REPUBLIC OF KENYA
KENYA NATIONAL ASSEMBLY
Hon. Aden Duale, MP.
Dujis Constituency

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Ref: DC/VOL.I/07/2012/1

Date: 13th July, 2012

Mr .Patrick Nyoike,CBS
Permanent Secretary
Ministry of Energy
Republic of Kenya
Nyayo House
Nairobi

Dr. Cyrus Njiru, CBS
Permanent Secretary
Ministry of Transport
Republic of Kenya
Transcom House
Nairobi

Dear Madam,

RE : AGOL LIQUEFIED PETROLEUM GAS PROJECT

In my capacity as the Member of Parliament representing Dujis Constituency, and also a member of the National Assembly's Departmental Committee on Energy, Communications and Information, I have certain valid concerns brought to my attention pertaining to the implementation of the African Gasoil Limited (AGOL) Project, that I would like your good offices to address urgently, in the public interest. Among the serious issues that I would like clarified by your offices and comprehensively addressed as a matter of national emergency pertains to:-

1. Environmental and Safety standards

2. Monopolistic tendency

3. Breach of the Public Procurement Act and/or Corruption

4. Derailment of Investors

Article 35 (1)(2)(3) of the Constitution of Kenya 2010, that guarantees the right to information, should guide your approach in response to these issues.

Please find below the details on each issue and the questions that I would like answered:

1. <u>Environmental and Safety</u>

a. Available information indicates that the Ship that AGOL wants to anchor at the Port is not only more than 30 years old, but it is also a Single Hull Ship. This is contrary to the Standards specified in your letter dated 22nd March 2011 where you clearly stated that only Double Hull Vessels and vessels of less than 20 years old in age should berth at the Port with Petroleum Products. As such, this ship poses a significant risk to marine lives and Port Users. It is surprising that given the dangerous nature of the Petroleum Products that will be handled, namely Liquefied Petroleum Gas (LPG), your offices seem to have given a waiver or ignored these realities. **Kindly explain what reasons underpinned such a decision if any.**

b. The AGOL Vessel will be situated within the flight path of aircrafts coming to land at Moi International Airport, Mombasa. Should there be any accidents/incidents such as vessel explosion, this is likely to negatively affect aviation at the airport and brings it to a standstill besides posing danger to flying planes approaching the busy Airport. This obviously will cause Catastrophic Damage to life and property and disrupt economic and commercial activities. **Explain whether and how authorisation from the Civil Aviation Authority and Kenya Airports Authority was obtained in spite of the significant risk**

to Kenyan people and visitors flying through the airport. What evidence is there of the relevant Authorities authorization for the projects?

c. Environmental damage of Protected Mangroves by this pipeline. Kindly provide and demonstrate that the proper procedure was followed before this destruction was effected. **Please explain whether the Environmental Impact Assessment covered these aspects. Kindly, avail a copy of the EIA conducted on the project to my office and/or office of the Clerk, National Assembly**.

2. <u>Creation of a Monopoly in LPG business</u>

This project was initially conceptualized with a noble intention to stabilize gas prices in Kenya but it has since metamorphosed and now converted into a Monopoly, similar to the Monopoly witnessed in Grain importation. The monopoly in cereals importation is almost certainly being duplicated in LPG Importation through the AGOL project. The LPG Industry will now move from the so called Cartel of Five Players to a Monopoly of one Player. This is totally unacceptable in a liberalized economy like Kenya's, and should invite the attention of the Competition Authority of Kenya, as it is contrary to Cap 504 of the Competition Act 2009, that prohibits a dominant player in the market.

It is public knowledge that the agreement that was signed by KPA and AGOL on 21st September 2007, envisaged that **AGOL will be a common user pipeline with connections to the Oil Marketers' with their Shimanzi and Changamwe depots. AGOL was not at that point meant to invest in Storage**.

Disturbingly yet intriguing information available, indicates that Kenya Port Authority Board resolved that all Petroleum and LPG Vessels will move to the new AGOL Facility and the Shimanzi Oil Jetty will be shut down. This will immediately give birth **to a Monopoly thus violating the Competition Act Cap 504**.

The Storage costs at the AGOL **Terminal are not regulated and they will thus charge the Industry whatever they wish and increase the price of Liquefied Petroleum Gas. This will work against the**

government policy of increasing uptake of usage of LPG to minimize use of charcoal and kerosene, hence improve environment damage. Could your offices provide laudable reasons why you would like to create a Monopoly by shutting down SOT yet connections have not been made to the Shimanzi and Changamwe Oil Terminals?

3. Breach of the Public Procurement Act/or Corruption

The Kenya Ports Authority entered into a License Agreement with African Gas Oil Limited on 21st September 2007 to develop a common user facility for LPG in Mombasa at an initial License Fee of US$ 200,000. This was after a Board meeting on the 27th of July 2007 that awarded the Tender to AGOL after the bidder Masumin Holdings withdrew its bid. **It is worth noting that this was single sourcing as KPA tender committee on the 24th of August 2006 had annulled the tender citing flaws in the tender documents.**

Despite these flaws, KPA went ahead to change the scope and the design of the Project without re-tendering, contrary to the **Public Procurement and Disposal Act 2005.** It was previously envisaged that on shore storage will be used primarily so that all marketers can bring in their gas. However, **it is shocking that the scope has been changed to off shore storage, which inevitably blocks other marketers from bringing in their vessels.**

Please explain how the project scope was altered /changed without tendering, to give other players a chance to submit their bids.

4. Derailment of Investments /business plans

The current oil marketers have invested in LPG facilities at Changamwe, Shimanzi and Kenya Petroleum Refinery. The new development is now forcing them to shut their facilities and move to a facility that they consider unsafe. Some of these marketers are the same ones Kenya Government has invited to invest in Oil and Natural Gas Exploration. It defeats logic why your offices would discourage investment instead of creating a policy consistency framework and level playing business operations environment. Who will underwrite their costs?

Please revert with urgent answers as I need to be convinced this is not one of the many schemes meant to generate funds to oil some political campaigns.

Aden Duale-Member of Parliament;
Dujis Constituency/
House Committee Member: Energy, Communications and Information

CC: Minister of Energy
Minister of Transport
Minister of Finance
PS Ministry of Finance
Director General – ERC
Investment Secretary
Director, PPOA
Speaker, National Assembly
Clerk, National Assembly
Director General NEMA;
Controller and Auditor General
Attorney General
CEOS-Oil Marketing Companies

MINISTRY OF ENERGY

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When replying please quote

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NAIROBI

URGENT

Ref. No. **ME/CONF/7/1/2B**

September 18, 2012

RECEIVED
04 FEB 2013
CONSUMERS FEDERATION OF KENYA
P.O. Box 2733 - 00200
NAIROBI

Mr. Ezra Pakter
Managing Director
African Gas & Oil Company
Beira Road, Shimanzi
P O Box 34065 - 80118
MOMBASA
E-mail: info@agol.co.ke

Dear CEOs

RE: HOSPITALITY TARIFF FOR AGOL LIQUEFIED PETROLEUM GAS IMPORT AND STORAGE FACILITY

Given that a storage ship carrying 14,000 metric tonnes of LPG has already berthed at Miritini and is awaiting evacuation by LPG Marketing Companies operating in Kenya and the neighbouring countries, it has become critical to put in place the following import handling and storage measures based on a detailed appraisal of the AGOL LPG investment undertaken by an MOE-ERC Technical Committee:

1. Import handling and storage tariff of **US$ 185.00 per metric tonne** of LPG based on an initial throughput of 85,000 MT per annum will be charged;

2. The US$D 185.00 storage tariff will be applicable for a period of 21 days from the date of cargo discharge;

3. The US$ 185.00 storage tariff shall be reviewed six monthly to take into account the rising throughput, i.e. it will be expected to drop with rising volume of imports above the initially assumed 85,000 MT;

4. Arrangements will be made for six monthly adjustment of the import handling tariff through a Legal Notice to be issued under Section 102 of the Energy Act 2006;

5. Any LPG quantity stored beyond 21 days will attract a penalty as defined in the hospitality agreement; and,

6. Any LPG marketer unable to evacuate its quantity after 30 days from the date of cargo out-turn shall be excluded from participation in the Open Tender System.

Finally, all future LPG imports through this facility shall be undertaken through an Open Tender System coordinated by the Ministry of Energy.

Please expedite.

Yours

Patrick M. Nyoike, **CBS**
PERMANENT SECRETARY

Copy to: **Hon. Kiraitu Murungi, EGH, MP**
Minister for Energy
Ministry of Energy
Nyayo House
NAIROBI

Eng. Kaburu Mwirichia
Director General
Energy Regulatory Commission
Eagle Africa Centre, Upper Hill
NAIROBI

Chief Executive Officers
LPG Oil Marketing Companies

AGOL
AFRICAN GAS & OIL COMPANY LTD.
LPG Terminal

Our Ref: AGOL/MOE/160712

RECEIVED
04 FEB 2013
CONSUMERS FEDERATION OF KENYA
P.O. Box 2733 - 00200
NAIROBI

Mr. Patrick Nyoike, CBS
Permanent Secretary
Ministry of Energy
Nyayo House
NAIROBI

Dear Patrick,

Reference is made to the letter addressed to yourselves by Honorable Aden Duale Ref: DC/VOL.1/07/2012/1, raising concerns in respect to the development of the LPG terminal at Miritini.

Having perused the contents of the same we wish to inform you as follows:

1. MV. AGOL was built and has operated as a LPG Carrier on international routes. The said vessel has obtained all certificates as required under international maritime codes and conventions as is required of any LPG Vessel. Enclosed are copies of the same for your perusal and records.

2. In respect to the consents from the Civil Aviation Authority enclosed are copies of correspondence evidencing the conditions imposed on AGOL and the procurement of the permissions. Perusal of the same is indicative of AGOL correctly following due procedure in obtaining government consents and in complying with the law of the land.

3. In respect to environmental damage, enclosed is a copy of the EIA licenses that the company procured from NEMA prior to the construction and laying of the pipeline.

4. In response to the allegation of the monopoly the very same license that approves our application and binds us by the terms therein specifically states that the license is a "non exclusive license". Nothing in this contract stops KPA from, licensing another handler who intends to invest within this area.

5. In response to the allegation raised in respect to clause 2 paragraph 2, we enclose herewith a copy of the original license, wherein you will note that AGOL's scope of work and obligations . Most certainly connection of Shimanzi and Changamwe was never licensed to us and neither was there a duty on AGOL to connect the CUM to facilities of the Oil Marketing Companies(OMCs).

Cont'd Pg 2

3rd Floor, Grain House, Beira Road, Shimanzi, P.O. Box 34065-80118 Mombasa, KENYA
Tel: +254 733 636 536, Fax: +254 703 017 444, E-mail: info@agol.co.ke

Our Ref: AGOL/MOE/160712

6. We are unable to comment on resolution of KPA board. However there is no doubt that regulation of AGOL by KPA is evident in the license and from the past consultations between KPA and AGOL. As a matter of fact it is rather premature for any person to accuse us of high storage rates when operations have not begun, this translates into speculation.

7. We are unaware of plans to shut down SOT.

8. Tariffs for storage will be determined in consultations with the Ministry as our regulators factors in the industry together with amount of capital investment will determine the optimal and acceptable rates of storage. The complainant is erring in deciding that storage charges will be arbitrary and high.

9. In respect to the accusation of PPDA, there was a reinstatement of the award to AGOL and as a consequence of the same KPA entered into a license agreement, something that is well within the powers of KPA and the Ministry if they find that a particular project will help to alleviate challenges in respect to costs, demurrage and service level deliveries in the importing and exporting of LPG. Enclosed are copies of correspondence between KPA and AGOL on the same.

10. The core aim of reduction in use of charcoal and kerosene is still in line with providing private investors licenses to invest in infrastructure and facilities for the better logistics of supply of alternative energy resources to meet the demand that is and will be created whilst discouraging use of charcoal and kerosene. Availability of alternative energy was clearly a factor considered by the ministry and it is believed that the facility will help to decrease freight and insurance costs with better turnaround and delivery times to the OMCs. We strongly believe that AGOL complements OMC's objectives as opposed to derailing their activities. We are committed to improving this perception of the oil marketers and believe that in due course they will realize the positive outcomes of AGOL's investment.

11. Lastly the fact that the Company has opted for an offshore storage is a short term solution. The construction of onshore tanks had a greater time lag. In recognizing the inadequacy of storage of LPG within Mombasa, AGOL brought forward its plans by providing a solution for off shore storage. To allege that the use of offshore storage will impede OMC to bring their own vessels is a fallacy and is untrue. The marketers' vessels are clearly capable of attaching directly to the storage tanker and transfer their LPG by ship-to-ship pump-over. At the Common User Manifold (CUM), any OMC may invest in connecting a pipeline to their facility. In the short term AGOL has using its own resources invested in providing storage as a value added service for the oil marketers as they invest in a direct connection from the CUM to the Pipeline End Manifold (PLEM). Nothing still prevents the marketers to invest in the downstream

connecting to the CUM or in obtaining a license to handle and construct another terminal.

We wish to take this opportunity to assert that a colossal amount of money in excess of USD sixty million has been invested in reliance of the license and in relying on outcomes of consultative meetings between your ministry, KPA and ourselves. Allegations against our company coupled with speculation in the letter by Honorable Duale seem to be frivolous and untrue.

We remain committed to continue complying with our licence agreement and to commence operation as soon as possible.

Yours Faithfully

EZRA J. PAKTER, HSC
EXECUTIVE DIRECTOR

CC: Dr. Cyrus Njiru, CBS
Permanent Secretary
Ministry of Transport
Transcom House
NAIROBI

ENCLOSURE

RECEIVED
04 FEB 2013
CONSUMERS FEDER... OF KENYA
P.O. Box 2733 - 00200
NAIROBI

MINISTRY OF ENERGY

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When replying please quote

NYAYO HOUSE
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NAIROBI

Ref. No. **ME/CONF/7/1/2B**

31st January, 2013

Eng. Kaburu Mwirichia
Director General
Energy Regulatory Commission
Eagle Africa Centre, Upper Hill
NAIROBI

Dear CEBs

RE: IMPORTATION OF LPG INTO THE OPEN TENDER SYSTEM.

As you are aware, construction of the LPG bulk import facility by African Gas and Oil Company has been completed and is ready for official commissioning. This will be a common user facility to all the LPG importers. Both the throughput contract and Open Tender System agreement for importation of LPG through this facility have been finalized and are ready for signing.

You may wish to note that importation of LPG through the Open Tender System is not enshrined in Legal Notice. No. 24 of July 1, 2012. There is need, therefore, for your Commission to revise the aforementioned regulation to incorporate LPG importation through an Open Tender System, so as to take advantage economies of scale and by extension reduce its retail prices.

This Ministry would, therefore, appreciate it if you would expedite the amendment of the subject Legal Notice to incorporate LPG Supply.

Yours sincerely

PATRICK M. NYOIKE, **CBS**
PERMANENT SECRETARY

Copy to: Chief Executive Officers
Oil Marketing Companies