

Offshore Energy Law

(Over-) Consumption – what is the cure?

In any time charter, the charterer will usually agree to provide and pay for fuel for the vessel. A consequence of this obligation to provide fuel is that the charterer will want a warranty in respect of fuel consumption.

In edition 1 of Well Heeled we considered some of the particular features of LNG as a cargo. An example is the boiling-off of LNG. This feature means the charterer will want a warranty as to the maximum daily rate of boil-off, which is usually described as the “natural” boil-off.

Most LNG carriers are able to use cargo in the form of boil-off for propulsion. The cargo lost as boil-off will then normally count towards the charterer’s obligation to provide and pay for fuel. The charterer will agree to provide this contribution freely, only up to the maximum per day of natural boil-off.

In these circumstances, there will be a question as to how the fuel consumption and boil-off warranties fit together. The purpose of this article is to consider how this issue is dealt with in the commonly used ShellLNGTime form.

At first sight the provisions are hard to follow and ShellLNGTime 1, in particular, is difficult to fathom without a cold towel and detailed LNG chartering experience.¹

On a closer analysis, however, the essence is relatively straightforward. The starting point is that, when calculating whether the guaranteed daily maximum fuel consumption has been exceeded, the calculation of actual fuel consumption will exclude boil-off in excess of the daily maximum boil-off figure.² The logic is that the charterer is compensated (and the Owner “pays”) for

such excess boil-off under the provisions concerning the guaranteed maximum boil-off.³

In other words, so far as the vessel is over-consuming fuel, the charterer is not obliged to provide boil-off in excess of the maximum for free. So far, so good.

The situation becomes more complicated if the charterer gives orders to force boil-off. In the context of LNG cargoes, the charterer will want the right to force boil-off in order to either:

- Increase speed to meet a delivery window; or
- Save on fuel oil (for example, because the price of the cargo is lower than that of fuel oil, or because minimising the use of fuel oil will avoid the need to deviate to stem bunkers).

Where the vessel forces boil-off in accordance with the Charterer’s orders, the boil-off warranty is deemed to be complied with even if there would otherwise be an excess of natural boil-off⁴ (the rationale being that the Charterer, by ordering the forcing of boil-off, has decided to use any boil-off for propulsion).

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A possible reading of Article 6(a)(ii) is that, even though the boil-off warranty is deemed to be complied with, it is nevertheless possible to calculate the boil-off in excess of the guaranteed maximum and so this excess is excluded from the calculation of actual fuel oil used. The result is that the charterer is deprived of the full force of the consumption warranty.

¹ The Detailed Performance Criteria are set out in Appendix C, with the fuel consumption provisions at Articles 3 to 6 and the guaranteed maximum boil-off provisions at Articles 7 to 10.

² Article 6(a)(ii).

³ See Article 8(d).

⁴ Article 9(b).

In our view, the better reading is that an order to force boil-off results in there being no boil-off in excess of the guaranteed maximum, because the boil-off guarantee is deemed to have been complied with.

This means that all boil-off (whether natural or forced) counts towards the actual fuel consumption, and so the charterer has the full benefit of the consumption warranty.

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Version 2 of the Shell form is clearer. Within the appendix concerning Performance Calculations, there is express wording making clear that where the charterer has instructed the vessel to force boil-off, then all cargo lost as boil-off (whether natural or forced) will count towards the actual fuel consumption.⁵

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Similar issues arise in the context of voyage charters for LNG cargoes. We shall consider those in the next edition of Well Heeled.



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⁵ Article 4(c) to Appendix A to ShellLNGTime 2.