



**EXPERT PANEL DETERMINATION**

**PURSUANT TO**

**THE AGREEMENT FOR DETERMINATION BY EXPERT OF CERTAIN DISPUTES  
RELATED TO COST RECOVERY (PATOS-MARINZA OILFIELD)  
DATED FEBRUARY 24, 2016**

**BETWEEN**

**THE MINISTRY OF ENERGY AND INDUSTRY ALBANIA, REPRESENTED BY  
THE NATIONAL AGENCY OF PETROLEUM RESOURCES**

**AND**

**INDEPENDENT PETROLEUM ALBANIA LTD**

**August 25, 2016**

**Reportorial**



August 25, 2016

Martin J. Valasek, Esq.  
Norton Rose Fulbright Canada LLP  
Suite 2500  
1 Place Ville Marie  
Montreal, Quebec H3B 1R1

Miriam Harwood, Esq.  
Curtis, Mallet-Prevost, Colt & Mosle LLP  
101 Park Avenue  
New York, NY 10178

Dear Mr. Valasek and Ms. Harwood:

The purpose of this report (“Decision Letter”) is to present the decision of the Expert Panel in the dispute between Bankers Petroleum Albania Ltd (“BPAL”) and the Ministry of Energy and Industry of Albania, represented by the National Agency for Natural Resources of Albania (“AKBN”) in accordance with the *Agreement for determination and expert of certain disputes related to Cost Recovery (Patos-Marinza Oilfield)* entered into by BPAL and AKBN (collectively, “Parties”) on February 24, 2016 (“Terms of Reference”).

Our services were performed and this Decision Letter was developed in accordance with the engagement letter between the Parties and PricewaterhouseCoopers Advisory Services LLC (“PwC”) dated March 8, 2016 (“PwC Engagement Letter”) and is subject to the terms and conditions included therein.

Although our work involved a detailed analysis of accounting records and other financial information provided to us by the Parties, it did not comprise an audit of any financial statements provided by the Parties in accordance with generally accepted auditing standards. Therefore, no representation or assurance is made by PwC as to the accuracy, reliability or completeness of any of the accounting records, submissions by the Parties or other financial information. Our Services were performed in accordance with Standards for Consulting Services established by the American Institute of Certified Public Accountants (“AICPA”). Accordingly, we are providing no attestation or other form of assurance with respect to our work. Use of the term “Expert” or



“Expert Panel” in the context of this Decision Letter is based solely on the Terms of Reference and the PwC Engagement Letter.

Our work was limited to the specific procedures and analysis described herein and was based only on the information made available through July 15, 2016. Accordingly, changes in circumstances after this date could affect the findings outlined in this Decision Letter.

This Decision Letter is based on the specific facts and circumstances in dispute and the information provided to the Expert Panel. It has been prepared solely in connection with the dispute between the Parties and is not intended for reliance in any other context. PwC disclaims any contractual or other responsibility to others based on its use and, accordingly, this information may not be relied upon by anyone other than the Parties. No other reference to or use of this Decision Letter, without the written permission of the Expert Panel, is permitted consistent with our Engagement Letter.

This Decision Letter contains summaries of positions of the Parties for background information only. Such reference is not meant to comprise all of the arguments offered by the Parties and considered by the Expert Panel. Similarly, the basis for conclusions of the Expert Panel herein comprises a summary of the judgments forming the basis for conclusions.

Sincerely,

Albert A. Vondra  
Partner, PwC

Peter Badala  
Partner, PwC

Jason Wardell  
Partner, PwC

*The report of Expert Panel member Peter Badala of Navigant Consulting has been issued separately.*

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## I. EXECUTIVE SUMMARY

In accordance with the mandate given to the Expert Panel in the Terms of Reference, the Expert Panel evaluated and determined whether the disputed costs as presented by the Parties: (i) “qualify as recoverable Petroleum Costs under the terms of the License Agreement and, to the extent applicable, the Petroleum Agreement and Accounting Procedure,” and (ii) “were incurred reasonably and in conformity with generally accepted practices in the international petroleum industry.” Our work was based on the submissions of the Parties, documents produced and the results of the Hearing conducted with the Parties.

In evaluating whether a cost qualified as a “recoverable Petroleum Cost,” the Expert Panel first assessed if the disputed cost satisfied the requirements to be considered a Petroleum Cost. If so, the Expert Panel then assessed the recoverability of such Petroleum Cost based on the License Agreement and the Petroleum Agreement (the “Agreements”). Once the Expert Panel determined that a cost qualified as a recoverable Petroleum Cost, the Expert Panel assessed whether the Petroleum Cost was incurred reasonably and was “in conformity with generally accepted practices in the international petroleum industry.”

The table below summarizes the determination by the Expert Panel in this proceeding regarding the recoverability of the disputed costs.

<b>Category</b>	<b>Disputed Amount</b>	<b>Recoverable</b>	<b>Determination Non-Recoverable</b>
Competitive Bidding	\$ 114,816,923	\$ 114,816,923 <sup>(1)</sup>	\$ 0
HOH	73,510,233	73,510,233	0
Inventory	25,372,000	25,372,000	0
Diluent	19,330,000	19,330,000	0
Other Costs – Out of Scope	7,833,405	7,833,405	334,730
Other Costs – Insufficient Support	6,995,663	6,995,663	4,712
<b>TOTAL</b>	<b>247,397,666</b>	<b>\$ 247,058,224</b>	<b>\$ 339,442</b>

(1) See further explanation below and in Section V.A. Competitive Bidding regarding costs incurred for Albstar sh.p.k. (“Albstar”).

The Expert Panel has concluded the recoverable cost amount to be **\$247,058,224**. However, the Expert Panel concludes that the cost incurred for Albstar obtained on a sole source basis was not in compliance with Section 21.2 of the Petroleum Agreement. The Expert Panel concludes

that BPAL's lack of competitive bidding for this vendor represents Willful Default. Nevertheless, the Expert Panel does not believe it would be appropriate, reasonable, or consistent with the Agreements or industry practice to classify the entirety of the disputed costs related to Albstar as non-recoverable. In addition, the Parties did not provide sufficient evidence or documentation to enable the Expert Panel to reliably determine whether or to what extent excess costs, if any, were incurred because of insufficient competitive bidding procedures with this vendor and as a result of a finding of Willful Default. As such, the Expert Panel was unable to reliably determine whether any portion of the disputed costs should be considered non-recoverable. We respectfully disagree with the conclusions of Navigant on this point.

The basis and reasons for our determination are explained in the remainder of this report.

## **II. BACKGROUND OF DISPUTES BEFORE THE EXPERT PANEL**

This dispute is between BPAL and AKBN. BPAL is a wholly-owned subsidiary of Bankers Petroleum Ltd ("BPL"), which is based in Calgary, Canada.<sup>1</sup> BPL's operations are primarily linked to BPAL's operations in Albania.<sup>2</sup> BPAL was originally incorporated in the United Kingdom as Saxon International Energy Ltd ("Saxon") and changed its name to BPAL in 2006.<sup>3</sup> AKBN is the successor to the National Petroleum Agency ("NPA") and was established in 2007.<sup>4</sup> AKBN's stated mission is to develop, supervise and monitor the use of natural resources in the mining, petroleum and energy sectors in accordance with government policy.<sup>5</sup>

BPAL operates the Patos-Marinza oilfield, which is located in the Republic of Albania and is one of the largest onshore oilfields in continental Europe. BPAL's operation of the Patos-Marinza oilfield is governed by two relevant agreements: the License Agreement and the Petroleum Agreement.

- The License Agreement was executed in June 2004 between the Ministry of Energy and Industry (represented at the time by the NPA and now by AKBN) and Albpetrol Sh.A.

<sup>1</sup> Written submission of Bankers Petroleum Albania Ltd dated April 20, 2016 ("BPAL Submission"), page 2.

<sup>2</sup> *Ibid.*

<sup>3</sup> Written submission of the Ministry of Energy and Industry of Albania, represented by the National Agency of Natural Resources ("AKBN Submission"), page 16.

<sup>4</sup> BPAL Submission, page 3.

<sup>5</sup> [www.akbn.gov.al/mision/?lang=en](http://www.akbn.gov.al/mision/?lang=en)

<sup>6</sup> AKBN Submission, page 14.

(“Albpetrol”).<sup>7</sup> Albpetrol is Albania’s state-owned oil company that explores, develops and produces crude oil and natural gas.<sup>8</sup> Albpetrol is also responsible for the administration of the existing Albanian oil fields and some of the exploration blocks.<sup>9</sup>

- The Petroleum Agreement was executed in June 2004, after the License Agreement, between Albpetrol and Saxon (later renamed to BPAL).<sup>10</sup> As part of the Petroleum Agreement, Albpetrol and Saxon executed an Instrument of Transfer that transferred Albpetrol’s rights, privileges and obligations under the License Agreement to Saxon.<sup>11</sup> As a result, BPAL became a party to the License Agreement. The License Agreement provides that should there be a conflict or disagreement between the provisions of the Petroleum Agreement and the License Agreement, the License Agreement will prevail.<sup>12</sup>

The Petroleum Agreement was approved by Albania’s Council of Ministers in July 2004 and the License Agreement and Petroleum Agreement simultaneously went into effect. The License Agreement provides for a 25-year term, ending in 2029, with the option for 5-year extensions thereafter.<sup>13</sup>

The Agreements allow BPAL to recover certain costs incurred for production from the revenues generated by the sale of crude oil production (after the deduction of certain royalties).<sup>14</sup> However, as part of the Agreements, BPAL must prepare an annual Work Plan and Budget (“WP&B”) that outlines its estimated capital and operating costs and activities for the upcoming year. The WP&B requires approval from both Albpetrol and AKBN. The Agreements also provide monthly and quarterly progress reports to both AKBN and Albpetrol. As among other items, compare actual performance to the WP&B.<sup>15</sup>

Additionally, the Agreements provide AKBN the right to inspect and audit BPAL’s books of account and accounting records for three years after the end of the subject year. Albpetrol also has the right to audit BPAL’s consolidated financial statements.<sup>16</sup> In March 2014, AKBN began the audit of

<sup>7</sup> License Agreement for the Exploration and Production of Petroleum in Patos-Marinza Oilfield between The Ministry of Industry and Energy as represented by the National Petroleum Agency and “Albpetrol” Sh. A., Fier dated June 7, 2004 (“License Agreement”).

<sup>8</sup> BPAL Submission, page 15.

<sup>9</sup> *Ibid*, page 15.

<sup>10</sup> Petroleum Agreement for Patos-Marinza Field dated June 19, 2004 between Albpetrol Sh.A. and Saxon International Energy Ltd (“Petroleum Agreement”).

<sup>11</sup> AKBN Submission, page 20; Petroleum Agreement, Annex E – Instrument of Transfer.

<sup>12</sup> License Agreement, Article 6.4.

<sup>13</sup> AKBN Submission, page 21.

<sup>14</sup> *Ibid*, page 28.

<sup>15</sup> BPAL Submission, pages 15 and 16.

<sup>16</sup> *Ibid*, page 16.

BPAL's costs for 2011 and 2012.<sup>17</sup> As part of the audit, AKBN worked with BPAL personnel to obtain documentation related to the costs claimed by BPAL as recoverable.<sup>18</sup> In December 2014, AKBN issued its initial audit report for 2011 ("Preliminary Audit Report").<sup>19</sup> In the Preliminary Audit Report, AKBN stated that it considered \$299 million of costs in 2011 to be non-recoverable (out of total costs of \$384 million).<sup>20</sup> In March 2015, BPAL issued a report responding to the objections noted in the Preliminary Audit Report ("BPAL Observations").<sup>21</sup> In July 2015, AKBN issued its final audit report ("2011 Audit Report").<sup>22</sup> The 2011 Audit Report accepted BPAL's explanation for certain costs (approximately \$51 million) but concluded that \$248 million of costs from 2011 were not recoverable.<sup>23</sup>

In September 2015, the Albanian Tax Authority issued a tax assessment to BPAL for unpaid profit taxes resulting from the adjustments noted in the 2011 Audit Report.<sup>24</sup> The amount assessed included taxes of 7 billion lek (approximately US \$56 million) and fines of 458 million lek (approximately US \$4 million).<sup>25</sup> BPAL disputed the assessment and the Parties initially planned to submit the dispute to an independent expert.<sup>26</sup> However, in September 2015, BPAL submitted the dispute over the 2011 Audit Report as well as other matters to the International Chamber of Commerce ("ICC") for arbitration.<sup>27</sup> As such, the Parties did not proceed with the initial expert proceeding. In January 2016, the Parties agreed to stay the arbitration and submit the dispute over the recoverability of the costs identified in the 2011 Audit Report to an independent expert.<sup>28</sup> Accordingly, in February 2016, the Parties agreed to the Terms of Reference for this expert proceeding (see **Appendix I**).<sup>29</sup> The Terms of Reference include the following mandate for the Expert Panel:

<sup>17</sup> Letter from the AKBN to BPAL dated March 21, 2014 (Prot 2526).

<sup>18</sup> AKBN Submission, page 49.

<sup>19</sup> Technical-Financial Audit Report for the Fiscal Year 2011, Control on Operations Performed from the Company Bankers Petroleum Albania Ltd for the Year 2011, dated December 14, 2014 ("Preliminary Audit Report").

<sup>20</sup> *Ibid*, pages 4 and 33.

<sup>21</sup> Patos-Marinza Development Project, Objections of Bankers Petroleum Albania Ltd. on AKBN Findings on the Audit Report No. 671/5 Prot., dated 24.12.2014 ("the BPAL Observations"), Sent upon Letter of AKBN No. 11142 Prot, dated 24.12.2014 ("BPAL Observations").

<sup>22</sup> 2011 Audit Report.

<sup>23</sup> *Ibid*, page 87.

<sup>24</sup> Notice on Tax Assessment issued on September 8, 2015, Prot. no. 10501/1 (included as Exhibit 10 to the BPAL Submission).

<sup>25</sup> *Ibid*, page 6. Based on the exchange rate on September 8, 2015 (\$1 USD/125.2 lek). The calculation of taxes owed was based on classifying the costs identified in the 2011 Audit Report as non-deductible expenses, and rolling forward the impact of these reduced expenses to 2011 and subsequent years. Fines were calculated only on profit taxes from 2011.

<sup>26</sup> Terms of Reference for determination by expert of certain disputes related to Cost Recovery (Patos Marinza Oilfield), dated September 15, 2015 (included as Exhibit 48 to the AKBN Submission).

<sup>27</sup> Request for Arbitration dated September 25, 2015 between Bankers Petroleum Albania Ltd (Cayman Islands), Claimant, vs. The Ministry of Energy and Industry represented by the National Agency of Natural Resources (Republic of Albania) and Albpetrol Sh.A. (Republic of Albania), Respondents (included as Exhibit 44 to the AKBN Submission).

<sup>28</sup> AKBN Submission, page 54.

<sup>29</sup> Agreement for determination by expert of certain disputes related to Cost Recovery, dated February 24, 2016 ("Terms of Reference").

**1.3 The Mandate.** The Expert shall determine whether the Cost Account items maintained by Bankers for Fiscal Year 2011 to which AKBN objected in the Audit Report (the “Disputed Costs”) qualify as recoverable Petroleum Costs under the terms of the License Agreement and, to the extent applicable, the Petroleum Agreement and Accounting Procedure (together, the “Agreements”), and were incurred reasonably and in conformity with generally accepted practices in the international petroleum industry.<sup>30</sup>

In February 2016, the Parties selected Albert A. Vondra, Douglas E. Branch and Jason Wardell from PwC and Peter V. Badala from Navigant Consulting (“Navigant”) to serve as the Expert Panel. Engagement Letters with PwC and Navigant were executed in March 2016 and the expert proceeding commenced.

### **III. TIMELINE OF THE EXPERT PROCEEDING**

In accordance with Attachment II to the PwC Engagement Letter, the expert proceeding followed a defined protocol and schedule of submissions to the Expert Panel. The dates for the proceeding were finalized and agreed to by the Parties on April 6, 2016 (see Attachment II for the Agreed-upon Timetable of Proceeding).

The following reflects the primary interactions between the Expert Panel and the Parties:

- *March 15, 2016* – BPAL made various documents available to the Expert Panel. This included information such as the 2011 Audit Report, various vendor files and other documents supporting AK Observations, and the BPAL books of account.
- *March 31, 2016* – The Expert Panel made a request to both Parties for additional documents, including AKBN audit work papers, certain meeting minutes and English translations of relevant correspondence. BPAL provided documents in response to the Expert Panel request on April 15, 2016. AKBN provided its response on April 27, 2016.
- *April 20, 2016* – The Parties provided the Expert Panel with written submissions describing their positions (“AKBN Submission” and “BPAL Submission”).

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<sup>30</sup> *Ibid*, page 2.

- *May 2, 2016* – The Parties requested documents and information from each other (“AKBN Request” and “BPAL Request”).<sup>31</sup> The Parties responded to each other on May 11, 2016 (“AKBN Response to BPAL Request” and “BPAL Response to AKBN Request”).
- *May 6, 2016* – The Expert Panel submitted questions to the Parties (“Expert Questions”). The Parties provided responses to the Expert Questions on May 25, 2016 (“AKBN Response to Expert Questions” and “BPAL Response to Expert Questions”).<sup>32</sup>
- *June 7, 2016 and June 8, 2016* – A hearing was held between the Parties and the Expert Panel in Washington, D.C. (“Hearing”). The Parties prepared presentations summarizing their positions on each issue in dispute (“AKBN Hearing Presentations” and “BPAL Hearing Presentations”).
- *June 13, 2016* – A transcript of the Hearing was sent to the Parties along with a request for additional information with respect to certain matters discussed at the Hearing.
- *June 17, 2016* – An additional information and document request was sent to the Parties related to certain contracts with Simmons and Crisco. BPAL provided responses to certain information requests discussed at the Hearing. AKBN notified the Expert Panel that it would submit additional written responses on certain matters.
- *June 29, 2016* – Parties provided supplemental responses to matters from the Hearing as well as responses to Expert Panel requests (“AKBN Post-Hearing Submission” and “BPAL Post-Hearing Submission”).
- *July 15, 2016* – Parties provided final submissions addressing matters raised in the Post-Hearing Submissions (“AKBN Final Submission” and “BPAL Final Submission”).

<sup>31</sup> The Agreed-upon timetable of Proceeding called for the Parties to submit these requests on April 29, 2016; however, the Parties mutually agreed to extend this deadline to May 2, 2016.

<sup>32</sup> The Agreed-upon timetable of Proceeding called for the Parties to submit responses to the Expert Questions on May 23, 2016; however, based on mutual agreement between the Parties, the deadline was extended to May 25, 2016.

#### **IV. TOTAL AMOUNT OF ITEMS IN DISPUTE**

The total amount in dispute referenced in Attachment I to the PwC Engagement Letter was \$247,584,845. This amount was based on the costs considered by AKBN to be non-recoverable in the 2011 Audit Report.<sup>33</sup> In its Submission as part of this proceeding, BPAL accepted \$187,179 of the costs identified by AKBN as non-recoverable.<sup>34</sup> As such, the amount in dispute covered by this proceeding is \$247,397,666 as shown below:

<b>Initial amount in dispute</b>		<b>\$ 247,584,845</b>
<i>Less: Items accepted by BPAL as non-recoverable</i>		
Donations and Sponsorships	\$ 145,158	
Portion of insurance payments (Connecticut, Zurich, Cigna)	14,912	
Various expenses	13,331	
Contract Accountant	13,071	
Boga Shpk	620	
Penalty payment	119	
<b>Total items accepted by BPAL</b>		<b>(187,179)</b>
<b>Final amount in dispute</b>		<b>\$ 247,397,666</b>

The Parties grouped the \$247 million of dispute into summarized cost categories in their submissions. Although similar, certain of the summarized groupings used by the Parties differed. For the purposes of this Determination Letter, the Expert Panel's Determinations are presented under the categories used by BPAL as indicated below. A reconciliation between the categories used by BPAL and the categories used by AKBN is included as **Appendix III**.

<sup>33</sup> 2011 Audit Report, page 87.

<sup>34</sup> BPAL Submission, pages 80-81, Appendix O, Appendix P. The Submission notes that the amount accepted for items considered out of scope was \$42,021 and the amount accepted for items considered to have insufficient supporting documentation was \$145,158, which totals \$187,179 (rather than \$175,597 as shown in the Submission).

<b>Category</b>	<b>Disputed Amounts</b>
Competitive Bidding	\$ 114,316,923
HOH	73,210,233
Inventory	25,372,000
Diluent	19,330,000
Other Costs – Out of Scope	8,168,135
Other Costs – Insufficient Support	7,000,375
<b>TOTAL</b>	<b>\$ 247,397,666</b>

## **V. SUMMARY OF EXPERT PANEL DETERMINATIONS OF DISPUTED COSTS**

The following sections provide summaries of the positions of the Parties on each disputed item as well as the determination of the Expert Panel. Reference to the Parties' positions is not meant to comprise all of the arguments proffered by the Parties and considered by the Expert Panel. Similarly, the basis for conclusions of the Expert Panel herein contains a summary of some of the key judgments underpinning the specific determinations and not every specific outcome determinative factor ultimately considered.

Certain defined terms and article provisions from the Agreement that are referenced in this Determination Letter are included in **Appendix F**. Capitalized terms not defined in this Decision Letter retain their definitions as stated in the Agreement.

### **A. COMPETITIVE BIDDING**

Amount in Dispute: \$114,316,923

#### ***Summary of Position***

AKBN and BPAL dispute whether the costs for nine vendors should be considered recoverable under Article 21.2 of the Petroleum Agreement that addresses the use of competitive bidding. The contractors, services and amounts in dispute are listed below.<sup>35</sup>

<sup>35</sup> AKBN Submission, page 71; BPAL Submission, page 45.

<b>Contractor</b>	<b>Service</b>	<b>Amount</b>
1 Simmons Edeco Inc.	Rig Services	\$ 34,633,302
2 Crosco Integrated Drilling Co. Ltd	Rig and Cementing Services	17,206,585
3 Phoenix Technology LP	Directional Drilling	16,922,773
4 Albstar sh.p.k	Civil Works	22,907,169
5 Bolv-Oil sh.a	Trucking Services	10,132,386
6 Tea-Co sh.p.k	Trucking Services	3,455,154
7 Q. Sinaj sh.p.k	Trucking Services	2,455,239
8 Western Atlas International Inc.	Logging Services	2,940,907
9 Smape Srl	Well Cementing and Stimulation	3,663,408
<b>TOTAL</b>		<b>\$ 114,316,923</b>

Based on the submissions and information presented at the Hearing, the Parties positions on competitive bidding center around two issues: (1) whether BPAL's competitive bidding processes for 2011 costs were compliant with Article 21.2; and (2) the implications and financial consequences for cost recovery under the Agreements.

#### BPAL's Competitive Bidding Processes

In the 2011 Audit Report, AKBN classified these costs as non-recoverable on the basis that the costs were not incurred in compliance with the License Agreement and Petroleum Agreement.<sup>36</sup> Specifically, AKBN cited the following clause from the Petroleum Agreement:

**21.2** Contractor shall solicit competitive bids for any services performed pursuant to items included in an Annual Procurement Plan. If the total cost of such services is expected to exceed two million US (US\$ 2,000,000), Allpetrol may attend the opening of the bids for all such tenders.

In its Submission, AKBN explained that it interprets Article 21.2 to require:

... multiple invitations to potential service providers inviting bids for specific services. Such invitations might involve open public tenders, with invitations specifying the services required and requesting a price quote for such services, which could then be compared to other proposals, after which the contract would be awarded to the company offering the best terms. Or it might involve privately inviting multiple pre-qualified companies to submit bids which would be compared and from which the best offer is selected.<sup>37</sup>

<sup>36</sup> 2011 Audit Report, page 78.

<sup>37</sup> AKBN Submission, pages 61-62.

AKBN claims BPAL did not follow the competitive bidding procedure with respect to the nine identified vendors and as a result, all related costs for these nine vendors are non-recoverable costs. BPAL disputes AKBN's claim from the 2011 Audit Report that "BPAL shall maintain tender procedures every year." BPAL asserts that "[i]f the bid process has already been carried out, there is no requirement under Article 21.2 for it to be carried out again." BPAL claims that a "compulsory annual performance of the tender process as envisioned by AKBN ... implies potentially changing contractors for each major service every twelve months," that would be a "cumbersome procedure for any company, leading to inefficiencies, increased costs as well as loss of contractors."<sup>38</sup> BPAL also claims that it used "sound procurement procedures such as pre-qualification tendering, selective tendering, direct contracting, shopping and local competitive tendering."<sup>39</sup> BPAL indicates that it used these procurement procedures when originally selecting the nine vendors and that there was "no requirement for BPAL to re-tender annually."<sup>40</sup> As part of its submission, BPAL identifies the type of procurement process used for each of the nine vendors as well as the year in which the process was initially used.

AKBN disagrees with BPAL's assertion that the requirements of Article 21.2 of the Petroleum Agreement are met through "internal, informal inquiries," or the "last-informal approach" it believes BPAL undertook. Rather, AKBN suggests that the last part of Article 21.2 that states "Albpetrol may attend the opening of bids for all such tenders," clearly indicates that a formal tendering process was required."<sup>41</sup> Furthermore, AKBN argues that "Even if Bankers found the bidding requirements burdensome or impractical in some circumstances, it cannot unilaterally relieve itself of its contractual obligations and breach the Agreement. If it thought the bidding requirements were impractical, it could raise the issue with the Advisory Committee, requesting waivers or an amendment to the Petroleum Agreement."<sup>42</sup> AKBN also disagrees with BPAL's argument that obtaining bids once a year means BPAL does not have to conduct another competitive bidding process in the year. AKBN notes that "[i]n an environment of continuously fluctuating oil prices and uncertain markets, maintaining the same service provider year after year is precisely the kind of situation in which the benefits of competitive bidding are lost."<sup>43</sup>

<sup>38</sup> BPAL Submission, page 50.

<sup>39</sup> *Ibid*, page 51.

<sup>40</sup> *Ibid*, page 52.

<sup>41</sup> AKBN Submission, page 65.

<sup>42</sup> *Ibid*, page 67.

<sup>43</sup> *Ibid*, page 67.

### Recoverability of Costs

Under Article 10.2(a) of the License Agreement, BPAL may recover “all Petroleum Costs” from the produced petroleum remaining after certain deductions. Petroleum Costs are defined in the License Agreement as “costs and expenditures incurred for the performance of or in connection with the Petroleum Operations, including a portion of the Royalty Tax, as provided by the Amending Agreement of the Petroleum Agreement.” The Petroleum Agreement includes a slightly different definition that states:

“Petroleum Costs” means all of the costs and expenditures borne and incurred by Contractor or in connection with the conduct of Petroleum Operations pursuant to this Agreement, determined and accounted for in accordance with the Accounting Procedure,<sup>44</sup> but does not include tax on Profit as set forth in Article 13 hereof.

Articles 10.2(c) and 10.2(d) of the License Agreement provide for certain exceptions with respect to the recoverability of costs:

10.2(c) Costs and expenditures which are incurred as a result of a Willful Default of LICENSEE or Operator shall not be considered as Petroleum Costs and shall not be recoverable pursuant to this Section 10.2.

10.2(d) The following costs and expenses shall not be recoverable under this License Agreement:

- cost incurred prior to the Effective Date and related to the performance of the minimum work commitment, unless approved by NPA; and
- costs incurred beyond the Deliverable Quantity;
- donations and contributions unless approved by NPA; and
- fines or penalties duly levied by an agency of the government of Albania and paid by LICENSEE;
- interest expenses.

With respect to the definition of Willful Default in Article 10.2(c), the License Agreement states the following in Article 10.2(c)(i):

“Willful Default” means, with respect to a Person, an intentional and conscious or reckless act or omission made by any director, supervisory or managerial personnel of such Person, its agents or contractors, not justifiable by any special circumstances, but shall not include any error of judgment or mistake made by any director, supervisory or managerial personnel, agent or contractor of such Person,

<sup>44</sup> The Accounting Procedure is included as Annex B to the Petroleum Agreement.

as the case may be, in the exercise, in good faith, of any right conferred upon such Person under this License Agreement.

AKBN contends that in order to be considered recoverable Petroleum Costs, the costs “must be incurred in connection with the performance of Petroleum Operations, in accordance with the terms of the Petroleum Agreement and the License Agreement, as well as the Development Plan and Annual Program and Budget for the year in question that were prepared in accordance with the Agreements.”<sup>45</sup> As a result, according to AKBN, it is “axiomatic that costs incurred in breach of the Agreements and other governing documents ... are not recoverable.”<sup>46</sup> AKBN indicates that Article 10.2(c) of the License Agreement confirms this interpretation. AKBN interprets BPAL’s alleged failure to obtain competitive bids as a Willful Default and believes that BPAL “consciously, intentionally, and willfully failed to conduct bidding processes” for the nine vendors.<sup>47</sup> As a result, the related costs should be considered fully non-recoverable as the “Agreements do not contemplate or allow for partial non-recovery of costs incurred in breach of the Agreements.”<sup>48</sup>

BPAL indicates that AKBN has not disputed whether the costs were incurred and were used for Petroleum Operations and, as such, the costs meet the definition of recoverable Petroleum Costs under Article 10.2(a). According to BPAL, the question then is whether the costs are subject to the exceptions included in Articles 10.2(c) and 10.2(d), since this is the only basis to disallow the disputed costs. BPAL asserts that “it is evident that BPAL has exercised its rights under the License Agreement in good faith, including prudently and reasonably taking certain special circumstances into account.”<sup>49</sup> In addition, according to BPAL, even if AKBN could satisfy the “high threshold of Article 10.2(c) [Willful Default], which BPAL believes it cannot, the consequence would not be that all of the costs related to the nine vendors would be non-recoverable. Rather, the costs would be recoverable “except [for] any portion of the costs that AKBN demonstrates arose as a result of the alleged default.”<sup>50</sup> As such, BPAL believes AKBN would “need to establish that a portion of costs that BPAL incurred that exceeded the market conditions that prevailed at the time, and adjusted for special circumstances applicable to the Patos-Marinza oil field.”<sup>51</sup> BPAL asserts that the prices it paid to the nine vendors “were reasonable and

<sup>45</sup> AKBN Submission, page 49.

<sup>46</sup> *Ibid*, page 49.

<sup>47</sup> AKBN Response to Expert Questions, page 42.

<sup>48</sup> AKBN Submission, page 31, AKBN Response to Expert Questions, page 55.

<sup>49</sup> BPAL Submission, page 53.

<sup>50</sup> *Ibid*, page 54.

<sup>51</sup> *Ibid*, page 54.

in line with market rates at the time,” and, as such, all of the disputed cost should be considered recoverable.<sup>52</sup>

### Vendor-Specific Positions

The Parties’ summarized positions for each of the nine vendors is as follows:

- *Simmons (\$34.6 million)*

Simmons is a Canadian company that provides drilling services. BPAL has been using Simmons for well servicing work, specifically for providing service rigs, since 2005. In 2008, BPAL entered into a contract with Simmons for drilling services. BPAL states that it entered into direct negotiations with Simmons to sole-source an initial rig (Rig 51), rather than conducting a competitive bidding process, because Simmons had a surplus service rig in Albania that it could convert into a drilling rig. BPAL believed it would be quicker and cheaper to convert this service rig than to mobilize a new rig into Albania. Further, Simmons had knowledge and experience of the Patos-Marinza oilfield and BPAL.<sup>53</sup> BPAL executed a contract for the rig in March 2008 and the contract contained a maximum three year term that started on the first drilling or “spud” date that ultimately occurred in June 2011. This contract was extended for an additional year with an increase in the rate. BPAL states that it decided to extend the contract because of the expected low response rate to a competitive bidding process, the satisfactory performance of Simmons, BPAL’s belief that the rates were still competitive and the mobilization/demobilization costs that would be incurred by switching to a new vendor.<sup>54</sup>

In February 2008, concurrent with the negotiations with Simmons for Rig 51, BPAL conducted a drilling rig tender. In June 2008, three companies (Precision Drilling, Simmons, and Soal Ltd. & Telkris Ltd.) and fifteen invited companies submitted bids. Precision Drilling was selected as the winning bidder with Simmons ranked second. BPAL signed a three-year contract with Precision Drilling in June 2008; however, in October 2008, BPAL decided to slow its operations. As a result, BPAL attempted to renegotiate its agreement with Precision Drilling to reduce its financial obligations under the contract. The negotiations

<sup>52</sup> *Ibid*, page 54.

<sup>53</sup> *Ibid*, Appendix L, page 3; BPAL Post-Hearing Submission, page 4.

<sup>54</sup> BPAL Post-Hearing Submission, pages 10 - 12.

were unsuccessful and BPAL was forced to terminate the contract incurring a termination fee of \$2.5 million.<sup>55</sup>

In April 2009, BPAL conducted another drilling rig tender where it invited Croscos, Saipem, KCA Deutag, Jaslo, Cracow, Hong Hua, Hydro Drilling, SDF Oil Well Technology, Weatherford and Simmons to submit bids. BPAL received six letters of interest that were reduced to three competitive bids including Croscos, Simmons and Hydro Drilling.<sup>56</sup> Phone interviews were conducted with bidders and a scoring system was used that resulted in Simmons ranked first and Croscos ranked second, with a small difference between the two. However, BPAL ultimately selected Croscos to provide additional drilling rigs in order to diversify its service providers.<sup>57</sup> Although Simmons was not selected in the bidding process, BPAL states that this tender process demonstrates the prices offered by Simmons were competitive.<sup>58</sup>

In March 2010, outside of a tendering process, BPAL approached Simmons to obtain an additional drilling rig. BPAL requested different technical specifications than the rig included in the 2009 tendering process. In May 2010, BPAL received a revised proposal from Simmons with higher rates than those in Simmons' 2009 proposal. BPAL entered a contract with Simmons in September 2010 that expired three years after the rig (Rig 60) began drilling in May 2011 (i.e. May 2014). BPAL notes that the daily rate for this rig was higher than the daily rate for Croscos due to "superior design features."

With respect to service rigs, Simmons has been providing service rigs to BPAL since 2005. Although BPAL conducted a tendering process for service rigs in 2008 that resulted in the selection of Precision Drilling, BPAL continued using Simmons outside of the bidding process.<sup>59</sup> BPAL conducted an additional competitive bidding process in June 2011 while continuing to use Simmons. Other vendors who submitted bids during this process included Nabors, Rompetrol and Tehnotech. Three companies responded

<sup>55</sup> BPAL Post-Hearing Submission, Exhibit L, pages 6 – 7.

<sup>56</sup> BPAL Post-Hearing Submission, Exhibit L, page 4; BPAL Post-Hearing Submission, page 7.

<sup>57</sup> BPAL Post-Hearing Submission, Exhibit L, page 4; Close out letter dated January 4, 2010.

<sup>58</sup> BPAL Post-Hearing Submission, page 7.

<sup>59</sup> *Ibid.*, page 7.

<sup>60</sup> The 2008 bidding process included both drilling rigs and service rigs. As described above with respect to drilling rigs, the 2008 bidding process resulted in the selection of Precision Drilling as an additional service rig vendor. However, BPAL's contract with Precision was ultimately terminated when BPAL decided to slow its drilling activities in October 2008. BPAL Response to Expert Questions, pages 48, 51.

but BPAL did not select any of these vendors as they were more expensive than Simmons. As such, Simmons remained the sole vendor for service rigs.<sup>61</sup>

AKBN disputes the costs for Simmons because it does not believe BPAL used competitive bidding procedures. AKBN also disputes BPAL's assertion that the initial daily rates it paid for Rig 51 were competitive and that the 2011 rate increase was competitive. In addition, AKBN claims that if the specifications for Rig 60 were higher than the specifications in the 2009 tender, BPAL should have conducted a competitive bidding process for the rig.<sup>62</sup>

- *Croscos (\$17.2 million)*

Croscos is a Croatian company that provides drilling services. Croscos was selected through a drilling rig tender in April 2009. BPAL invited Croscos, Saipem, KCA Deutag, Jaslo, Cracow, Hong Hua, Hydro Drilling, SDF Oil Well Technology, Weatherford and Simmons to submit bids. BPAL received six letters of interest that were reduced to three competitive bids (Croscos, Simmons and Hydro Drilling). Phone interviews were also conducted with bidders and a scoring system was used that resulted in Croscos being selected to provide additional drilling rigs.<sup>63</sup>

According to BPAL, a condition of the Croscos bid was that BPAL contract for two rigs. As such, BPAL signed contracts with Croscos in November 2009 for Rig 299 and in June 2010 for Rig 301. The minimum contract period for each contract was one year from the first spud date for each rig, i.e. January 2011 and July 2011 respectively, and BPAL extended the contracts for an additional year.<sup>64</sup> BPAL contracted for a third rig, Rig 37, in January 2011 for the same day rate as the other two rigs.<sup>65</sup> BPAL states that it did not conduct an additional tender process for 2011 because it believed it would not attract new bidders given the response rate in 2008 and 2009. In addition, BPAL alleges there was no market information to suggest that market prices declined.<sup>66</sup> BPAL also found the performance of Croscos to be satisfactory and considered it to be more economical to remain with Croscos than incur mobilization and demobilization fees for a new vendor.<sup>66</sup>

<sup>61</sup> BPAL Response to Expert Questions, page 51.

<sup>62</sup> AKBN Final Submission, pages 11-12, 16.

<sup>63</sup> BPAL Submission, Appendix L, page 4; Close out letter dated January 4, 2010.

<sup>64</sup> BPAL Post-Hearing Submission, pages 8 - 10.

<sup>65</sup> Croscos PM-LC-226-09, page 16; Croscos PM-LC-263-10, page 18; Croscos PM-LC-606-11, page 18.

<sup>66</sup> BPAL Response to Expert Questions, page 50.

AKBN disputes the costs for Crosco because it believes BPAL did not perform a competitive bidding process for the services performed in 2011. AKBN indicates that the tender performed in 2009 contemplated only 10 wells rather than the 66 wells in the 2011 drilling program.<sup>67</sup> Further, AKBN disputes BPAL's statement that it was a condition of the Crosco bid that BPAL contract for two rigs and therefore claims the contract for Rig 301 was not part of the 2009 bidding process. BPAL also claims the contract for Rig 37 was not part of any bidding process.<sup>68</sup>

- *Phoenix (\$16.9 million)*

Phoenix provides directional drilling services. BPAL signed a one-year contract with Phoenix in June 2008 as a result of a tendering process. BPAL invited Crosco, Cracow, Weatherford, Schlumberger, Halliburton, Baker Hughes (Western Atlas), Directional Plus (Cathedral) and Phoenix to submit bids for the directional drilling services. Phoenix, Directional Plus, Weatherford and Baker Hughes submitted proposals in response to the tender invitation. BPAL selected Phoenix as the winning contractor on the basis of its safety record, the quality of drilling equipment available, and a competitive price.<sup>69</sup> BPAL states that it continued with the services of Phoenix after the contract expired because Phoenix made a significant investment in 2010 to build a motor repair facility on an oilfield that allowed for additional efficiencies.<sup>70</sup> BPAL claims that no other contractor could offer the efficiency, experience, and cost benefits that Phoenix could provide.<sup>71</sup> In addition, BPAL states there was no market data to indicate market prices. However, BPAL claims the increase in oil prices resulted in increased oil field activity, thereby making it more difficult to solicit services for better prices.<sup>72</sup>

AKBN disputes the costs related to Phoenix because BPAL did not conduct tendering procedures for the services performed in 2011.<sup>73</sup> AKBN also disputes BPAL's claim that Phoenix was the only company that could provide these services. AKBN questions why BPAL did not test the market in 2011 given that seven companies were invited to bid in 2008 and that the drilling program in 2011 was much larger than the 2008 program.<sup>74</sup>

<sup>67</sup> AKBN Hearing Presentations, Topic I – Competitive Bidding, pages 25 – 27.

<sup>68</sup> AKBN Hearing Presentations, page 25.

<sup>69</sup> BPAL Submission in Appendix L, page 3.

<sup>70</sup> *Ibid.*, Appendix L, page 2.

<sup>71</sup> *Ibid.*, Appendix L, page 2.

<sup>72</sup> BPAL Responses to Expert Questions, page 52.

<sup>73</sup> AKBN Submission, page 73.

<sup>74</sup> AKBN Hearing Presentations, Topic I – Competitive Bidding, page 24.

- *Albstar (\$22.9 million)*

Albstar provides various civil works services such as road construction, wellpad construction, tank fabrication and other infrastructure construction.<sup>75</sup> BPAL initially executed a contract with Albstar in 2004 on a sole source basis. The contract term was 15 months and extended periodically, including in January 2011, for a period of one year.<sup>76</sup> BPAL claims that it selected and used Albstar on a sole source basis because it was the only company that could meet BPAL's service requirements.<sup>77</sup> Specifically, BPAL identified Albstar's oilfield industry experience, nearby base of operations, large equipment fleet, contract management efficiencies and experienced employees as reasons for using Albstar.<sup>78</sup> BPAL also notes that when it started operating in Albania it initially selected vendors such as Albstar that previously provided services to Albpetrol or Anglo-Albanian Petroleum.<sup>79</sup> As such, based on its analysis of the market in 2004, BPAL determined that Albstar was a suitable vendor. BPAL claims that this situation existed through 2011 and the decision to continue using Albstar "provided the best value for BPAL in circumstances where its options were (and still are) significantly limited."<sup>80</sup>

AKBN disputes BPAL's position, identifying 1,951 companies that are licensed to perform civil construction work, including 111 located in Fier (location of the Marinza oilfield).<sup>81</sup> AKBN also claims that the work performed by Albstar, such as building roads and bridges was not a specialized, complicated, or unique service that could only be performed by Albstar. According to AKBN, BPAL is not excused from its tendering requirements just because it is easier to work with one company.<sup>82</sup>

- *Bolv-Oil (\$10.1 million)*

Bolv-Oil provides crude oil transportation services, primarily the transportation of crude oil from the oil field to the refinery, to the sea terminal.<sup>83</sup> Bolv-Oil also provides water and emulsion transport services. BPAL initially contracted with Bolv-Oil in 2008 after a tendering process and extended the contract through a series of amendments.<sup>85</sup> During the

<sup>75</sup> BPAL Submission, Appendix L, page 1.

<sup>76</sup> *Ibid.*, Appendix L, page 1.

<sup>77</sup> *Ibid.*, Appendix L, page 1.

<sup>78</sup> *Ibid.*, Appendix L, page 1.

<sup>79</sup> BPAL Submission, Appendix L, Questions, pages 55 - 56.

<sup>80</sup> *Ibid.*, page 21.

<sup>81</sup> AKBN Hearing Transcripts, Topic 1 – Competitive Bidding, page 20.

<sup>82</sup> *Ibid.*, page 21.

<sup>83</sup> BPAL Submission, Appendix L, page 1.

<sup>84</sup> Bankers' Books of Account, tab 6 (Opex+ G&A+Other)

<sup>85</sup> BPAL Submission, Appendix L, pages 1-2.

2008 tender process for transportation services, BPAL invited Bolv-Oil, Q. Sinaj, Europetrol, Tea-Co, and Renci to submit bids. The tender was for support trucks at the Patos-Marinza oilfield including load trucks and dust control trucks.<sup>86</sup> Europetrol and Tea Co did not submit bids and Bolv-Oil was selected as the winning bidder based on “its safety record, the quality of trucking equipment available, the absence of any comparable service providers and a heavily negotiated price discount.”<sup>87</sup> BPAL states that rather than organizing new tenders for fluid transportation in 2010 and 2011 it decided to “review and renew” contracts with existing suppliers. BPAL claims that since it already had contracts in place with all the major local fluid transportation companies, any new tender would not result in additional bidders. In addition, since BPAL was using three main contractors and two smaller contractors as well as renewing contracts annually, BPAL believed there was an appropriate level of competition between the contractors. As such, BPAL did not believe a tender would generate additional benefits.<sup>88</sup>

AKBN disputes the costs related to Bolv-Oil, noting that the invitations to tender were sent in 2008. AKBN also asserts that there was no evidence of the bids submitted by Bolv-Oil and others in response to this tender and there is no evidence that the tender invitations relate to the services provided in 2011.<sup>89</sup>

- *Tea-Co (\$3.5 million)*

Tea-Co provides fluid transportation services such as emulsion transport, pressure trucks and vacuum trucks.<sup>90</sup> BPAL signed a five-year contract with Tea-Co in January 2008. Tea-Co was identified as a vendor based on the tender process performed in 2004 and 2005 and because Tea-Co was a contractor for the Albanian Petroleum before BPAL took over operations. The contract with Tea-Co was renewed in January 2011. BPAL claims that it decided to renew the contract with Tea-Co because it was unable to locate other providers within the region that could provide the same expertise and had the transportation equipment required for the services. BPAL claims that it conducted a competitive bid for vacuum truck transportation services in August 2009 and sent invitations to Bolv-Oil, Tea-Co, Q. Sinaj,

<sup>86</sup> Invitation to Tender (RFP No. T-OST-01-July 2008) dated July 11, 2008, Prot No. 236/08.

<sup>87</sup> BPAL Submission, Appendix L, page 2; Email correspondence between Rick Landmark, Martin Graystone, Leondidha Cobo, and Terry Landmark, dated August 11, 2008 titled “Truck Tenders.” Martin Graystone, Project Services Director, writes: “see attached spreadsheet. I have prepared for the tenders we opened with Lola on Friday ... My recommendation is that we give all three services to Bolv-Oil as they are more cost effective than the others and this is something they are familiar with ...”

<sup>88</sup> BPAL Response to Expert Questions, page 45.

<sup>89</sup> AKBN Submission, page 72.

<sup>90</sup> BPAL Submission, Appendix L, page 1.

<sup>91</sup> *Ibid*, Appendix L, page 1.

Europetrol and Sula. BPAL claims that this bid process confirmed to BPAL that Bolv-Oil, Tea-Co and Q. Sinaj were suitable vendors for continued use. This was due to the size of the companies' truck fleets, their experience in the oil field sector, the training of their staff and the prices offered.<sup>92</sup>

AKBN disputes all costs related to Tea-Co. AKBN indicates that the only evidence provided by BPAL related to Tea-Co was an internal memorandum related to a meeting held in January 2009 with transportation contractors. AKBN claims that the memo indicates BPAL "directly negotiated contract terms with the contractors."<sup>93</sup> The memo titled "National Contractor Review 2009" indicates that an "internal review was carried out to assess improvements to the overall field logistics of BPAL key transport contractors."<sup>94</sup> The memo includes follow-up items for Bolv-Oil, Baki Sinaj, Tea-Co and Ylli Gjani. With respect to Tea-Co, BPAL changed from hourly rates to a monthly fee basis for vacuum trucks and agreed to a reduced fee for pressure trucks.<sup>95</sup>

- *Q. Sinaj (\$2.5 million)*

Q. Sinaj (formerly Baki Sinaj) provides fluid transportation services such as wastewater removal, pressure trucks, vacuum trucks and tank transportation. BPAL began using Q. Sinaj in 2004 since Q. Sinaj had been used by Anglo-Albanian Petroleum before BPAL took over operations. The first contract with Q. Sinaj was executed in July 2004 for six months. The contract was extended several times including in July 2011 for a period of one year.<sup>96</sup> Q. Sinaj was invited to tender bids in both 2008 and 2009 for transportation services. BPAL claims that Q. Sinaj submitted a bid for 2008 but was unsuccessful and the contract was awarded to Bolv-Oil. The 2009 tender for vacuum truck transportation services confirmed Bolv-Oil, Tea-Co and Q. Sinaj as vendors for the services.

AKBN disputes the costs related to Q. Sinaj noting that the relevant tenders took place in 2008 and 2009 and were not for transportation services. AKBN also claims that there is no evidence of bids submitted in response to the 2009 tender and there is no evidence that the tender invitations related to the services provided by Q. Sinaj in 2011.<sup>97</sup>

<sup>92</sup> BPAL Reply to Report Questions, pages 44-45.

<sup>93</sup> AKBN Submission, page 71 - 72.

<sup>94</sup> National Contractor Review 2009 dated January 14, 2009 (included as Exhibit 61 to the AKBN Submission).

<sup>95</sup> *Ibid.*

<sup>96</sup> BPAL Submission, Appendix L, pages 1-2.

<sup>97</sup> AKBN Submission, page 72.

- *Western Atlas (\$2.9 million)*

Western Atlas is a subsidiary of Baker Hughes and provides open hole logging, cased-hole electric wireline services and perforating services.<sup>98</sup> BPAL executed a three-year contract with Western Atlas in May 2008 and executed a new contract with Western Atlas in July 2011. Western Atlas was selected as part of a tender for various oilfield services in 2008. Schlumberger and Western Atlas provided bids as part of the tender and Western Atlas provided the lowest price.<sup>99</sup> BPAL's reasons for selecting Western Atlas included the lower price, the reputation of Baker Hughes, and Western Atlas' presence and history in Albania. BPAL claims that it renewed the contract because of Western Atlas' performance and experience and also because it believes Western Atlas "is the only oilfield services company in Albania that has the necessary license to perform perforation services, which requires the use of explosives." BPAL claims that other companies have had challenges obtaining the required license for this service that limited the options available to BPAL.<sup>100</sup>

AKBN disputes all costs for Western Atlas because a tendering process was not performed for these services for 2011.<sup>101</sup> AKBN also claims that there is "no evidence that Western Atlas was the 'only company' that had license to use explosives for perforation services."<sup>102</sup>

- *Smape (\$3.7 million)*

Smape provides coiled tubing services. BPAL began using Smape's services in February 2011. BPAL initially planned to introduce coiled tubing to a limited extent to determine the success of the method and therefore did not expect these services to exceed \$2 million in 2011. As such, BPAL states that it evaluated various vendors using a "shopping" process in 2010 and Smape was ultimately selected. After the success of the coiled tubing process, BPAL initiated a tender process in 2011 and invited Cosco, TacRom, Central Alberta Well Servicing, Baker Hughes, Sanjel and Teca, L.L.C. BPAL received bids from Smape and TacRom and selected Smape to perform the work. Smape was selected based on its prior performance and lower cost.<sup>103</sup> As a result, BPAL executed a three-year contract with Smape in February 2012.

AKBN disputes all costs for Smape because it believes the activity was expected to cost more than allocated in the 2011 Annual Work Program and Budget and therefore a competitive

<sup>98</sup> BPAL Submission, Appendix E, page 5.

<sup>99</sup> OH Logging Services for 2008 Tender.

<sup>100</sup> BPAL Submission, Appendix L, pages 5.

<sup>101</sup> AKBN Submission, page 73.

<sup>102</sup> AKBN Hearing Presentations, Topic I – Competitive Bidding, page 29.

<sup>103</sup> BPAL Submission, Appendix L, pages 4-5; BPAL Response to Expert Questions, page 55.

bidding process should have been conducted.<sup>104</sup> AKBN does not believe there was a basis to award a direct contract to Smape in 2011 and points out that the 2011 bidding process did not relate to 2011 services.<sup>105</sup>

### ***Expert Panel Determination***

The Expert Panel has concluded that all \$114,316,923 of the disputed costs should be considered recoverable based on the following:

1. In accordance with the Expert Mandate, the Expert Panel first evaluated whether the disputed costs met the definition of Petroleum Costs. The Agreements indicate that for a cost to be considered a Petroleum Cost, it should be incurred in connection with Petroleum Operations. The Agreements both define Petroleum Operations as:

“all or any of the operations including the Abandonment aimed or authorized by this License Agreement and operated by the LICENSEE on or after the Effective Date, including without limitation the development, extraction, production, treatment, transportation and storage of Petroleum of or from the Contract Area pursuant to this License Agreement.”

Based on the documentation and evidence provided, the Expert Panel concluded that the disputed costs for all nine vendors relate to Petroleum Operations, and as such, the Expert Panel determined that the disputed costs qualify as Petroleum Costs.

2. The Expert Panel next considered whether the disputed costs are recoverable. Under the License Agreement, Petroleum Costs are recoverable unless they meet the criteria of Article 10.2(c) or 10.2(d) of the License Agreement.
  - a. Article 10.2(c) deems costs to be non-recoverable as a result of “Willful Default” to be non-recoverable. In other words, the costs must have to be incurred as a result of an “intentional and conscious or reckless omission,” and not be “justifiable by any special circumstance,” or an “error, omission or mistake” made “in the exercise, in good faith, of any right conferred under the License Agreement.”<sup>106</sup> AKBN claims that BPAL’s competitive bidding process in 2011 did not satisfy the requirements of Article 21.2 of the Petroleum Operations Agreement related to competitive bidding. As a result, AKBN believes BPAL’s actions

<sup>104</sup> AKBN Submission, page 72.

<sup>105</sup> AKBN Hearing Presentations, Topic I – Competitive Bidding, page 30.

<sup>106</sup> License Agreement, definition of “Willful Default” in Article 1.1, Definitions.

should be considered Willful Default and the costs classified as non-recoverable. The Expert Panel's determination on Willful Default is as follows:

- With respect to Albstar, the Expert Panel understands that BPAL did not perform any competitive bidding for the services performed prior to or during 2011. As such, the Expert Panel determines that BPAL actions rise to the level of Willful Default for Albstar.
  - For the remaining eight vendors, the Expert Panel was not persuaded that BPAL's actions, or inactions, with respect to competitive bidding rise to the level of Willful Default. Further, the Expert Panel was not provided with persuasive evidence that BPAL acted in bad faith or recklessly with respect to its competitive bidding practices.
- b. Article 10.2(d) indicates that items such as donations, fines, penalties and interest expenses are non-recoverable. The Expert Panel concluded that, for each vendor, the disputed costs do not meet the criteria relate to the items excluded under Article 10.2(d) and therefore the disputed costs would not be excluded under Article 10.2(d).
3. The Expert Panel next considered whether the disputed costs were incurred reasonably and in accordance with generally accepted practices.
- a. With respect to Albstar, the Expert Panel concludes that BPAL's lack of competitive bidding represents Willful Default. Nevertheless, the Expert Panel does not believe it would be appropriate, reasonable, or consistent with the Agreements or industry practice to classify the entirety of the disputed costs related to Albstar as non-recoverable. In addition, the Parties did not provide sufficient evidence or documentation to enable the Expert Panel to reliably determine whether or to what extent excess costs, if any, were incurred because of non-compliance with competitive bidding procedures with this vendor. As such, the Expert Panel was unable to reliably determine whether any portion of the disputed costs should be classified as non-recoverable.
- b. For the remaining eight vendors, based on the supporting documentation provided by the Parties, the Parties' submissions, and the Hearing, the Expert Panel concludes that the competitive bidding procedures performed by BPAL were, in some instances, insufficient. However, the Expert Panel was not provided persuasive evidence to indicate that the costs were incurred unreasonably or were not in conformity with generally accepted practices

in the international petroleum industry. As such, the Expert Panel determined that the disputed costs related to these vendors are recoverable.

**B. HOH**

Amount in Dispute: \$73,210,233

***Summary of Positions***

AKBN and BPAL disagree as to whether the costs related to HOH are recoverable Petroleum Costs. HOH is a UK-based vendor that was utilized by BPAL as a procurement agent.<sup>107</sup> The disputed costs related to HOH are comprised of costs for products procured by HOH as well as procurement and transportation fees charged by HOH:<sup>108</sup>

HOH – Purchase of Goods	65,250
HOH – Transportation of Goods	6,235,858
HOH – Procurement Fee	888,195
<b>TOTAL</b>	<b>\$73,210,233</b>

*Purchase and Transportation of Goods (\$6,235,858)*

AKBN objects to the recoverability of HOH costs because “...Bankers was unable to provide a considerable amount of supporting documentation for the claimed expenses...”<sup>109</sup> Specifically, while AKBN was provided the cost of goods from HOH to BPAL, AKBN did not receive supporting documentation such as “...supplier invoices, transportation invoices, purchase orders, offers received, certificates of origin, etc.” that was maintained by HOH from third party vendors.<sup>110</sup> To support its argument that HOH costs are non-recoverable, AKBN states that “Bankers is obligated to provide supporting documentation for all purchases made for the Project in order for

<sup>107</sup> BPAL Submission, page 77.

<sup>108</sup> In its Submission, AKBN categorizes the costs related to the purchase and transportation of goods as “unsupported expenditures” and categorizes the procurement fee as “costs unrelated to petroleum operations.”

<sup>109</sup> AKBN Submission, page 75.

<sup>110</sup> AKBN Hearing Presentations, Topic II – HOH, page 3.

such costs to be recoverable as Petroleum Costs. Such documentation is required under the Accounting Procedure....”<sup>111</sup> AKBN cites Articles 15.1 (b) and 15.2 of the License Agreement that require BPAL to “maintain at its business offices ... such other books and records as may be necessary to show the work performed...” and require the accounting records to be “sufficiently detailed so as to permit [AKBN] to define the regularity of Petroleum Costs incurred.”<sup>112</sup> AKBN contends that because BPAL was not able to meet its obligations from the Agreements and unable to provide sufficient supporting documentation, the costs related to HOH were incurred as a result of Willful Default and are non-recoverable under Article 10.2(c) of the License Agreement.<sup>113</sup>

In response to AKBN, BPAL asserts that it was not required to maintain third party vendor invoices and other supporting documentation beyond invoices from HOH to BPAL because its “...controls over purchases were designed in such a way as to ensure the quality and costs via a three-way match between the PO, HOH’s invoice and the actual goods received.”<sup>114</sup> BPAL indicates that it maintained and provided AKBN access to documents including HOH invoices, evidence of payment, customs clearance documents, material requests (“MSRs”), purchase orders and shipping documents.<sup>115</sup> BPAL asserts that its process in conformity with Albanian Law and prior audits conducted by AKBN. BPAL also, in response to the Preliminary Audit Report, it coordinated with HOH and obtained the additional underlying supporting documentation requested by AKBN for approximately \$8 million (11%) of HOH costs. AKBN compared these documents to the HOH invoices at reception and the costs related to these documents were re-classified as recoverable and removed from the 2011 Audit Report. At the time of the 2011 Audit Report, BPAL did not provide the supporting documentation for the remaining \$71.3 million of HOH costs. However, as part of this Expert Proceeding, BPAL worked with HOH to obtain additional supporting documentation for approximately 62% of the disputed HOH costs and provided the supporting documents to AKBN as part of the BPAL Response to the AKBN Request. AKBN responded that it should not have to “undertake the burden and expense of generating new documents at this time” in the Expert Proceeding given that the new documents had already been produced timely.<sup>118</sup>

<sup>111</sup> AKBN Submission, page 81.

<sup>112</sup> AKBN Submission, page 81; AKBN Hearing Presentations, Topic II – HOH, page 8.

<sup>113</sup> *Ibid.*, page 81.

<sup>114</sup> BPAL Submission, page 62 – 64.

<sup>115</sup> BPAL Hearing Presentations, Topic II – HOH, page 7.

<sup>116</sup> AKBN Submission, pages 76 - 78; BPAL Submission, page 63.

<sup>117</sup> BPAL Submission, page 63; AKBN Hearing Presentations, Topic II – HOH, page 14.

<sup>118</sup> Email from Ali Gursel of Curtis, Mallet-Prevost, Colt & Mosle LLP dated June 17, 2016.

In addition to being supported costs, BPAL also emphasizes that the costs are recoverable because they meet “all of the technical, contractual and accounting conditions required for a cost to be determined as recoverable...”<sup>119</sup> Specifically, BPAL claims the costs have (i) been incurred in connection with Petroleum Operations; (ii) are not listed as non-recoverable costs in Articles 10.2(c) or 10.2(d) of the License Agreement; and (iii) have been accounted for using sufficient and reliable supporting documentation.<sup>120</sup> With respect to the disputed transportation fees, BPAL references Articles 2.4 and 2.6 from Annex B to the Petroleum Agreement that states that “cost of material shall be charged at the actual cost incurred by BPAL, including packaging, transportation, and other fees” and “the cost of transportation, expediting, forwarder’s charges and other freight costs shall be charged at the actual cost incurred by BPAL.”<sup>121</sup>

As additional support for its claim that the HOH costs are recoverable, BPAL notes that the granting of VAT exemptions on the subject goods demonstrates that these were approved costs.<sup>122</sup> AKBN disagrees with this assertion stating that VAT exemptions are unrelated to BPAL’s right to recover Petroleum Costs under the Agreements.<sup>123</sup>

#### *Procurement Fee (\$1,888,195)*

AKBN also contests the recoverability of the procurement fee. HOH that in 2011 ranged from 2% to 3% of the procured goods cost.<sup>124</sup> AKBN claims that the procurement fee was not “contemplated” in Annex B of the Petroleum Agreement and therefore BPAL was required to pursue and obtain approval from Albpetrol under Article 2.7 of the Petroleum Agreement in order to submit the procurement fee for cost recovery.<sup>125</sup> Conversely, BPAL claims that the procurement fee is recoverable through Articles 2.4 and 2.4.1.1 of Annex B to the Petroleum Agreement. Article 2.7.1 states that BPAL can recover “actual costs of contract service, professional consultants, and other services performed by third parties,” and Article 2.4.1.1 states that “Material shall be charged at the actual net cost incurred by Contractor as the vendor’s net invoice price, packaging, transportation, loading and unloading expenses, insurance costs, duties, fees and applicable taxes, less all discounts actually received.”<sup>126</sup>

<sup>119</sup> BPAL Submission, page 27.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*, page 27.

<sup>122</sup> *Ibid.*, page 27.

<sup>123</sup> AKBN Response to Expert Questions, page 66.

<sup>124</sup> BPAL Submission, page 58.

<sup>125</sup> AKBN Hearing Presentations, Topic II – HOH, page 17.

<sup>126</sup> BPAL Submission, pages 60-61.

An additional claim raised by AKBN with respect to the procurement fees relates to competitive tendering under Article 21.2 of the Petroleum Agreement. Specifically, AKBN states that “...given the amount of the fees paid to HOH for procurement services, and the large scale of purchases that Bankers delegated to it in 2011, the arrangement with HOH could well have been challenged as involving a service that was expected to exceed the US\$2 million threshold in Article 21.2 of the Petroleum Agreement...” and therefore required competitive bidding.<sup>127</sup>

### ***Expert Panel Determination***

The Expert Panel has concluded that all \$73,210,233 of the disputed HOH costs are recoverable based on the following reasons.

1. Petroleum Costs, as defined in the License Agreement, include “...costs and expenditures incurred for the performance of or in connection with the Petroleum Operations.” Similarly, the Petroleum Agreement defines Petroleum Costs to be, “...all of the costs and expenditures borne and incurred by Contractor in or in connection with the conduct of Petroleum Operations pursuant to this Agreement, determined and accounted for in accordance with the Accounting Procedure, but does not include Taxes.” In addition, the Accounting Procedure defines “Material” as “any equipment, machinery, materials, articles, supplies and consumables either purchased, or leased, or rented, or transferred by contractor and used in the Petroleum Operations.”<sup>128</sup> As a result, the Expert Panel has determined that based on the definitions included in the Agreements and the goods represented by the Parties, the goods obtained through HOH are appropriately classified as Petroleum Costs.
2. Article 10.2(d) of the License Agreement lists certain categories of costs that are not recoverable, such as fines, penalties, donations and interest expenses. The costs related to HOH do not meet these criteria.
3. Article 10.2(c) of the License Agreement indicates that costs incurred as a result of Willful Default are non-recoverable. AKBN alleges that BPAL failed to keep records, provide documentation to AKBN to monitor HOH, or conduct competitive bidding, and this constitutes Willful Default. Based on the evidence provided, the Expert Panel does not agree that Willful Default occurred for the following reasons.

<sup>127</sup> AKBN Submission, page 79.

<sup>128</sup> Petroleum Agreement, Annex B, Section 1.1.3.

<sup>129</sup> AKBN Hearing Presentations, Topic II – HOH, page 24.

- a. The Expert Panel concluded that the invoices provided by HOH to BPAL, as well as other supporting documentation maintained by BPAL, reflect a reasonable level of documentation to support the costs incurred under generally accepted practices. The HOH invoices maintained by BPAL display the parts ordered, unit price and number of units ordered. BPAL also indicates that it maintained and made available to AKBN its Material Service Requests, Purchase Orders, shipping documents and customs clearance documents related to the HOH invoices. BPAL notes that Purchase Orders are created after analyzing quotations received from HOH in response to a Material Service Request. Upon receipt of the goods, the HOH invoices are compared to the Purchase Orders to confirm the prices and quantities charged by HOH.<sup>130</sup> However, BPAL was not contemporaneously provided, and therefore did not maintain, copies of all the underlying supporting documentation retained by HOH, such as third party vendor invoices, on the basis that BPAL's procedures adequately supported the HOH invoices.
- b. The Accounting Procedure and Article 15.1(b) of the License Agreement do not detail the specific types of documentation that would need to be reviewed by BPAL. Rather, the provisions require records to be kept "in accordance with generally accepted and recognized international accounting principles consistent with Albanian law, and consistent with modern petroleum industry practices and procedures ...," and "as may be necessary to show the work performed under the License Agreement ...." The Expert Panel is therefore persuaded that the documentation maintained by BPAL met the requirements in the Agreements, particularly when considered in connection with the procedures performed by BPAL in connection with the invoices received. Nevertheless, even if one were to conclude that the documentation did not meet the requirements in the Agreements, BPAL's actions did not rise to a level of Willful Default.
- c. While the Expert Panel considers the documentation maintained by BPAL to be reasonable, the Expert Panel notes that BPAL obtained additional documentation to further support its position. Specifically, during the audit, BPAL obtained additional supporting documentation in the form of third party invoices to HOH that covered approximately 10 percent of total HOH costs.<sup>131</sup> These third party invoices closely matched the documentation provided to AKBN.<sup>132</sup> BPAL also worked with HOH during the audit to attempt to obtain additional supporting documentation. Through this process,

<sup>130</sup> BPAL Submission, page 64.

<sup>131</sup> *Ibid*, page 63.

<sup>132</sup> *Ibid*, page 63.

HOH and BPAL were able to obtain supporting documentation for an additional 62 percent of the disputed HOH costs. Although AKBN chose not to review these supporting documents, BPAL asserts that these invoices agree to the BPAL purchase orders and the HOH invoices.<sup>133</sup> The Expert Panel analyzed the supporting documents and agrees with this assertion.

4. Based on the documentation provided and submissions from the Parties, the Expert Panel was not persuaded that the disputed costs were incurred unreasonably or not in accordance with generally accepted practices in the international petroleum industry.
5. With respect to the procurement fee charged by HOH, the Expert Panel has concluded that this fee is recoverable. The procurement fee represents consideration for HOH's effort to procure the requested materials for BPAL. It is not uncommon in the petroleum industry to use a procurement agent such as HOH.<sup>134</sup> In addition, this fee appears to be covered by Annex B of the Petroleum Agreement. Specifically, the Accounting Procedure states that "Material shall be charged at the actual net cost incurred by Contractor as the vendor's net invoice price, packaging, transportation, loading and unloading expenses, insurance costs, duties, fees and applicable taxes if any less all discounts actually received [its net cost]."<sup>135</sup> As such, the fees from HOH would be recoverable under this provision of the Petroleum Agreement.

### **C. INVENTORY**

Amount in Dispute: \$25,372,000

#### ***Summary of Positions***

AKBN and BPAL disagree as to whether the costs related to certain inventory purchased, but not used, by BPAL in 2011 are recoverable in 2011 or during the period in which the inventory is used in operations. The amount in dispute is based on the increase in inventory between 2010 and 2011 and includes material and operational inventory (e.g. diluent):<sup>136</sup>

<sup>133</sup> *Ibid*, page 65.

<sup>134</sup> Transcript from the Hearing (Day 1 – June 7, 2016), pages 458 – 459.

<sup>135</sup> Petroleum Agreement, Annex B – Accounting Procedure, Article 2.4.1.1.

<sup>136</sup> BPAL Submission, page 70; Q4 2011 Quarterly Progress Report, page 16. The 2011 ending material inventory balance was \$37.7 million and the ending operational inventory balance was \$6.3 million.

Increase in Material Inventory	\$ 20,190,000
Increase in Operational Inventory	5,182,000
<b>Total Increase in Inventory</b>	<b>\$ 25,372,000</b>

AKBN claims the costs related to this increase in inventory should not be classified as recoverable costs in 2011 because the inventory was not used in 2011.<sup>137</sup> BPAL conversely asserts the costs are recoverable in 2011 because the costs were incurred (i.e., the inventory was purchased) in 2011. In addition, BPAL claims that classifying the costs as recoverable is consistent with historical practice of the Parties.<sup>138</sup>

AKBN contends that “recoverable ‘Petroleum Costs’ in any given year would include costs for materials necessary and used in that year, not those acquired for potential future use. Any materials acquired for use in the future would be recoverable ‘in the period they will be used.’”<sup>139</sup> In other words, AKBN asserts that in 2011, BPAL may only recover costs related to inventory used during 2011 and should defer the recovery of costs related to unused inventory to subsequent years. As support for its position, AKBN references Annex B to the Petroleum Agreement that defines “Material” as “any equipment, machinery, materials, and supplies and consumables either purchased, or leased, or rented, or transferred by Contract *incurred* in the Petroleum Operations [italics added].”<sup>140</sup>

In addition, AKBN claims that BPAL’s inventory purchases “were over and above what was contemplated and included in the budget for the year in the 2011 Annual Program.”<sup>141</sup> Specifically, AKBN notes that BPAL “incurred US\$25 million in extra inventory purchases of materials, equipment and fuel beyond what was contemplated in the 2011 Work Program and Budget.”<sup>142</sup> AKBN indicates that the amount of purchased inventory “...suggests imprudent management at best, or, at worst, an intentional attempt to negatively impact financial results to continue forestalling tax and other non-sharing obligations. In other words, AKBN was right on the mark in noting the negative impact on the R-factor in its objections to these avoidable expenditures.”<sup>143</sup>

<sup>137</sup> AKBN Submission, page 47, 52.

<sup>138</sup> BPAL Submission, pages 70-71.

<sup>139</sup> AKBN Submission, page 57.

<sup>140</sup> Petroleum Agreement, Annex B – Accounting Procedure, Article 1.1.3.

<sup>141</sup> AKBN Submission, page 86.

<sup>142</sup> *Ibid*, page 88.

<sup>143</sup> *Ibid*, page 89.

In its response to AKBN, BPAL notes that “...AKBN has not suggested that the costs were not incurred and has not raised any concerns regarding the completeness and accuracy of BPAL’s books of account, accounting records and supporting documentation” with respect to the disputed inventory.<sup>144</sup> BPAL states that the disputed inventory costs “...are recoverable under the Agreements because BPAL has met all of the technical, contractual and accounting conditions required for a cost to be recoverable.”<sup>145</sup> BPAL explains that the technical requirements have been met because, “...the costs have been incurred in connection with the conduct of Petroleum Operations.”<sup>146</sup> BPAL asserts that the contractual requirements have been met because, “...the costs are not listed as non-recoverable costs pursuant to Articles 10.2(c) and 10.2(d) of the License Agreement and are, on the contrary, expressly included within the list of Petroleum Costs under the category of ‘Materials’ in Annex B, Article 2.4 of the Petroleum Agreement.”<sup>147</sup> In addition, “[b]oth the License Agreement and the Petroleum Agreement define Petroleum Costs as ‘costs and expenditures incurred’ in performing the Petroleum Operations ... Hence, by definition, costs are recoverable when incurred.”<sup>148</sup> BPAL also addresses the accounting requirements by noting that, “BPAL has provided sufficient and reliable supporting documentation based on costs that have been accurately measured and accounted for in its books and records, in accordance with international accounting principles and Albanian law.”<sup>149</sup>

BPAL notes that its reasons for purchasing the inventory not used in 2011 included: (1) to ensure uninterrupted production; (2) to have a sufficient volume of spare materials and (3) to take advantage of volume discounting.<sup>150</sup> In addition, BPAL notes that “[t]he planned program for 2012 as set out in BPL’s 2011 Annual Report was to drill 10 new wells and 60 well reactivations. With this increase in the drilling program it is likely that inventory will need to be ramped up.”<sup>151</sup>

With respect to the claim that BPAL should classify inventory costs as recoverable when they are “incurred” versus when they are “recovered”, BPAL cites Annex B of the Petroleum Agreement and indicates that BPAL is required to “reimburse (credit) the recoverable costs if surplus materials which have been recovered as scrap and the costs are sold.”<sup>152</sup> BPAL argues that “[t]his clearly presupposes that the costs must have been already recognised in the cost account, i.e. the cost was

<sup>144</sup> BPAL Submission, page 77; Petroleum Agreement.

<sup>145</sup> *Ibid.*, page 77.

<sup>146</sup> *Ibid.*, page 77.

<sup>147</sup> *Ibid.*, page 77.

<sup>148</sup> *Ibid.*, page 77.

<sup>149</sup> *Ibid.*, page 77.

<sup>150</sup> BPAL Response to Expert Questions, pages 65 - 67.

<sup>151</sup> *Ibid.*, page 67.

<sup>152</sup> BPAL Submission, page 77; Petroleum Agreement.

recognised when it was incurred (i.e. when the item was purchased), the item was included in inventory and then a decision was taken to sell it, at which point the sales proceeds must be netted off the cost account.”<sup>153</sup> BPAL further notes that of the total 2011 ending material inventory balance of \$37.7 million, approximately \$4.5 million remained in inventory at the end of 2014. Of the \$4.5 million, \$1.9 million relates to spare parts and \$2.6 million “...relates to items that were subsequently determined by BPAL as being ineffective or unsuitable for future operations.”<sup>154</sup>

### ***Expert Panel Determination***

Based on the Submissions received by the Expert Panel, the areas of dispute between the Parties include: (1) the timing of when the inventory should have been recorded in the books of account, and (2) the reasonableness of the inventory costs. For the following reasons, the Expert Panel has determined that all \$25,372,000 of disputed inventory costs are recoverable.

1. Multiple articles in the Agreements support BPAL’s position of recovering inventory costs as recoverable when incurred (or purchased) rather than when used in Petroleum Operations.
  - a. The Petroleum Agreement defines Petroleum Costs to include “...all of the costs and expenditures borne and *incurred* by Contractor for in connection with the conduct of the Petroleum Operations ... [italics added].”<sup>155</sup> In addition, Annex B to the Petroleum Agreement, specifically Article 2.1, indicates that Petroleum Costs ... shall be fully included without amortisation cost in the Calendar Quarter in which such costs are *incurred* [italics added].”
  - b. In support of its position that inventory should not be recoverable until used, AKBN refers to Annex B to the Petroleum Agreement that defines “Material” as “...any equipment, machinery, material, spare parts and consumables *either purchased, or leased, or rented, or transferred* by Contractor and *used* in the Petroleum Operations [italics added].” However, in light of the aforementioned Articles of the Agreements, the Expert Panel is not persuaded by this argument. Instead, when considered together with the definition of Petroleum Costs in the Agreements, the term “used in Petroleum Operations” indicates and requires that “Material” must ultimately be intended for use in the Petroleum Operations

<sup>153</sup> *Ibid.*

<sup>154</sup> BPAL Response to Expert Questions, page 64.

<sup>155</sup> Similarly, the License Agreement defines Petroleum Costs as “...costs and expenditures incurred for the performance of or in connection with the Petroleum Operations.”

versus used in some context outside of the Petroleum Operations and is not a restriction on cost recoverability until the inventory is “used.”

2. With respect to the reasonableness of the increase in 2011 inventory, the Expert Panel is persuaded by BPAL’s explanation that, in light of the new drilling program, additional inventory was necessary to maintain uninterrupted production at the oil fields. As such, the Expert Panel concludes that the entire disputed amount of \$25,372,000 is a recoverable cost.

#### **D. DILUENT**

Amount in Dispute: \$19,330,000

##### **Summary of Positions**

AKBN and BPAL disagree as to the recoverability of diluent costs incurred by BPAL in 2011. Diluent is “a light hydrocarbon ... that is used as an additive to blend with heavy crude oil such as that produced by the Patos-Marinza Oilfield, in order to lower the viscosity of the crude oil, mainly to facilitate processing and transportation.”<sup>156</sup> The table below compares BPAL’s budgeted diluent costs for 2011 compared to actual diluent costs<sup>157</sup>:

	2011 Budget	2011 Actual	Over/(under) budget
Production (Mbbls)	4,660.0	4,765.0	(849.0)
Diluent as a percentage of production	6%	10%	4%
Diluent volume (Mbbls)	280.8	486.5	149.7
Diluent price (per bbl) <sup>158</sup>	\$138.27	\$134.12	\$45.85
Diluent cost (gross)	\$29.7 m	\$65.2 m	\$35.5 m
Value returned through sale of diluent <sup>159</sup>	(\$17.5 m)	(\$35.4 m)	(\$17.9 m)
Diluent cost (net)	\$12.2 m	\$29.8 m	\$17.6 m
Transportation and storage costs	\$18.5 m	\$15.6 m	(\$2.9 m)
Total diluent cost	\$ 30.7 m	\$45.4 m	\$14.7 m

<sup>156</sup> AKBN, Report, at 43.

<sup>157</sup> *Ibid*, page 43; BPAL Submission, page 32.

<sup>158</sup> The 2011 Volume Estimate states that the price of diluent would be at a 10% premium to the expected price of Brent Crude.

<sup>159</sup> Although BPAL incurs costs to purchase diluent, this diluent is blended with the extracted heavy crude oil. The volume of the resulting lower viscosity oil that is sold by BPAL includes both the heavy crude oil and the diluent. As such, BPAL earns revenue that offsets part of the cost of the diluent. The net diluent cost reflected represents the amount paid for the diluent less the offsetting revenue earned.

AKBN disputes \$19.3 million of the \$45.4 million in diluent costs claimed by BPAL. AKBN's calculation is based on the difference between BPAL's actual costs and the budgeted costs included in the 2011 WP&B adjusted for actual production being lower than budget. The table below compares budgeted diluent costs, adjusted for lower actual production, to actual diluent costs<sup>160</sup>:

	<b>2011 Expected</b>	<b>2011 Actual</b>	<b>Over/(under) budget</b>
Production (Mbbbls)	4,765.0	4,765.0	0
Diluent as a percentage of production	6%	10%	4%
Diluent volume (Mbbbls)	285.9	486.5	200.6
Diluent price (per bbl)	\$88.27	\$134.12	\$45.85
Diluent cost (gross)	\$25.2 m	\$65.2 m	\$40.0 m
Value returned through sales	(\$14.9 m)	(\$35.4 m)	(\$20.5 m)
Diluent cost (net)	\$10.3 m	\$29.8 m	\$19.5 m
Transportation and storage costs	\$15.8 m	\$15.6 m	(\$0.2 m)
Total diluent costs	\$ 26.1 m	\$ 45.4 m	\$19.3 m

Based on this calculation, AKBN disputes both the quantity of diluent used and the price paid for the diluent.

#### Diluent Quantity

In 2011, BPAL used 486.5 Mbbbls of diluent versus a budgeted usage of 285.9 Mbbbls. AKBN claims that costs related to the increase in usage should not be recoverable since the costs were incurred in excess of the 2011 WP&B, without price adjustment to AKBN and Albpetrol, and without modification to the WP&B. In addition, AKBN does not consider the increase in diluent quantity to be reasonable or justified.<sup>161</sup>

BPAL responds that the volume of diluent used was necessary for the performance of Petroleum Operations and was the result of heavier than expected crude oil. BPAL asserts that the density of the oil, known as API, in the Santos-Marinza is what determines the volume of diluent required. When preparing the 2011 WP&B, BPAL made an estimate of the API that it expected to encounter but the density of the oil is not known until drilling begins. In addition, the density is not

<sup>160</sup> AKBN – Cost of Diluent (Alternative Calculations); AKBN Submission, pages 89 – 91.

<sup>161</sup> AKBN Submission, page 94.

uniform between wells.<sup>162</sup> BPAL claims that in 2011, it encountered “extra-heavy oil” that required a higher diluent quantity than estimated, even though production was lower than expected.<sup>163</sup> AKBN challenges BPAL’s assertion that the oil was heavier in 2011. AKBN cites data from BPAL monthly reports that reflect a higher API (representing lighter oil) than the API reflected in a chart included in the BPAL Submission and a consistent trend in API from prior years.<sup>164</sup> BPAL states that the API included in these reports is an estimate and reflects the effect of diluent that has already been added to the heavy oil to extract it out of the well.<sup>165</sup>

An additional assertion presented with respect to quantity relates to “water cut.” The water cut represents the water content that is naturally included within the crude oil.<sup>166</sup> When BPAL sells its production, some contracts specify the water content percentage for the crude oil and diluent is used in order to achieve that water cut percentage.<sup>167</sup> BPAL claims that the heavier oil also required extra diluent in order to meet water cut requirements.<sup>168</sup> AKBN disagrees with this claim and instead asserts that based on BPAL data, water cut did not change between 2009 and 2011. Further, AKBN indicates that BPAL could have used alternative, potentially cheaper methods to reduce the water content or just delivered oil below the required specifications and received a lower price.<sup>169</sup> BPAL asserts that AKBN’s water cut calculations are incorrect. In addition, BPAL notes that contrary to AKBN’s assertion, buyers may refuse to purchase low-specification oil.<sup>170</sup>

### Diluent Price

In 2011, the actual price paid by BPAL for diluent was \$91.00 per barrel versus a budgeted price of \$88.27 per barrel. The calculation of non-recoverable diluent costs in the AKBN Submission reflects the full impact of the price increase. However, as noted above, the price of diluent changes in tandem with the price of Brent Crude and, in 2011, the price of Brent Crude, and thus the price of diluent, increased unexpectedly. BPAL claims that the price increase was out of BPAL’s control and should not be part of the cost of production or non-recoverable costs.<sup>171</sup>

After the Hearing, AKBN provided additional calculations of non-recoverable costs that reflected the rise in oil prices in 2011. However, AKBN does not fully remove the price impact from its

<sup>162</sup> Transcript of the Hearing (June 8, 2016), page 535.  
<sup>163</sup> BPAL Hearing Presentations, Topic IV – Diluent (Corrected), page 24; BPAL Response to Expert Questions, page 71.  
<sup>164</sup> AKBN Hearing Presentations, Topic IV – Diluent (Corrected), page 12.  
<sup>165</sup> BPAL Final Submission, page 2.  
<sup>166</sup> AKBN Submission, page 71.  
<sup>167</sup> Report on the Use of Diluent in Patos-Marinza Oilfield, page 12.  
<sup>168</sup> *Ibid*, page 12.  
<sup>169</sup> AKBN Hearing Presentations, Topic IV – Diluent (Corrected), page 20.  
<sup>170</sup> BPAL Hearing Presentations, Topic IV – Diluent, page 224.  
<sup>171</sup> BPAL Final Submission, pages 3 -4.

calculations. The 2011 WP&B assumed that the price of diluent would be 10 percent higher than the benchmark Brent Crude price; however, the price paid by BPAL in 2011 (\$134.12) was approximately 20 percent higher than the benchmark Brent Crude price (\$111.30). As such, AKBN's revised illustrative calculation of non-recoverable diluent costs still includes the effect of the increase in the price of diluent over and above the 10 percent uplift from benchmark Brent Crude (\$122.40). AKBN's revised calculation, assuming diluent usage is 6 percent of production, results in non-recoverable costs of \$16.3 million.<sup>172</sup>

### ***Expert Panel Determination***

The Expert Panel has determined that all \$19,330,000 of the disputed diluent costs should be considered recoverable for the following reasons.

1. AKBN's primary basis for classifying the disputed diluent costs as non-recoverable is that it does not consider BPAL's usage of diluent to be reasonable. Additionally, AKBN criticizes BPAL's "deviation from planned usage and budget without approval or reason." With respect to deviations from budget, the Expert Panel notes that the quarterly progress reports provided by BPAL to Albpetrol and AKBN include budget to actual comparison of diluent usage for the quarter. As such, Albpetrol and AKBN had insight into diluent usage on a quarterly basis. Further, Albpetrol performed an audit of BPAL for the period July 2011 through December 2012 and acknowledged that API gravity had decreased during the period resulting in an increased usage of diluent.<sup>173</sup>
2. With respect to the increase in the quantity of diluent used, the Expert Panel was persuaded by BPAL's explanation that the heavy oil production in 2011 necessitated higher diluent usage. The Expert Panel understands that the APIs included in the monthly reports were an estimate that already reflected the amount of diluent that was required in order to extract the oil from the well. Further evidence has been provided indicating the diluent quantity claimed by BPAL was actually used in Petroleum Operations. As such, the Expert Panel considers the costs associated with the increased usage of diluent to be recoverable.
3. With respect to the increase in the price of diluent, the Expert Panel understands that BPAL has not increased the price it pays for diluent since the diluent price changes in tandem with the price of Brent Crude. The Expert Panel notes that the agreement between BPAL and

<sup>172</sup> AKBN - Cost of Diluent (Alternative Calculations)

<sup>173</sup> Report on the audit conducted on Bankers Petroleum Albania Ltd Fier, for the period 01.07.2011-31.12.2012 ("Albpetrol 2011-2012 Audit")

KastPetrol, a supplier of diluent, indicates that the price charged for diluent is based on information obtained from a third party market data provider.<sup>174</sup> As such, the Expert Panel considers these costs to be reasonable and recoverable.

**E. OTHER COSTS – OUT OF SCOPE**

Amount in Dispute: \$8,168,135

***Summary of Positions***

AKBN and BPAL disagree as to whether expense items totaling \$8,168,135 in 2011 are recoverable Petroleum Costs within the scope of Annex B, Article 2 of the Petroleum Agreement. The initial amount in dispute under this category was \$8,210,156. However, in the BPAL Submission, BPAL accepted AKBN’s position that the following 5 expense items totaling \$42,021 were non-recoverable:<sup>175</sup>

<b>Description</b>	<b>Amount</b>
Connecticut General Life Insurance, Zurich Insurance and Cigna Int’l	12,000
Various Expenses	17,831
Contract Accountant Boga & Associates	23,016
Penalty payment	620
	142
<b>Total</b>	<b>\$ 42,021</b>

Therefore, the remaining amount in dispute is \$8,168,135.

***Expert Panel Determination***

The Expert Panel has reviewed each of the disputed costs for the purpose of explaining its determination. The following table displays the Expert Panel’s determination regarding each cost item with reference to the parties’ positions and the basis for the determination described in more detail below.

<sup>174</sup> Fuel Supply Agreement between KastPetrol SH.A and BPAL, dated December 4, 2008, paragraph 4.1.  
<sup>175</sup> BPAL Submission, page 80.

	<b>Category</b>	<b>Disputed Item</b>	<b>Recoverable</b>	<b>Non-Recoverable</b>
<b>1</b>	Bank Fees	Raiffeisen Bank Sh.A. – Commitment fee	\$ 0	\$ 42,670
<b>2</b>	Fines and Penalties	A&A Logistics	73,401	0
<b>3</b>	Operator Extra Expense Insurance	SIGAL Uniqa Group Austria Sh.A. – Operator Extra Expense insurance	707,457	0
<b>4</b>	Terminal Expansion Expenses	Petrolifera (PIA Vlore)	641,250	0
<b>5</b>	Operations Expenses	Interalbanian Sh.a.	104,364	0
		SIGAL Uniqa Group Austria Sh.A. – Vehicles Casco insurance	74,153	0
		Illyria GeoTechnologies Sh.p.k	1,421	0
<b>6</b>	Out of Contract Area	Area Extension Project	1,212,658	0
<b>7</b>	Overlapping rent payment	Jonus Ismailaj	0	187,095
<b>8</b>	Professional Fees	JB Environmental Ltd	380,259	0
		Blackstone Corporation Resource Management Consultants and Tourism Consultants 1	166,000	0
		Blackstone Corporation Resource Management Consultants and Tourism Consultants 2	14,335	0
		SourceOne	17,511	0
		Avanzar LLC 1	88,187	0
		Avanzar LLC 2	55,601	0
		Branko Radanovic ar Radanovic Oplanic	13,451	0
		Risk Management Consultants	13,200	0
		EnviroTech Environmental Services Ltd.	31,260	0
		Boga & Associates	144,760	0
	Raiffeisen Bank Sh.A. (Legal Costs)	0	8,965	
<b>9</b>	Intercompany Expenses	Intercompany Salaries	2,286,088	0
<b>10</b>	Auditor Expenses		0	96,000
<b>11</b>	Various Expenses	Various Expenses	227,732	0
<b>12</b>	Insurance Expenses	Connecticut General Life Insurance, Zurich Insurance and Cigna International	272,573	0
		SIGAL Uniqa Group Austria Sh.A. - Private Health insurance	260,546	0
		SIGAL Life Uniqa Group Austria Sh.A. - Group Life insurance	9,377	0

	<b>Category</b>	<b>Disputed Item</b>	<b>Recoverable</b>	<b>Non-Recoverable</b>
<b>13</b>	Employee-related and Administrative Expenses	Supermarket Hasaj and Pleurat Shehu (personnel and office expenses)	306,864	0
		3-sh Shpk	123,377	0
		Gezim Mici	107,166	0
		Purchase of fitness equipment	81,224	0
		Suzana Bushi	23,122	0
		Harrilla Toska	2,998	0
<b>14</b>	Medical Services	Medical Response for the Diplomatic Corps. ("MRDC")	186,000	0
<b>15</b>	Newspaper Announcements	Announcements in newspaper for employment vacancies	7,070	0
<b>Total</b>			<b>\$ 7,833,405</b>	<b>\$ 334,730</b>

## 1. Bank Fees

<b>Disputed Item</b>	<b>Recoverable</b>	<b>Non-Recoverable</b>
Raiffeisen Bank Sh.A. – Commitment fee	\$ 42,670	

In the 2011 Audit Report, AKBN claims that the disputed cost is a fee related to the line of credit agreement BPAL entered into with Raiffeisen Bank Sh.A.<sup>176</sup> Specifically, the line of credit agreement requires BPAL to pay a commitment fee to keep unused line of credit amounts available for use. AKBN claims that such expenses are not covered by any provision of Article 2, Annex B of the Petroleum Agreement.<sup>177</sup> However, BPAL states that the commitment fee provides BPAL with the financial resources necessary to conduct the Petroleum Operations as required by Article 3.3(a)(i) of the License Agreement and is therefore recoverable.<sup>177</sup>

The Expert Panel concludes that the disputed commitment fee is a non-recoverable cost. The commitment fee represents a fee paid to the lender for keeping the unused portion of the line of credit available for the borrower at a future date. The fee therefore reflects a financing cost similar to interest. Article 10.2(d) of the License Agreement specifically excludes interest costs as a Recoverable Petroleum Cost. Therefore, the Expert Panel determines that the commitment fee should be considered a non-recoverable Petroleum Cost.

<sup>176</sup> 2011 Audit Report, page 54.

<sup>177</sup> BPAL Submission, Appendix O, page 24.

## 2. Fines and Penalties

Disputed Item	Recoverable	Non-Recoverable
A&A Logistics	\$ 73,401	\$ 0

This disputed item relates to demurrage fees, or fees charged as a result of a delay in unloading items at the port. AKBN claims that demurrage fees paid to A&A Logistics are non-recoverable costs based on Article 10.2(d) of the License Agreement that indicates “fines or penalties duly levied by an agency of the government of Albania and paid by LICENSEE” shall not be recoverable.<sup>178</sup> However, BPAL states that the demurrage fees are not fines or penalties levied by an Albanian government agency. Rather, the costs are overtime fees charged by the shipping line for the storage of BPAL goods at the port due to delays in customs procedures.<sup>179</sup> BPAL claims that these expenses are recoverable based on Annex B of the Petroleum Agreement in Article 2.6 that considers as Petroleum Costs the “[t]ransportation of Material and other related costs, including but not limited to origin services, expediting, crating, dock charges, forwarder’s charges, surface and air freight, and customs clearance and other destination services.”

The Expert Panel concludes that the disputed demurrage fees are recoverable on the basis that they can be considered dock charges or destination services covered under Annex B of the Petroleum Agreement. In addition, the Expert Panel does not agree these charges are covered under Article 10.2(d) of the License Agreement since they do not represent fines or penalties levied by an Albanian government agency. As demonstrated by the invoices provided by BPAL, these fees were charged by the shipping line and passed through to BPAL by A&A Logistics.<sup>180</sup>

## 3. Operator Extra Expense Insurance

Disputed Item	Recoverable	Non-Recoverable
Shirazi Group Austria Sh.A. – Operator Extra Expense insurance	\$ 707,457	\$ 0

<sup>178</sup> AKBN Submission, page 100.

<sup>179</sup> BPAL Submission, Exhibit 57.

<sup>180</sup> *Ibid*, Exhibit 57.

This disputed item relates to Operator Extra Expense (“OEE”) insurance. OEE “covers the company for excessive expenses that may be incurred with respect to contracts entered into with subcontractors, mainly for well drillings and rehabilitation.”<sup>181</sup> AKBN claims this cost is not included under any categories of recoverable costs within Annex B to the Petroleum Agreement. In addition, AKBN states that the “services are not obligatory” and should not be covered by AKBN even though they are a requirement of BPAL’s loan agreements with the EBRD and the International Finance Corporation (“IFC”).<sup>182</sup> BPAL claims that these costs are recoverable under Annex B to the Petroleum Agreement, Article 2.13.1 that considers as Petroleum Costs “[p]remiums paid for insurance to cover the risks related to Petroleum Operations according to Contractor’s practice or any of its employees and/or outsiders, which is in compliance with international petroleum practice or which is required by law.” BPAL notes that OEE insurance is “customary practice in the international petroleum industry.”<sup>183</sup>

The Expert Panel concludes that OEE insurance is a reasonable and customary expense in the petroleum industry. Further, the reasonableness of such an expense is demonstrated by EBRD and IFC requirements for borrowers to maintain OEE insurance. In addition, BPAL’s use of OEE insurance is noted in the 2011 WP&B.<sup>184</sup> As such, the Expert Panel concludes that the OEE insurance should be considered a recoverable Petroleum Cost under Annex B to the Petroleum Agreement.

#### 4. Terminal Expansion Expenses

Disputed Item	Recoverable	Non-Recoverable
Petrolifera (PIA Vlore)	\$ 641,250	\$ 0

This disputed item relates to the Terminalo Albanese (“PIA”) terminal in the Bay of Vlore that is used for the storage and unloading of oil and other products.<sup>185</sup> In 2004, the Albanian government entered into a concession agreement with PIA to build and operate the Vlore terminal.<sup>186</sup> BPAL entered into a contract with Petrolifera for storage services

<sup>181</sup> *Ibid*, Appendix O, page 3.  
<sup>182</sup> 2011 Audit Report, page 57 – 68.  
<sup>183</sup> BPAL Observations, page 111.  
<sup>184</sup> 2011 WP&B, page 57.  
<sup>185</sup> BPAL Submission, Appendix O, page 57.  
<sup>186</sup> *Ibid*, Appendix O, page 57.

at the Vlore terminal.<sup>187</sup> As part of the contract, BPAL agreed to contribute to the cost of constructing additional storage capacity for BPAL at the Vlore terminal.<sup>188</sup>

AKBN claims these costs are non-recoverable since such an arrangement conflicts with the terms of the concession agreement between the Albanian government and PIA.<sup>189</sup> In addition, AKBN references Article 17.2 of the License Agreement that indicates that: (a) “[t]itle to assets in possession of LICENSEE in connection with the Petroleum Operations shall, by virtue of this License Agreement, be transferred to [AKBN] at the time the costs of such fixed and movable assets have been fully recovered as Petroleum Costs...,” and (b) “...it is expressly agreed that any assets belonging to a third party or rented by LICENSEE for the purpose of Petroleum Operations, and any assets owned by LICENSEE’s subcontractors or their Affiliates, will not become the property of [AKBN].” AKBN claims that upon construction of the additional storage facilities they remain the property of PIA and not BPAL. Since the assets do not become the property of AKBN, AKBN claims the associated costs should therefore not be recoverable. However, AKBN acknowledges that the costs provide benefit to BPAL because they improve the available infrastructure for Petroleum Operations and because PIA agreed to a lower monthly lease fee than it would have otherwise charged.<sup>190</sup>

BPAL asserts that these costs were incurred in connection with Petroleum Operations and are consistent with Article 12.4 of the Petroleum Agreement that requires BPAL to “endeavour to achieve the efficient use and safe development for the production of Petroleum and optimise the ultimate economic recovery of Petroleum in the Joint Project Area.”<sup>191</sup> Further, these types of expenses are not specifically listed as non-recoverable under Articles 10.2(c) and 10.2(d) of the License Agreement and the “investments created a benefit for BPAL, because it improved the infrastructure used to carry out Petroleum Operations.”<sup>192</sup>

The Expert Panel concludes that the costs related to the Vlore terminal expansion are recoverable. The storage expansion costs are consistent with Annex B to the Petroleum Agreement, specifically Article 2.5 that considers as Petroleum Costs “[b]ase overhead and facilities such as ashore base, warehouses, water systems, road systems ....” In addition, the costs benefited both BPAL and AKBN by lowering the monthly rent BPAL paid for the terminal and by improving the infrastructure in order to respond to increased

<sup>187</sup> BPAL Submission, Exhibit 61, page 1.

<sup>188</sup> *Ibid*, Exhibit 61, page 1.

<sup>189</sup> 2011 Audit Report, page 63.

<sup>190</sup> *Ibid*, page 64.

<sup>191</sup> BPAL Submission, Appendix O, page 57.

<sup>192</sup> *Ibid*, Appendix O, page 58.

production. Finally, the Expert Panel was not persuaded that Article 17.2 of the License Agreement, i.e. that the storage facilities would remain the property of PIA, prohibits these expenses as recoverable costs.

## 5. Operations Expenses

<b>Disputed Item</b>	<b>Recoverable</b>	<b>Non-Recoverable</b>
Interalbanian Sh.a.	\$ 104,364	\$ 0
SIGAL Uniq Group Austria Sh.A. – Vehicles Casco insurance	74,153	0
Illyria GeoTechnologies Sh.p.k	1,421	0
<b>Total</b>	<b>\$ 179,938</b>	<b>\$ 0</b>

The costs for Interalbanian relate to insurance premiums incurred by BPAL. Interalbanian provided property insurance for BPAL offices and a commercial general liability policy for BPAL operations.<sup>193</sup> AKBN disputes the recoverability of these costs because they relate to “coverage of the obligations and liabilities of third parties in the relationship with BPAL,” not to Petroleum Operations.<sup>194</sup>

The costs for SIGAL relate to vehicle insurance. AKBN claims these costs as non-recoverable because they are “triggered by the indemnification of the damages caused by BPAL itself or third parties.”<sup>195</sup> BPAL claims that Annex B to the Petroleum Agreement, specifically Article 2.13.1, considers as recoverable “[p]remiums for insurance to cover the risks related to Petroleum Operations according to Company’s practice or any of its employees and/or outsiders, which is in compliance with an international petroleum practice or which is required by law.”<sup>196</sup>

The costs for Illyria GeoTechnologies relate to GPS technology used by BPAL to monitor the location of vehicles in the field and identify vehicles exceeding the speed limit.<sup>197</sup> AKBN claims that these costs are not covered by Annex B to the Petroleum Agreement and therefore non-recoverable. In response, BPAL cites Annex B of the Petroleum Agreement, Article 2.7.1

<sup>193</sup> *Ibid*, Appendix O, page 22.

<sup>194</sup> 2011 Audit Report, page 48.

<sup>195</sup> *Ibid*, page 67.

<sup>196</sup> BPAL Submission, Appendix O, page 22.

<sup>197</sup> Transcript from the Hearing (Day 2 – June 8, 2016), page 785.

that considers as recoverable “[t]he actual costs of contract service, professional consultants, and other services performed by third parties.”<sup>198</sup>

The Expert Panel concludes that the costs related to Interallbanian, SIGAL and Illyria GeoTechnologies are recoverable. With respect to the insurance policies issued by Interallbanian and SIGAL, the items covered by the policies (i.e., BPAL’s offices and vehicles) are used by BPAL for the performance of Petroleum Operations. The Petroleum Agreement defines Petroleum Operations as “all or any of the operations ... aimed or authorized by the License Agreement ..., including without limitation the testing, development, extraction, production, treatment, transportation and storage of Petroleum of or from the Contract Area pursuant to this License Agreement.” As such, these costs would be considered “[p]remiums paid for insurance to cover the risks related to Petroleum Operations,” in accordance with Article 2.13.1 of Annex B to the Petroleum Agreement. In addition, the Petroleum Agreement allows for insurance coverage for “employees and/or outsiders.” Finally, the costs for Interallbanian, SIGAL and Illyria GeoTechnologies are reasonable and customary in international petroleum operations.

## 6. Out of Contract Area

Disputed Item	Recoverable	Non-Recoverable
Area Extension Project	\$ 58	\$ 0

These disputed costs relate to the Area Extension Project. This project represents the development and drilling of extension areas of the Patos-Marinza oil field that were not contained in the initial Plan of Development. In 2011, costs related to the development of this area were included as part of the cost recovery statement for the main Patos-Marinza project. However, AKT argued that these costs should not be recoverable under the main project because AKT and BPAL agreed to capture the costs in a separate cost recovery pool during the evaluation period for the Area Extension Project.<sup>200</sup>

BPAL argued that the costs should have been included under a separate cost recovery pool. However, BPAL notes that the costs were recorded under the main project in 2011 in

<sup>198</sup> BPAL Submission, Appendix O, page 32.

<sup>199</sup> *Ibid*, Appendix O, page 35.

<sup>200</sup> Presentation for Advisory Committee Meeting #14 dated November 10, 2010, page 4.

error and were recorded separately in prior and subsequent years.<sup>201</sup> In addition, the Area Extension represents land included within the Contract Area as defined in the License Agreement and is subject to the terms of the License Agreement and Petroleum Agreement.<sup>202</sup> Further, these costs represent Petroleum Costs related to Petroleum Operations that are defined in the Petroleum Agreement as “all or any of the operations ... including without limitation the testing, development, extraction, production, treatment, transportation and storage of Petroleum *of or from the Contract Area* pursuant to this License Agreement [emphasis added].” As such, BPAL claims that the costs should be considered recoverable but transferred from the cost recovery statement of the main project to the cost recovery statement of the Area Extension Project.<sup>203</sup> In March 2016, BPAL submitted restated cost recovery statements to AKBN reflecting the reclassification of the area extension costs.<sup>204</sup>

Based on the positions presented, the Parties do not appear to dispute the nature of the costs and whether they generally relate to petroleum operations. Rather, the dispute appears to be over whether the costs should be recoverable as part of the main Patos-Marinza project or the Area Extension project. Although the classification of the cost as Patos-Marinza versus Area Extension cost may be in error, based on the evidence provided, the Expert Panel concludes the costs are appropriately classified as recoverable Petroleum Costs. The Expert Mandate charges the Expert Panel with determining the recoverability of Petroleum Costs, not the evaluation of the reporting of these costs between the main Patos-Marinza project and the Area Extension project.

## 7. Overlapping Rent Payment

Disputed Item	Recoverable	Non-Recoverable
Jonus Ismailaj	\$ 0	\$ 187,095

This disputed item represents office rent paid to Jonus Ismailaj. In 2011, BPAL planned to move to a new office and signed a lease with Jonus Ismailaj from July 2011 to June 2020. However, due to delays in the completion of construction for the new office, BPAL had to extend its existing lease agreement with Bexhat Ziaj from July 2011 through December

<sup>201</sup> BPAL Submission, Appendix O, page 35.

<sup>202</sup> *Ibid.*

<sup>203</sup> *Ibid.*

<sup>204</sup> BPAL Submission, Exhibit 52.

2011.<sup>205</sup> AKBN claims the rent paid to Jonus Ismailaj is non-recoverable since the rent payment was duplicative of the rent paid to Bexhat Ziaj.<sup>206</sup> BPAL states that rent expenses are covered under Annex B to the Petroleum Agreement in Article 2.8 that considers as recoverable “cost of staff and maintaining Contractor’s head office in the Republic of Albania, and/or other offices established in the Republic of Albania.”<sup>207</sup>

The Expert Panel concludes that the disputed costs are non-recoverable. The Expert Panel notes that Article 2.8 of Annex B to the Petroleum Agreement states that “[i]n the event such personnel and office costs of Contractor or Contractor’s Affiliates for the purpose of this Agreement are not fully attributable to the Petroleum Operations then such costs shall be charged on an equitable basis.” Since the office costs for Jonus Ismailaj were duplicative and not fully attributable to Petroleum Operations during the overlapping period, the Expert Panel determines these costs to be non-recoverable.

## 8. Professional Fees

Disputed Item	Recoverable	Non-Recoverable
JB Environmental Ltd	\$ 0	0
Blackstone Corporation Resource Management Consultants and Tourism Consultants 1	106,000	0
Blackstone Corporation Resource Management Consultants and Tourism Consultants 2	1,335,000	0
SourceOne	1,275,511	0
Avanzar LLC 1	38,187	0
Avanzar LLC 2	55,601	0
Branko Radanovic and Jelena Oplaca	13,451	0
Risk Management International	13,200	0
EnviroTech Specialist Services	31,260	0
Boga & Associates	144,760	0
Raiffeisen Bank Sh.A	0	8,965
<b>Total</b>	<b>\$ 1,124,564</b>	<b>\$ 8,965</b>

The disputed professional fees for professional services for various vendors:

<sup>205</sup> *Ibid*, Appendix O, page 44.

<sup>206</sup> 2011 Audit Report, page 70.

<sup>207</sup> BPAL Submission, Appendix O, page 44.

- *JB Environmental*: Provided “environmental consultancy services, waste management and strategy support, and social science consultancy services.” Produced a “Preliminary Social Impact Assessment” related to BPAL activities in the Fier region.<sup>208</sup>
- *Blackstone*: “[D]eveloped and oversaw BPAL’s social/community relations team in Fier, Albania,” and performed tasks including “building and training a local team of social scientists,” and “developing and implementing a Community Investment programme to benefit local populations.”<sup>209</sup>
- *SourceOne*: Provided BPAL with “support in the areas of advertising and public relations,” and were asked to “monitor publicity, supervise publicity, disseminate press releases, manage interviews and events, and develop marketing and advertising materials.”<sup>210</sup>
- *Avanzar*: “[P]rovided services as a Health, Safety, Environment and Social Grievance Redress Specialist to BPAL.” Specifically, “assisted BPAL in developing a grievance mechanism,” in order to “ensure that BPAL makes adequate communication and feedback channels available to its stakeholders.”<sup>211</sup>
- *Branko Radanovic and Jelena Oplanic*: Retained to “create a Resettlement Policy and Action Plan for pipeline construction.” Produced a report with guidelines that “are used by BPAL in managing land acquisition and any potential physical or economic displacement of people.”<sup>212</sup>
- *Risk Management International*: Provides security management services. Asked to “lead and manage the workload of local security supervisors, coordinate and manage the field and city security operations etc.”<sup>213</sup>
- *EnviroTech*: Provided “an EnviroTech/Solid Systems liquid-solids separation system for processing hydrocarbon sludge from the Patos-Marinza oilfield.” The particular costs being disputed relate to a “Commitment Fee” that was “payable immediately to cover the preparatory costs associated to the contract.”<sup>214</sup>
- *Boga & Associates*: Law firm that provided a “broad range of legal services,” including “legal advice on petroleum regulations and corporate law and employment issues, court representation, and assistance with VAT exemption procedures.”<sup>215</sup>
- *Raiffeisen Bank*: Raiffeisen Bank is one of BPAL’s lenders. The disputed costs relates to “legal fees from lawyers engaged by Raiffeisen” in connection with the 2009 Loan Agreement. The agreement “stipulates that BPAL shall pay these fees.”<sup>216</sup>

<sup>208</sup> *Ibid*, Appendix O, page 53.

<sup>209</sup> *Ibid*, Appendix O, page 53.

<sup>210</sup> *Ibid*, Appendix O, page 121.

<sup>211</sup> *Ibid*, Appendix O, page 53.

<sup>212</sup> *Ibid*, Appendix O, page 52.

<sup>213</sup> BPAL Observator, page 121.

<sup>214</sup> BPAL Submission, Appendix O, page 26.

<sup>215</sup> *Ibid*, Appendix O, page 37.

<sup>216</sup> *Ibid*, Appendix O, page 53.

AKBN claims the costs for these vendors are non-recoverable primarily because the costs are not covered by Annex B to the Petroleum Agreement. In addition, for certain costs, AKBN claims that it was not provided sufficient supporting documentation for the costs. For the majority of these costs, BPAL states that the costs are covered by Annex B, Article 2.7.1 (Services) that considers as recoverable “[t]he actual costs of contract service, professional consultants, and other services performed by third parties.” Additionally, with respect to legal fees, BPAL references Article 2.14 that provides as recoverable “[a]ll costs or expenses of litigation or legal services to protect Contractor’s interest in the Contract Area under or pursuant to the Agreement and otherwise necessary or expedient including but not limited to legal counsel’s fees, arbitration costs, court costs, cost of investigation or procuring evidence and amounts paid in settlement or satisfaction of any such litigation or claims.”

The Expert Panel’s determination on each of these disputed costs based on the evidence provided is as follows:

1. The costs related to JB Environmental, Blackstone, StoneOne, Avanzar, Branko Radanovic, Jelena Oplanic and Risk Management International appear to be professional consulting fees paid to various vendors to assist BPAL with investigations to maintain community relations. AKBN claims that it “appreciates the engagement of BPAL for services and social programs in its interest by contributing to the community as and [sic] additional value to the community,” but states that the costs should be paid by BPAL rather than as recoverable petroleum costs.<sup>217</sup> Article 2.7.1 of the Petroleum Agreement, Article 2.7.1, states that “actual costs of contract service, professional consultants, and other services performed by third parties” are recoverable costs. As such, the Expert Panel concludes that these costs are recoverable.
2. Based on the proposal submitted by BPAL by EnviroTech, the disputed costs represent a partial advance payment of a mobilization fee for services “to cover preparation costs of equipment and so on, reservation of transport, purchase of consumables, insurance and all other costs related to the contract.”<sup>218</sup> Mobilization fees are customary in the international remediation industry. Based on the evidence provided, it appears the mobilization fee, along with the ongoing fees for the services provided by EnviroTech were not disputed by AKBN. Since the commitment fee is also part of “the

<sup>217</sup> 2011 Audit Report, page 20.

<sup>218</sup> EnviroTech proposal for the “Sector III Remediation Project 2010,” Section L – Commercial Offer.

actual costs of contract service,” the Expert Panel concludes that the commitment fee is a recoverable cost.

3. Based on the invoices and explanation provided by BPAL, the costs related to Boga & Associates are for the purpose of employment and regulatory matters in the Contract Area. The Expert Panel concludes that the Boga & Associates fees are recoverable costs. An additional point of dispute by AKBN related to these costs was that BPAL did not provide documents to confirm the work performed, such as reports, studies, or analysis. However, the Expert Panel considers the type of documentation included with the invoice (i.e., a description of the task performed, the date, the staff member, and the number of hours spent) to be consistent with the reasonable and customary level of detail included in law firm invoices.
4. The costs related to Raiffeisen Bank are loan-related legal expenses that do not appear to “protect Contractor’s interest in the Contract Area” but are rather one of the required costs for obtaining financing from the bank. BPAL is required to “use all financial resources” in order to “pay one hundred percent (100%) of all costs and expenses associated with the Petroleum Operations,” and can then recover the funds from the costs from revenues.<sup>219</sup> Since the disputed item relates to BPAL’s obligations to secure financing, not to Petroleum Operations, the Expert Panel concluded that the Raiffeisen Bank legal expenses are not recoverable.

## 9. Intercompany Expenses

Disputed Item	Recoverable	Non-Recoverable
BPL (BNK) Calgary Subcontractor	\$ 2,286,088	\$ 0

The disputed costs relate to salaries for professional staff employed by BPL in Canada.<sup>220</sup> AKBN claims these costs are non-recoverable because the employee contracts for these individuals were with BPL, not BPAL, and did not indicate that the individuals would provide services exclusively for BPAL and the Patos-Marinza project.<sup>221</sup> According to AKBN, this is in violation of Article 16.3 of the License Agreement that states that “LICENSEE will inform the Licenser of the name and address of every sub-contractor and the identity of its

<sup>219</sup> License Agreement, Article 3.3(a)(i)

<sup>220</sup> BPAL Submission, Appendix O, page 55.

<sup>221</sup> 2011 Audit Report, page 28.

authorized representative, and will provide [AKBN] with a copy of the contract within thirty (30) days after this sub-contractor has been employed by LICENSEE.” Under this article, AKBN claims that a legal contract is required between these employees and BPAL, not BPL, for the costs to be recoverable.<sup>222</sup> AKBN refers to Annex B of the Petroleum Agreement, Article 2.9, which considers as recoverable “Contractor’s parent company administrative overheads outside the Republic of Albania applicable to the operations under this Agreement.” However, this article goes on to state that “[i]n no case may the amount charged to Petroleum Costs under this Article 2.9 exceed \$250,000 in the 2005 Calendar Year, and in any subsequent Calendar Year, \$250,000 adjusted for inflation using the U.S. Consumer Price Index.”<sup>223</sup>

BPAL claims that the disputed payments relate to BPL personnel that performed services such as well engineering, petroleum engineering and geological services. BPAL notes that since BPAL is the only operating entity of BPL, the majority of BPL’s personnel costs are attributable to operations in the Patos-Marinza oilfield. BPL charges the cost of the personnel to BPAL at cost and claims that keeping the employees in Canada reduces costs because the personnel do not need to be transferred to work in Albania.<sup>224</sup> BPAL also references Annex B of the Petroleum Agreement, Article 2.2.1, that considers as recoverable “the actual costs of all Contractor’s employees and the costs of personnel assigned or temporarily assigned or loaned to Contractor [emphasis added].” BPAL claims that this article demonstrates that a direct contract between the employees and BPAL is not required and therefore the BPL costs should be recoverable.<sup>225</sup>

The Expert Panel concludes that the disputed costs related to BPL salaries are recoverable based on the following:

1. As part of its submission, BPAL provided the payroll registers that support the costs. The payroll registers and cover sheets include the names of the employees whose salaries were charged to BPAL along with their titles. BPAL also provided a schedule of these employees with job descriptions. The employees listed on this schedule hold technical positions such as geologists and engineers and not administrative positions such as accounting or IT.

<sup>222</sup> *Ibid*, pages 55-56.

<sup>223</sup> AKBN Hearing Transcriptions, Topic III – Other Costs: Insufficient Support, page 13. AKBN estimates the cap amount to be \$288,000 for 2011.

<sup>224</sup> BPAL Submission, Appendix O, page 55.

<sup>225</sup> *Ibid*, Appendix O, page 55.

2. In addition to Article 2.9 to Annex B of the Petroleum Agreement that relates to parent company administrative overheads, BPAL identifies Article 2.17 that allows as recoverable “[e]xpenditures under any service agreement entered into between Contractor and any of its Affiliated Companies.” BPAL notes that a service agreement exists between BPL and BPAL.<sup>226</sup>
3. Article 2.9 limits parent company overheads to \$288,000 for 2011 relating to “Contractor’s parent company personnel who are involved in administering Contractor activities related to the Petroleum Operations.”<sup>227</sup> Article 2.17 does not indicate the types of costs that would or would not be covered under a service agreement.
4. BPAL confirms that, with respect to administrative costs it has not exceeded the cap amount under Article 2.9.<sup>228</sup> Rather, the disputed costs all relate to non-administrative employees that spent their time on the Patos-Marinza project. As such, the Expert Panel concludes that these costs should be considered under Article 2.17, i.e., expenditures under a service agreement, and should therefore be classified as recoverable costs.

## 10. Auditor Expenses

Disputed Item	Recoverable	Non-Recoverable
KPMG	\$ 0	\$ 96,000

This disputed cost relates to audit fees charged by KPMG. The costs represent an expense accrual for 2011 audit expenses charged by KPMG to BPAL as a third party service cost. AKBN claims these costs are non-recoverable based on Annex B to the Petroleum Agreement, Article 2.9, that limits administrative overheads to \$250,000 adjusted for inflation since 2005 (approximately \$288,000 in 2011).<sup>229</sup> Since BPAL exceeded this threshold in 2011 with other administrative overheads, AKBN claims the KPMG fees are non-recoverable.

BPAL claims that the KPMG audit fees are not administrative overhead costs but rather service provided by a third party. BPAL states that Article 2.9 relates to “parent company personnel who are involved in administering Contractor activities related to the Petroleum

<sup>226</sup> Service Agreement between Bankers Petroleum Ltd. and Bankers Petroleum Albania Ltd., Agreement No. PM-OS-012-5, dated January 1, 2009 (and amended January 1, 2009).

<sup>227</sup> Transcript from the hearing (Day 2 – June 8, 2016), page 719.

<sup>228</sup> *Ibid*, page 814.

<sup>229</sup> *Ibid*, page 719.

Operations.” BPAL claims that audit fees should instead be evaluated under Article 2.7.1 of Annex B that indicates the “actual costs of contract service, professional consultants, and other services performed by third parties” are recoverable.<sup>230</sup>

The Expert Panel notes that auditor fees are a common business expense for both public and non-public companies. However, the Agreements do not appear to specifically address the recoverability of outside auditor fees whether incurred in Albania or elsewhere. Given that the auditor fees were a required expense for BPL as a public company, not for BPAL’s Petroleum Operations, the Expert Panel concludes that the disputed KPMG costs are non-recoverable.

## 11. Various Expenses

<b>Disputed Item</b>	<b>Recoverable</b>	<b>Non-Recoverable</b>
Various Expenses	\$ 227,732	\$ 0

The disputed costs relate to various expenses that AKBN grouped together in the 2011 Audit Report. These costs and the Expert Panel determination are summarized below.

- *Social security and health insurance contributions (\$135,774)*: These costs relate to social security and health insurance contributions for expatriate employees.<sup>231</sup> AKBN claims that the disputed amount is a duplicate charge. BPAL disputes the claim that the costs are a duplicate charge and indicates that the contributions for the expatriate employees were not initially recorded with social security and health insurance contributions. Rather, BPAL added these costs as a result of a tax assessment issued by the Albanian tax authorities mandating these contributions. The Expert Panel concludes that these costs are recoverable. Persuasive evidence was not provided indicating that these were duplicate charges. Since the contributions are determined to be non-duplicative they are recoverable under the Petroleum Agreement, Article 2.2.1(a) that considers gross salary to be recoverable.

<sup>230</sup> BPAL Submission, Appendix O, page 60.

<sup>231</sup> *Ibid*, Appendix O, page 41.

<sup>232</sup> *Ibid*, Appendix O, page 40.

<sup>233</sup> *Ibid*, Appendix O, page 41.

- *Demurrage fees (\$24,326)*: This category relates to fees charged by Vitol and AOT for delays in loading vessels with production.<sup>234</sup> Similar to the disputed costs for A&A Logistics, AKBN claims these costs are non-recoverable because they represent fines and penalties excluded under Article 10.2(d) of the License Agreement.<sup>235</sup> BPAL claims that these charges are not fines and penalties imposed by an Albanian governmental agency but rather fees charged by two companies, Vitol and AOT.<sup>236</sup> BPAL indicates that these charges are covered by Annex B to the Petroleum Agreement, Article 2.6, that allows for the recovery of costs related to the transportation of petroleum.<sup>237</sup> The Expert Panel concludes that the disputed demurrage fees are recoverable since they are not included in the definition of Article 10.2(d) and are recoverable under Article 2.6 of Annex B. Further, no supporting documentation was provided to indicate that these fees were unreasonable.
- *Various personnel and administrative costs (\$67,433)*<sup>238</sup>: This category covers a range of costs such as medical supplies, employee expenses (e.g., TV in employee housing, food, water, towels, and linens) and administrative expenses (e.g., promotional materials, plants, and posters).<sup>239</sup> AKBN claims these costs as non-recoverable and not covered under Annex B to the Petroleum Agreement.<sup>240</sup> BPAL cites Article 2.16 that covers the “cost of staff and maintaining Contractor’s head office in the territory of Albania” and Article 2.16 that covers the “[c]ost of establishing, maintaining and operating any offices, sub-offices, camps, warehouses, housing and other facilities such as recreational facilities for employees.”<sup>241</sup> Based on an analysis of the documentation provided by BPAL, the Expert Panel concludes that these costs are recoverable pursuant to Article 2.16 to Annex B of the Petroleum Agreement. In addition, these costs appear to be customary and reasonable.

## 12. Insurance Expenses

Disputed Item	Recoverable	Non-Recoverable
Connecticut Life Insurance, Zurich Insurance Co. Int'l	\$ 272,573	\$ 0
SIGAL Group Austria Sh.A. - Private Health Insurance	260,546	0

<sup>234</sup> *Ibid*, Appendix O, page 40.  
<sup>235</sup> 2017 O.R.G. No. 10.  
<sup>236</sup> BPAL Submission, Appendix O, page 41.  
<sup>237</sup> *Ibid*, Appendix O, page 40.  
<sup>238</sup> The initial amount disputed by AKBN related to these costs was \$80,764; however, BPAL accepted AKBN’s findings related to \$13,331 of these costs. Note that page 40 of Appendix O to the BPAL Submission indicates that BPAL has accepted \$1,749 of costs, but on page 42 BPAL indicates that it has accepted \$13,331 of costs.  
<sup>239</sup> BPAL Submission, Appendix O, page 42.  
<sup>240</sup> *Ibid*, Appendix O, page 40.  
<sup>241</sup> *Ibid*, Appendix O, page 43.

<b>Disputed Item</b>	<b>Recoverable</b>	<b>Non-Recoverable</b>
SIGAL Life Uniqa Group Austria Sh.A. - Group Life insurance	9,377	0
<b>Total</b>	<b>\$ 542,496</b>	<b>\$ 0</b>

These disputed costs relate to health and life insurance coverage for expatriate and manager-level employees and family members.<sup>242</sup> AKBN claims that portions of the costs are non-recoverable because they cover family members and therefore are not covered by Annex B to the Petroleum Agreement.<sup>243</sup>

BPAL disputes the disallowance of the costs and the amounts calculated by AKBN related to family members.<sup>244</sup> BPAL states that providing insurance coverage to family members of expatriate employees is part of the compensation package offered to employees and a common practice in the international oil and gas industry. In addition, BPAL notes that the amounts AKBN claims as non-recoverable for Connecticut General Life, Cigna and SIGAL health insurance reflect costs for employees and family members and not just family members.<sup>245</sup> Further, the disputed costs for SIGAL life insurance relate only to employees.<sup>246</sup> BPAL asserts the health and life insurance costs are recoverable under Annex B to the Petroleum Agreement, Article 2.2(d) that considers as recoverable “[c]osts of established plans for employees’ life insurance, hospitalisation, pension, savings and other benefit plans of like nature applicable to the salaries and wages charged on the employees (gross salaries and premiums or wages] hereof.”<sup>247</sup>

The Expert Panel concludes that the disputed health and life insurance costs are recoverable Petroleum Costs under Article 2.2(d) of Annex B and are reasonable costs that are generally accepted in the international petroleum industry.

### 13. Employee-related and Administrative Expenses

<b>Disputed Item</b>	<b>Recoverable</b>	<b>Non-Recoverable</b>
Supplies, travel and Pleurat Shehu (personal and administrative expenses)	\$ 306,864	\$ 0

<sup>242</sup> *Ibid.*, Appendix O, page 29.

<sup>243</sup> *Ibid.*

<sup>244</sup> AKBN disputed \$2,377,000 of costs for Zurich Insurance which it claimed related to employees not on BPAL’s payroll. BPAL accepted AKBN’s position with respect to \$14,912 of the costs, as they related to former expatriate employees where the insurance had been prepared for their employment termination. For the remaining \$12,867, BPAL indicated that the specific employees were on the payroll. BPAL Submission, Appendix O, page 6.

<sup>245</sup> BPAL Submission, Appendix O, pages 5 – 7.

<sup>246</sup> *Ibid.*, Appendix O, page 29.

<sup>247</sup> *Ibid.*, Appendix O, page 6.

<b>Disputed Item</b>	<b>Recoverable</b>	<b>Non-Recoverable</b>
3-sh Shpk	123,377	0
Gezim Mici	107,166	0
Purchase of fitness equipment	81,224	0
Suzana Bushi	23,122	0
Harrilla Toska	2,998	0
<b>Total</b>	<b>\$ 644,751</b>	<b>\$ 0</b>

These disputed expenses relate to items such as food, cleaning services, rent and services for a villa rented for employees, fitness equipment for a gym, towels for the fitness center and maintenance and gardening for BPAL’s head office in Albania.<sup>248</sup> AKBN claims these costs as non-recoverable and not covered by Annex B of the Petroleum Agreement.<sup>249</sup> With respect to the villa (Gezim Mici), AKBN disputes the entire charge, rather than just service charges, because the invoice did not separately break out the cost for recoverable rent from the cost for other services.<sup>250</sup> BPAL claims that these costs are recoverable under Annex B to the Petroleum Agreement, Article 2.2(g) that covers “accommodation costs for employees” and Article 2.16 that covers “[c]ost of establishing, maintaining and operating any offices, sub-offices, camps, warehouses, housing and other facilities and recreational facilities for employees.”<sup>251</sup>

The Expert Panel concludes that the disputed costs are recoverable. Based on the evidence provided, Article 2.16 to Annex B includes costs for “maintaining and operating” facilities including employee housing and recreational facilities. In addition, an analysis of the supporting documentation provided supports the costs as reasonable and customary.

#### 14. Medical Services

<b>Disputed Item</b>	<b>Recoverable</b>	<b>Non-Recoverable</b>
Medical Services for the Diplomatic Corps	\$ 186,000	\$ 0

<sup>248</sup> *Ibid*, Appendix O, page 14; pages 13-15; page 20; page 27; page 31.

<sup>249</sup> *Ibid*.

<sup>250</sup> *Ibid*, Appendix O, page 14.

<sup>251</sup> *Ibid*, Appendix O, page 13; page 15.

The disputed costs relate to on-site medical response services provided by MRDC. MRDC provides doctors, nurses, and other medical services in the oilfield to employees of BPAL and subcontractors.<sup>252</sup> AKBN claims the costs for subcontractors are non-recoverable and not covered under Annex B to the Petroleum Agreement.<sup>253</sup> BPAL asserts that these costs are covered by Annex B, Article 2.2(d) that allows for the “cost of established plans for employees’ life insurance, hospitalisation, pensions, saving and other benefit plans of like nature applicable to the salaries and wages chargeable under (a) [gross salaries and premiums or wages] hereof.” In addition, BPAL notes that it has an obligation under Albanian law to provide adequate on-site medical services to employees.<sup>254</sup>

The Expert Panel concludes that the disputed costs related to medical services are recoverable. The services appear to be reasonable health and safety expenses that provide hospitalization services for employees in the field. Based on the evidence provided, it appears that MRDC is paid a fixed amount on a quarterly basis rather than being paid per incident. As such, it appears the costs for the services would be the same whether a BPAL employee or a subcontractor was treated.<sup>255</sup>

## 15. Newspaper Announcements

Disputed Item	Recoverable	Non-Recoverable
Announcements in newspaper for employment vacancies	\$ 270,000	\$ 0

The disputed costs relate to the cost of newspaper employment vacancy announcements in the newspaper.<sup>256</sup> AKBN claims that these costs are non-recoverable because they are not covered by any provision of Annex B to the Petroleum Agreement.<sup>257</sup> BPAL asserts that Article 2.2 provides a non-exhaustive list of job-related costs and these costs should be considered recoverable even though they were not specifically identified.<sup>258</sup> The Expert Panel concludes that these costs are recoverable as they appear to be reasonable costs necessary for the Petroleum Operations.

<sup>252</sup> *Ibid*, Appendix O, page 9.  
<sup>253</sup> 2011 Audit Report, page 15.  
<sup>254</sup> BPAL Submission, Appendix O, page 9.  
<sup>255</sup> *Ibid*, Exhibit 33a, MRDC Ledger 2011.  
<sup>256</sup> *Ibid*, Appendix O, page 30.  
<sup>257</sup> *Ibid*.  
<sup>258</sup> BPAL Submission, Appendix O, page 30.

## **F. OTHER COSTS – INSUFFICIENT DOCUMENTATION**

Amount in Dispute: \$7,000,375

### ***Summary of Positions***

AKBN and BPAL disagree as to whether expense items totaling \$7,000,375 in 2011 are supported with sufficient documentation to qualify as recoverable Petroleum Costs.

AKBN claims these costs are non-recoverable on the basis that AKBN did not receive certain supporting documents from BPAL or because AKBN did not consider the documentation received to be sufficient. AKBN claims BPAL provided insufficient documentation related to the following<sup>259</sup>:

- Contracts (with fee schedules, if applicable)
- Invoices within the contract period
- Reports/workproduct prepared by vendor
- Documentation reflecting the basis of calculation for certain expenses (e.g. timesheets)

AKBN also cites Article 16.6 of the License Agreement, which states:

LICENSEE will provide [AKBN] with a copy, in hard and electronic format, of all the data (including, but not limited to, geological and geophysical reports, seismic recording tapes, records and documents of wells, reports of development and production, and other data) and information and interpretation of such data and all the other work products belonging to LICENSEE or in possession of LICENSEE's Affiliates). LICENSEE will provide [AKBN] with extra copies of the above data and information when requested by [AKBN] at the latter's expense.

The initial amount in dispute under this category was \$7,145,533. However, in the BPAL Submission, BPAL adopted AKBN's position that sponsorship and donation expenses totaling \$145,158 are non-recoverable.<sup>260</sup> As such, the total amount in dispute is \$7,000,375.

<sup>259</sup> AKBN Hearing Presentations, Topic III – Other Costs-Insufficient Support, page 3.

<sup>260</sup> BPAL Submission, Appendix P, page 64. This category included items such as flowers, party expenses, gifts, and sponsorships (see 2011 Audit Report, pages 49 – 50).

### **Expert Panel Determination**

The Expert Panel has categorized the disputed costs for the purpose of explaining its determination. The following table displays the Expert Panel determination regarding each cost item with the summary basis for the determinations below.

	<b>Category</b>	<b>Disputed Item</b>	<b>Recoverable</b>	<b>Non-Recoverable</b>
<b>1</b>	Lack of supporting documentation - Contracts	A&A Shpk	\$ 159,369	\$ 0
		Europump System	109,917	0
		Coromandel Resource	109,774	0
		SunSystem Consultants	30,353	0
		Continental Laboratories	29,336	0
		Tarpon Energy	26,990	0
		Aecom Canada	25,656	0
		IT-AL Shp	5,063	0
		Luan Sulejmani	462	0
		Ari Frigo Shpk	1	0
<b>2</b>	Lack of supporting documentation – Work Product	Third party recharges (Interco)	7,111	0
		Weatherford Laboratories	1,990	0
		AKS Geoscience	8,506	0
		Consultancy Martin B Graystone	15,706	0
		Chinook Consulting	53,396	0
		Spektri	49,508	0
<b>3</b>	Lack of supporting documentation - Professional Licenses	Sia-Serjani	692,980	0
		Q.Sinaj	25,635	0
		Vibtis	958,276	0
		All	95,747	0
<b>4</b>	Lack of supporting documentation - Other	tu	2,482,582	0
		sa Ingenieria S.L	209,208	0
		omechanics	126,420	0
		SP Remediation Limited	125,150	0
		Image Lease	94,115	0
		Eli Shpk	68,741	0
		RBA	63,301	0
		Unitrack Shpk	42,485	0
		Rick Mazurkevich	23,010	0
		Janaq Zarka	15,500	0
		Arben Malaj	10,673	0

	Category	Disputed Item	Recoverable	Non-Recoverable
5	Rent Calculation	Llambi Gjergjo	2,912	3,577
		Dashuri Bacja	1,765	1,135
	<b>Total</b>		<b>\$ 6,995,663</b>	<b>\$ 4,712</b>

## 1. Lack of supporting documentation – Contracts

Disputed Item	Recoverable	Non-Recoverable
A&A Shpk	\$ 159,369	\$ 0
Europump System	109,917	0
Coromandel Resource	109,774	0
SunSystem Consultants	30,353	0
Continental Laboratories	29,336	0
Tarpon Energy	26,990	0
Aecom Canada	25,656	0
IT-AL Shp	5,063	0
Luan Sulejmani	3,462	0
Ari Frigo Shpk	1,231	0
<b>Total</b>	<b>\$ 501,818</b>	<b>\$ 0</b>

AKBN disputes the costs in this category for the following reasons:

- *A&A*: AKBN claims that certain logistics charges by A&A were not specified in the contract.<sup>261</sup> BPAL asserts that for well-site services vary based on destination, weight and time period. In addition, BPAL provided a fee estimate in advance for the services.<sup>262</sup>
- *Europump*: AKBN disputes this cost based on the lack of a valid contract covering the invoiced period and a discrepancy between invoices and the contract with respect to daily rates charged.<sup>263</sup> BPAL asserts that the time period noted in two invoices was in error and the invoices do fall within the contract period. In addition, the daily fee in the contract is the net fee payable with withholding taxes, while the fee reflected in the accounting records is the gross fee.<sup>264</sup>
- *Coromandel*: AKBN disputes this cost for logistics related to well-site geologists because BPAL did not provide a contract. BPAL asserts that it entered into a Service Agreement in 2010 to continue the arrangement through 2011. AKBN also claims these costs were

<sup>261</sup> 2011 Audit Report, Page 37.

<sup>262</sup> BPAL Submission, Appendix P, page 35.

<sup>263</sup> 2011 Audit Report, page 48.

<sup>264</sup> BPAL Submission, Appendix P, page 41.

duplicative. BPAL asserts that the costs represent non-duplicative services fees and logistics support.<sup>265</sup>

- *SunSystem*: AKBN disputes this cost because BPAL did not provide a contract that included information on fees and scope. AKBN claims that it does not consider purchase orders as a service contract since these are used for the purchase of goods and not services. BPAL asserts that a purchase order meets the requirements of a contractual arrangement under Albanian Law.<sup>266</sup>
- *Continental Laboratories*: AKBN disputes this cost because the rental rate charged by Continental for a gas detector increased without BPAL receiving a formal request for rate increase. Rather, BPAL sent a letter to Continental in reference to its invoice, acknowledging and approving the rate change. BPAL asserts that in a December 2010 invoice, Continental included a note in its invoice that rental rates will change in January 2011. BPAL claims that its letter was in response to Continental's note.<sup>267</sup>
- *Tarpon Energy*: AKBN disputes this cost because although BPAL provided a purchase order and invoice, it did not provide a contract and therefore could not assess the services against the agreed-upon fees and scope of work.<sup>268</sup> BPAL asserts that a purchase order meets the requirements of a contractual arrangement under Albanian Law. The purchase order provided by BPAL includes a description of the service, the daily rate and number of service days, costs for transportation and withholding.<sup>269</sup>
- *Aecom*: AKBN disputes this cost because although BPAL provided a purchase order and invoice, it did not provide a contract. In addition, AKBN claims that the costs are duplicative because Albanian vendors provided the same services for the project. BPAL asserts that a purchase order meets the requirements of a contractual arrangement under Albanian Law. In addition, the services are unrelated to the services provided by the Albanian vendors and therefore are not duplicative.
- *IT-Al*: AKBN disputes this cost because the contract does not define fees for the services rendered. BPAL asserts that the invoice and payment for this cost are sufficient to justify the cost.<sup>271</sup>
- *Luan Sulejmani*: AKBN disputes this cost because the services were incurred before the effective date of the contract. BPAL responds that Albanian Law does not require a contract in order for there to be a contractual relationship.<sup>272</sup>
- *Ari Frigo*: AKBN disputes this cost because BPAL provided only a purchase order, not a contract. AKBN claims that it does not consider a purchase order to serve the same purpose as a contract. BPAL asserts that a purchase order meets the requirements of a contractual arrangement under Albanian Law.<sup>273</sup>

<sup>265</sup> *Ibid*, Appendix P, page 42 – 43.

<sup>266</sup> *Ibid*, Appendix P, page 42 – 43.

<sup>267</sup> *Ibid*, Appendix P, page 57.

<sup>268</sup> 2011 Audit Report, page 70.

<sup>269</sup> *Ibid*, Appendix P, page 45.

<sup>270</sup> *Ibid*, Appendix P, page 54.

<sup>271</sup> *Ibid*, Appendix P, pages 46 – 47.

<sup>272</sup> *Ibid*, Appendix P, page 73.

<sup>273</sup> 2011 Audit Report, page 56; BPAL Submission, Appendix P, page 64.

The Expert Panel concludes that each of these disputed items are recoverable costs for the following reasons.

1. In its submissions, AKBN references various books and records provisions in the Agreements and claims BPAL did not meet the requirements of these provisions for the disputed items. As such, AKBN states it was unable to conclude whether the items qualified as Petroleum Costs. Based on an analysis of the documents provided with respect to these vendors, the Expert Panel believes they appear to be “sufficiently detailed so as to permit [AKBN] to define the regularity of Petroleum Costs incurred,” as required under Article 15.2 of the License Agreement. They also appear to be sufficient to “show the work performed under this License Agreement,” as required by Article 15.1(b) of the License Agreement.
2. With respect to contracts, AKBN does not consider purchase orders to be sufficient documentation for the cost. However, acceptance of a purchase order by a vendor typically represents a contractual agreement between the parties and BPAL claims that Albanian law supports this interpretation. The Expert Panel understands that it is not uncommon in the international petroleum industry for goods and services of smaller dollar values to be procured with purchase order in place of a contract.
3. AKBN also claims that BPAL is in violation of Article 10.2(a) of the License Agreement, which indicates that BPAL will provide AWP with a copy of the contract within thirty days of a sub-contractor being employed by AWP. BPAL did not meet the criteria of this Article, its actions would need to represent Willful Default under Article 10.2(c) of the License Agreement to be considered non-recoverable. The Expert Panel believes that the documentation maintained by BPAL while missing certain items that AKBN considers necessary, does not constitute a level of Willful Default. As such, the Expert Panel considers the disputed costs to be recoverable Petroleum Costs.

**2. Lack of Supporting Documentation – Work Product**

<b>Disputed Item</b>	<b>Recoverable</b>	<b>Non-Recoverable</b>
Third party recharges (Interco)	\$ 1,007,756	\$ 0
Weatherford Laboratories	190,690	0

<b>Disputed Item</b>	<b>Recoverable</b>	<b>Non-Recoverable</b>
AKS Geoscience	78,956	0
Consultancy Martin B Graystone	75,706	0
Chinook Consulting	53,396	0
Spektri	49,508	0
<b>Total</b>	<b>\$ 1,456,012</b>	<b>\$ 0</b>

AKBN disputes the costs in this category for the following reasons:

- *Third party recharges:* This amount represents third party consulting services paid by BPL and then charged to BPAL. AKBN disputes the charges because reports, studies, or analyses to show the services were rendered were not provided by BPAL. BPAL asserts that it provided relevant invoices and proof of payment and noted that some of the services did not result in reports or deliverables (e.g., Well Green Tech provided document conversion services).<sup>274</sup>
- *Weatherford:* AKBN claims that BPAL provided a sample deliverable but not the technical engineering report stipulated in the contract.<sup>275</sup> BPAL notes that Weatherford provides services such as petrographic analysis and reservoir engineering and therefore does not provide descriptive written reports.<sup>276</sup>
- *AKS Geoscience:* AKBN disputes this cost because of a missing report/deliverable and timesheets and because of a missing contract number on an invoice.<sup>277</sup> BPAL asserts that AKS Geoscience's deliverables may be in the form of items such as photographs and excel spreadsheets, rather than a report, and BPAL provided samples of the deliverables.<sup>278</sup>
- *Martin Graystone:* AKBN disputes this cost because BPAL did not provide work reports to verify the work was performed. BPAL asserts that no work report was available since the services provided were project management and support including, calls, meetings and emails. BPAL provided samples of emails demonstrating some of the work performed.<sup>279</sup>
- *Chinook Consulting:* AKBN disputes this cost because the contract did not contain a signature and because BPAL did not provide work reports for the services. BPAL asserts that although the contract was not signed, there was a contractual relationship between the parties that was created by BPAL's notification to Chinook when it terminated the contractual relationship. In addition, as part of its Submission, BPAL provided a sample of the work reports provided by Chinook including written reports.<sup>280</sup>

<sup>274</sup> BPAL Submission, Appendix P, pages 17 – 18.

<sup>275</sup> 2011 Audit Report, page 24.

<sup>276</sup> BPAL Submission, Appendix P, page 20.

<sup>277</sup> 2011 Audit Report, page 25.

<sup>278</sup> BPAL Submission, Appendix P, pages 24– 25.

<sup>279</sup> *Ibid*, Appendix B, page 27.

<sup>280</sup> *Ibid*, Appendix P, page 29.

- *Spektri*: AKBN disputes this cost because BPAL did not provide “substantial elements” that it required for a technical assessment of Petroleum Operations. Since AKBN could not perform this technical assessment, it claims this cost as non-recoverable. BPAL asserts it is not clear which documents AKBN is referring to.<sup>281</sup>

The Expert Panel concludes that these disputed items are recoverable costs for the following reasons.

1. AKBN references various books and records provisions in the Agreements indicating that BPAL did not meet the requirements of these provisions for the disputed items and that AKBN was therefore unable to conclude whether the items qualified as Petroleum Costs. However, the Expert Panel recognizes that a written report or deliverable may not be prepared for all services provided (e.g. scanning/document conversion services). In these instances, BPAL was able to provide examples of the types of documents prepared by the vendor. Based on an analysis of the documents provided with respect to these vendors, the Expert Panel considers them to be “sufficiently detailed” as to permit [AKBN] to define the regularity of Petroleum Costs incurred,” as required under Article 15.2 of the License Agreement. They also appear to be sufficient to “define the work performed under this License Agreement,” as required by Article 15.1(b) of the License Agreement.

### 3. Lack of supporting documentation - Professional Licenses

Disputed Item	Recoverable	Non-Recoverable
Sia-Serjani	69,980	\$ 0
Q.Sinaj	25,635	0
Vibtis	958,276	0
Albstar	95,747	0
<b>Total</b>	<b>\$ 1,772,638</b>	<b>\$ 0</b>

AKBN is disputing costs in this category for the following reasons:

- *Spektri*: AKBN disputes certain of the costs for this security services provider because it did not receive payment for services such as administrative services, a driver and a security guard. BPAL asserts that its arrangement with Sia-Serjani is on a cost plus basis and

<sup>281</sup> *Ibid*, Appendix P, page 13. In the Preliminary Audit Report, AKBN indicates that it also disputes whether the vendor had the appropriate license from May to December 2011. It is not clear in the Final Audit Report if this is still an issue in dispute. However, BPAL indicates that the vendor did have the appropriate licenses and provides copies of licenses that appear to show valid licenses.

Sia-Serjani passes through direct and indirect costs related to the services it provides to BPAL. BPAL asserts these costs are recoverable under Article 2.7.1 of Annex B to the Petroleum Agreement, because they represent “[t]he actual costs” of the services performed. AKBN disputes the remainder of the costs because Sia-Serjani’s license expired in October 2011 but the charges are through the end of 2011. AKBN claims that this is inconsistent with Article 26.1(a) to the License Agreement that requires Petroleum Operations to be “conducted in accordance with the requirements of the Albanian Law.” BPAL asserts that Sia-Serjani obtained a renewal of its license in March 2012. BPAL asserts that the responsibility for obtaining licenses is with the vendor, not BPAL, and the Agreements do not indicate the disallowance of cost recovery if vendors do not meet certain licensing regulations.<sup>282</sup>

- *Q. Sinaj*: AKBN disputes this cost because it claims Q. Sinaj did not have the necessary license for services it provided. Specifically, Q. Sinaj did not have “authorization for treatment and disposal of the polluted waters and transportation of liquid wastes.”<sup>283</sup> BPAL asserts that the responsibility for complying with licensing laws rests with the vendors and not with BPAL. Further, AKBN “cannot unilaterally make its own determination with respect to licensing requirements, and disallow expenditures on that basis, effectively imposing its own penalties on BPAL outside the relevant licensing regime.”<sup>284</sup>
- *Vibtis*: AKBN disputes this cost because it claims Vibtis did not have a license for certain categories of work that were invoiced. As such, AKBN claims that Vibtis did not “possess the technical-legal capacity for the contracted invoiced work.”<sup>285</sup> In addition, AKBN notes that Vibtis subcontracted certain services that AKBN claims “significantly increased the costs for the requested service.”<sup>286</sup> BPAL asserts that responsibility for complying with licensing laws rests with the vendor and not BPAL. In addition, Vibtis used licensed subcontractors to perform the work for which Vibtis did not have a license.<sup>286</sup>
- *Albstar*: AKBN disputes this cost because it claims Albstar did not have a license for performing design services. Rather, Albstar subcontracted the services to four other companies that AKBN claims are “more expensive” and increased the cost of the service.<sup>287</sup> BPAL asserts that responsibility for complying with licensing laws rests with the vendor and not BPAL. In addition, Albstar used licensed subcontractors to perform the work that Albstar did not have a license. Further, the Agreements do not indicate that a cost would be non-recoverable where a vendor did not have a license.<sup>288</sup>

The Expert Panel concludes that these disputed items are recoverable costs for the following reasons:

<sup>282</sup> BPAL Submission, Appendix P, pages 6 – 8; 2011 Audit Report, pages 38 – 39.

<sup>283</sup> 2011 Audit Report, page 62.

<sup>284</sup> BPAL Submission, Appendix P, page 15.

<sup>285</sup> 2011 Audit Report, page 41.

<sup>286</sup> BPAL Submission, Appendix P, page 4.

<sup>287</sup> 2011 Audit Report, page 62.

<sup>288</sup> BPAL Submission, Appendix P, page 10.

1. It appears that Sia-Serjani did not have a license for a period of two months in 2011 but was licensed for the remaining 10 months. Based on the information provided, it is not clear if Q. Sinaj had the relevant license. It also appears that both Vibtis and Albstar used subcontractors with relevant licenses to perform the work for which they were not licensed. It is not explicitly stated in the Agreements that BPAL needs to ensure that its subcontractors and vendors are appropriately licensed for the work they are to perform. However, Article 26.1(a) to the License Agreement requires that “the activities of LICENSEE in performing the Petroleum Operations shall be governed by and conducted in accordance with the requirements of the Albanian Law.” AKBN claims this requires BPAL to ensure its vendors are appropriately licensed, which BPAL disputes. However, if the License Agreement does require this, BPAL’s actions do not rise to the level of Willful Default, and therefore do not preclude cost recovery. For example, the license for Sia-Serjani expired in October 2011 but had been renewed by March 2012 as it went through the renewal process. Further, Vibtis and Albstar appropriately subcontracted areas of work which they did not have the relevant licenses. These actions are not consistent with Willful Default on the part of BPAL. As such, the Expert Panel considers the disputed costs to be recoverable Petroleum Costs.

#### 4. Lack of supporting documentation – Other

Disputed Item	Recoverable	Non-Recoverable
Bonuses	2,502	\$ 0
S.C Inocsa Ingenieria S.L	203,208	0
Geomechanics	126,420	0
WSP Remediation Limited	125,150	0
Damage Lease	94,115	0
Eli Shpk	68,741	0
RBA	63,301	0
Unitran	42,485	0
Richardson	23,010	0
...	15,500	0
...	10,673	0
	<b>\$ 3,261,185</b>	<b>\$ 0</b>

AKBN disputes the costs in this category for the following reasons:

- *Bonuses*: AKBN disputes this cost because it did not have information on the job positions of the employees receiving bonuses or how the bonuses were calculated. In addition,

AKBN claims that a portion of the bonuses related to BPL staff, not BPAL staff, and this is not allowed under Annex B to the Petroleum Agreement. BPAL asserts that it provided AKBN with the formula used to calculate bonuses as well as the job category for each employee. Further, with respect to the BPL employees, BPAL notes that Article 2.2.1 of Annex B permits salaries for “personnel assigned or temporarily assigned or loaned to Contractor.”<sup>289</sup>

- *S.C Inocsa*: AKBN disputes this cost because the company changed its name and BPAL did not provide AKBN with a government certificate from the company’s country to verify this name change. In addition, AKBN claims another supplier charged BPAL for services similar to those provided by Aecom and therefore Aecom’s charges are duplicative. BPAL asserts that the services provided by Aecom and the other vendor are not duplicative and satisfy different needs. BPAL provided a notification from the company of its name change along with a certificate of incorporation.<sup>290</sup>
- *Geomechanics*: AKBN disputes this cost because for one phase of the project a Statement of Work was provided but not a Work Order, and for a second phase of the project a Work Order was provided but not a Statement of Work. BPAL asserts that the contract between BPAL and Geomechanics does not require a Work Order, and the Statement of Work provided is incorporated into the contract. The Expert Panel notes that the Work Order provided for the second phase of the project does reference a Statement of Work that is not provided. However, the Work Order includes information such as price and was issued pursuant to the contract.<sup>291</sup>
- *WSP Remediation*: AKBN disputes this cost because the invoices were dated after the expiration date of the contract. In addition, the invoices were issued by Baker Tilly Albania, rather than WSP Remediation. BPAL asserts that the invoices were covered by a separate proposal issued by WSP that was accepted by BPAL. This proposal had a different scope than the original contract. Baker Tilly issued the invoices on WSP’s behalf as a result of the Albanian VAT legislation at the time, which required foreign companies to appoint a fiscal representative in Albania to represent, declare, and pay the VAT.<sup>292</sup>
- *Various (“Damage Lease”)*: The cost relates to compensation BPAL paid to property owners for damage that occurred during the installation of an underground pipeline. AKBN disputes this cost because there was no evaluation of the damages from an independent expert or a detailed formula for the damages. In addition, BPAL did not provide information on property damage or associated ownership documents. BPAL asserts that BPAL negotiated the compensation with property owners and used current market prices. AKBN asserts that no detailed formula for damages is required by law or under the contract.<sup>293</sup>

<sup>289</sup> *Ibid*, Appendix P, page 66. The BPL employees included in the bonus listing are the same employees referenced in the Intercompany Agreement section under the Other Costs – Out of Scope category.

<sup>290</sup> *Ibid*, Appendix P, page 31.

<sup>291</sup> *Ibid*, Appendix P, page 37.

<sup>292</sup> *Ibid*, Appendix P, pages 38 – 39.

<sup>293</sup> *Ibid*, Appendix P, page 23.

- *Eli*: AKBN disputes this cost for the purchase of a truck loader because BPAL did not provide the ownership certificate for the truck loader. BPAL asserts that the invoice and proof of payment are sufficient support for the cost. In addition, BPAL claims that the lack of an ownership certificate does not affect BPAL's control over the asset.<sup>294</sup>
- *Unitrack*: AKBN disputed this cost for the purchase of a robotic fork because BPAL did not provide the ownership certificate for the truck loader. BPAL asserts that the invoice and proof of payment are sufficient support for the cost. In addition, BPAL claims that the lack of an ownership certificate does not affect BPAL's control over the asset.<sup>295</sup>
- *Rick Mazurkevich*: AKBN disputes this cost because BPAL did not provide signed timesheets or approved expense reports. In addition, AKBN claims the services performed were outside the scope of the consultant's expertise. BPAL asserts that invoices and proof of payment are sufficient support for third party services.<sup>296</sup>
- *Janaq Zarka*: AKBN disputes this cost, which relates to a lease for a warehouse, because BPAL failed to explain why it leased the warehouse. BPAL responds that it was leasing the warehouse for use as a gym and recreational area for expatriate employees. This type of expense is covered under Annex B to the Petroleum, specifically Article 2.16, which allows for recovery of costs related to "recreational facilities for employees."<sup>297</sup>
- *Arben Malaj*: This disputed cost relates to an easement agreement that BPAL entered into with Arben Malaj so that BPAL could have access to land that would allow it access to the Fier refinery more quickly. Prior to this easement agreement, BPAL entered into a contract with the Ministry of Economy to rent the building that is the property for sponge production. AKBN disputes the cost of BPAL's agreement with Arben Malaj because it claims the contract with the Ministry of Economy limits the use of the facility to manufacturing activities and by entering into a new contract BPAL is in breach of its contract with the Ministry of Economy. BPAL responds that the two contracts have a different scope (one is for use of the building and the other for using the land in order to access a shorter road to Fier). BPAL also claims that it is not in breach of its contract.<sup>298</sup>

The Expert Panel concludes that the disputed costs are recoverable. Based on an analysis of the documents provided, the costs appear to be reasonably supported and the documentation appears sufficiently detailed to "define the regularity of Petroleum Costs incurred" and "show the work performed." Further, the lack of documents claimed as missing by AKBN does not rise to the level of Willful Default and therefore do not result in the costs being non-recoverable.

<sup>294</sup> *Ibid*, Appendix P, page 68.

<sup>295</sup> *Ibid*, Appendix P, page 69.

<sup>296</sup> *Ibid*, Appendix P, page 32.

<sup>297</sup> *Ibid*, Appendix P, page 70.

<sup>298</sup> *Ibid*, Appendix P, page 71; 2011 Audit Report, page 74.

## 5. Rent Calculation

Disputed Item	Recoverable	Non-Recoverable
Llambi Gjergjo	\$ 2,912	\$ 3,577
Dashuri Bacja	1,765	1,135
<b>Total</b>	<b>\$ 4,677</b>	<b>\$ 4,712</b>

AKBN disputes these rental costs because it claims BPAL used the incorrect time period for the calculation of 2011 rent. The table below demonstrates AKBN's objections regarding the time period used by BPAL to calculate rent expense.<sup>299</sup>

Contract	Contract Dates	BPAL Amount	BPAL Period (mos.)	AKBN Amount	AKBN Period (mos.)	Difference
<i>Llambi Gjergjo</i>						
PM-LC-559-11	5/9/11 - 5/9/21	\$ 37,683	8	\$ 34,550 <sup>a</sup>	7.3	\$ 3,133
PM-LC-572-11	5/17/11 - 5/17/21	22,473	8	21,068	7.5	1,405
PM-LC-601-11	8/10/11 - 8/10/21	12,654	5	10,872	4.3	1,772
<i>Difference</i>						179
<b>TOTAL</b>		<b>\$ 72,810</b>		<b>\$ 66,500</b>		<b>\$ 6,489</b>
<i>Dashuri Bacja</i>						
PM-LC-573-11	5/17/11 - 5/16/21	\$ 11,786	8	11,049	7.5	\$ 737
PM-LC-600-11	8/10/11 - 8/9/21	6,637	5	4,712	4.3	929
Unsupported Amount						1,234
<b>TOTAL</b>		<b>\$ 18,423</b>		<b>\$ 16,761</b>		<b>\$ 2,900</b>

(a) Based on the information included in AKBN's calculation, this amount should be \$34,386.

The Expert Panel notes that it is customary and reasonable for companies to use months to allocate rent year, as BPAL did, rather than calculating it by day. The Expert Panel also notes that if the number of days were taken into account, the time periods that should be used for the first and third Llambi Gjergjo contracts and the second Dashuri Bacja contract should be 7.7, 4.7, and 4.7 months, respectively, rather than 7.3, 4.3, and 4.3 months as used by AKBN. As such, the amount disputed by AKBN should be lower than the amount included here. Further, AKBN notes in its 2011 Audit Report that \$1,234 related to Dashuri Bacja is not supported with documentation and it does not explain the basis for this statement.

The Expert Panel concludes that while the method used by BPAL is reasonable it is more accurate than the daily calculation proposed by AKBN. However, since the calculation

<sup>299</sup> *Ibid*, Appendix P, pages 74 – 76; 2011 Audit Report, pages 73 – 75.

proposed by AKBN appears to include inaccuracies, the Expert Panel used the calculation presented below.

<b>Contract</b>	<b>Contract Dates</b>	<b>BPAL Amount</b>	<b>Period (mos.)</b>	<b>Recalc. Amount</b>	<b>Period (mos.)</b>	<b>Difference</b>
<i>Llambi Gjergjo</i>						
PM-LC-559-11	5/9/11 - 5/9/21	\$ 37,683	8	\$ 36,270	7.7	\$ 1,413
PM-LC-572-11	5/17/11 - 5/17/21	22,473	8	21,068	7.5	1,405
PM-LC-601-11	8/10/11 - 8/10/21	12,654	5	11,895	4.7	759
<b>TOTAL</b>		<b>\$ 72,810</b>		<b>\$69,233</b>		<b>\$ 3,577</b>
<i>Dashuri Bacja</i>						
PM-LC-573-11	5/17/11 - 5/16/21	\$ 11,786	8	\$ 11,049	7.5	\$ 737
PM-LC-600-11	8/10/11 - 8/9/21	6,637	5	6,239	4.7	398
<b>TOTAL</b>		<b>\$18,423</b>		<b>\$ 17,288</b>		<b>\$ 1,135</b>

## **VI. CONCLUSION**

In accordance with the Mandate given to the Expert Panel in the Terms of Reference, the Expert Panel evaluated and determined whether the disputed costs as proposed by the Parties (i) “qualify as recoverable Petroleum Costs under the terms of the Licence Agreement and, to the extent applicable, the Petroleum Agreement and Accounting Procedure; and (ii) “were incurred reasonably and in conformity with generally accepted practices in the international petroleum industry.” Our work was based on the submissions of the Parties, documents produced and the results of the Hearing conducted with the Parties. Based on the results of our work, the Expert Panel has determined that the total recoverable costs are **\$247,058,224**.