

## Offshore Energy Law

# Liability for boil off during delay under ShellNGTime 1

With LNG constantly evaporating as boil-off gas, delays to a voyage mean an increase in the amount of cargo lost as boil-off. In most cases under a time charterparty, the charterer takes the risk of delay and therefore also the risk of losses arising from increased boil-off. But sometimes, the owner bears this risk under the provisions of ShellNGtime 1.

Where the owner's breach of charter has caused the delay, it comes as no surprise that he should also be responsible for additional boil-off arising from the delay, for example where the delay is caused by unseaworthiness or failure to maintain the vessel in the condition required by the charterparty.

However, under ShellNGtime 1 the owner also accepts the risk of increased boil-off in some situations where he has not breached the charterparty at all. Under the off-hire clause (cl. 22), the owner must reimburse the charterer for LNG lost as boil-off during a period of off-hire.

Although accepted by the industry, as this form is frequently used, the principle that an owner pays for loss of cargo without any liability for breach remains a surprise to some, and the relatively rare occurrence of off-hire disputes has meant that these provisions receive little publicity.

Nevertheless we have seen an increasing number of such cases in recent times, and the amounts at stake can quickly become significant, also including additional LNG needed for cooling down the cargo tanks if LNG heel is lost completely during an off-hire period, and the tanks become warm.

The provisions raise a number of questions, starting with when exactly the LNG is 'lost' as boil-off – is this already at the time when it evaporates, or some later stage when the boil-off is consumed or released?

Presumably LNG is 'lost' at the time when the LNG evaporates, since the clause refers to the (liquid) LNG being 'lost' as boil-off, and not to the resulting boil-off gas being lost later on. This in turn would mean that once LNG has been 'lost' as boil-off, this cannot be reversed for the purpose of the calculation under the off-hire clause e.g. where the resulting boil-off is partly burned in the ship's engine(s). LNG has still been lost as boil-off during a period of off-hire. However, if claimed as part of a damages claim rather than under the off-hire clause, a charterer would presumably need to give credit for any benefit derived from the additional boil-off gas, e.g. in cases where fuel is saved as a result. So a charterer may wish to consider carefully whether to claim under the off-hire clause or for breach of charter.

The forthcoming LNGVOY voyage charter (jointly developed by BIMCO and GIIGNL, and currently awaiting approval from the BIMCO documentary committee) follows the principle that owners are responsible for boil-off during those periods where owners take the risk of delay. Of course, those periods are different under LNGVOY to reflect the differences between a voyage charter and a time charter, but the principle remains that in some cases owners take responsibility for boil-off even where they have not breached the charter.



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