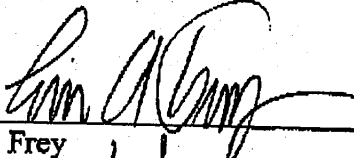
Eric Frey states as follows:

1. My name is Eric Frey, I am over the age of 18 years, and am competent to make this Declaration. This Declaration is based on my personal knowledge, obtained through my employment as a business development manager with Chicago Bridge & Iron Company, N.V. ("CB&I").
2. As a business development manager, I have primary responsibility for contracting for LNG-related projects in North America which includes all pre-contract interfacing with the client, bid preparation, and negotiation of final contract. Specially, I have represented CB&I in its efforts to obtain awards on the following projects:
 - Peak shaver facility to be built for Yankee Gas in Waterbury, Connecticut (the "Yankee Gas Project")
 - Peak shaver facility to be built for Washington Gas in Prince George's County, Maryland (the "Washington Gas Project").
3. CB&I recently competed for the EPC contract on the Yankee Gas Project. When CB&I submitted its bid on the Yankee Gas Project, I understood that our competition would include combinations of Toyo Kanetsu KK ("TKK"), a Japanese corporation, AT&V,

CHI Engineering Services, Inc., Mitsubishi Heavy Industries ("MHI"), a Japanese corporation, Matrix, and Black & Veatch.

4. Until the moment Yankee Gas advised CB&I that we had won the contract for the project, I believed that CB&I was in a fierce competition with a joint venture of Black & Veatch and MHI. During the course of several rounds of negotiations with Yankee Gas, CB&I reduced its bid in a effort to win the Yankee Gas Project. CB&I was extremely price conscious throughout the bidding and negotiations given the competition with Black and Veatch/MHI.
5. I am currently working on the obtaining the Washington Gas Project for CB&I. Washington Gas has requested pricing on "Technical Services," basically engineering services, and General Contractor Services. Washington Gas has further requested that bidders identify the work they would self-perform and the work they would expect to subcontract and manage. Proposals for the Washington Gas Project are due on February 21, 2005.
6. On January 28, 2005, I attended a pre-bid meeting and site visit for the Washington Gas Project. Also present were representatives from Black and Veatch, MHI, Washington Group, and Whessoe. It appeared that Black and Veatch was there with MHI and that Washington Group was there with Whessoe. I understand that these parties will be our competitors in the bid for the Washington Gas Project.

I declare under penalty of perjury that the foregoing is true and correct.


Eric Frey
Date: 1/31/05