



LONG TERM SERVICE AGREEMENTS

THE “TOP 10” CONTRACTUAL PITFALLS AND HOW TO AVOID THEM

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“Long Term Maintenance Programs,” “Contractual Service Agreements,” “Long Term Service Agreements,” or “LTSAs.” Sooner or later, power generation equipment Owners worldwide are likely to come face to face with these behemoth documents. While many Owners are looking to enter into an LTSA for the first time, others are realizing the challenges of actually implementing LTSAs that were entered into when the equipment was first ordered years ago. Still other Owners are faced with analyzing LTSAs that they themselves did not negotiate, but that they have instead inherited as part of an asset acquisition. LTSAs typically commit the original equipment manufacturers (or “OEMs”) to provide, on a relatively “fixed-priced” basis, maintenance services for the very equipment that they manufacture (e.g., gas turbines, steam turbines, etc.). Commercially speaking, LTSAs can offer many advantages to Owners, including the predictability of relatively fixed long term maintenance costs and contractually guaranteed or incentivized OEM support. However, these very complex agreements can often contain pitfalls for the unwary equipment Owner - pitfalls that can cause an

Owner to bear an inordinate amount of risk, or may result in costly and time-consuming disputes with the OEM.

This article examines the “Top 10” contractual pitfalls most commonly found in LTSAs, and suggests appropriate means for avoiding them. As no two LTSAs are alike, for the sake of discussing these matters, this article assumes an LTSA whereby the OEM’s work scope is limited to performing:

- all regularly “scheduled” maintenance on the equipment, including providing parts and labor, the compensation for which is relatively fixed-price (i.e., a fixed monthly amount and/or an amount that, while possibly variable itself, is “fixed” in the sense that there is an established agreement as to pricing of dollars per operating hour and/or per start-ups on the equipment); and
- all “unscheduled” maintenance work on the equipment, the compensation for which may be unit-priced, fixed priced, or a combination of both; and certain “Extra Work” as may be requested by the Owner, the compensation for which would normally be unit-priced based upon a given pricing schedule.

TOP TEN COMMON LTSA PITFALLS AND HOW TO AVOID THEM

1. Clearly Defining Scheduled Maintenance

As basic as it may sound, one of the most common pitfalls in LTSAs is the lack of a clearly defined scope of the OEM's responsibilities for providing scheduled maintenance on the equipment. The risk an Owner faces as a result of such a lack of clarity can be tremendous and costly, especially in the context of an LTSA that contains fixed-pricing for scheduled maintenance work (the corollary to which is typically that work outside of the OEM's defined work scope costs extra). For instance, imagine an Owner whose gas turbine has just been taken offline for its first scheduled major maintenance outage. The Owner believes that the OEM will provide all parts that may be necessary as part of its scheduled maintenance work scope. Suddenly, however, the Owner receives notice from the OEM that it is waiting for the Owner to replace certain thermocouples, oil filters and other spare parts as part of such maintenance. Or worse yet, the OEM goes ahead and replaces such spare parts and bills the Owner for such work, in addition to its normal invoice for scheduled maintenance. The response echoes from the plant site to company headquarters: "Wasn't that part of the OEMs work scope!?"

The way to avoid this pitfall is as basic as the pitfall itself: the LTSA should clearly and completely define the OEM's work scope with regard to scheduled maintenance. In this respect, such definition should include several key components. First, it should include a complete list of all component parts of the equipment that are subject to OEM scheduled maintenance obligations. Second, it should describe the general nature of the OEM's scheduled maintenance obligations with respect to each such part (e.g., inspect, repair, refurbish, replace, etc.). Third, the work scope definition should include a description of activities for each scheduled maintenance outage, outlining

the OEM's obligations with respect to the same. Ideally, the contract should also specifically list any parts or activities that are not included in the OEM's scheduled maintenance work scope, with express language that such exceptions are the only exceptions. Finally, as a "catch-all" concept, it is helpful to define the goals of the overall scheduled maintenance program (e.g., high availability and maximum output) and require that the OEM's scheduled maintenance work scope include any other activities required to meet those goals (this is especially recommended in the absence of OEM guarantees regarding equipment performance). With each of these components present in the LTSA's definition of scheduled maintenance work scope, the risk of disputes regarding what is and is not covered as part of the OEM's scheduled maintenance work scope will be minimized, to the benefit of all parties involved.

2. Clearly Defining "Extra Work" Concepts and Cost Allocations

Most LTSAs include a concept known as "Extra Work." This concept is typically intended to provide the Owner with a mechanism in the contract to request that the OEM perform various services that are not normally included in its standard work scope. For example, the Owner may ask for the OEM to repair or replace certain parts of the equipment that are normally "inspect only" components, meaning that the OEM's regular obligation with respect to those parts is limited to inspecting them and then notifying the Owner of any irregularities. The OEM can then either agree to perform such "extra" work or not. Extra Work provisions are typically structured so that if the OEM agrees to perform such work, then the provisions of the LTSA will govern the parties' obligations related to such Extra Work. Thus, the parties avoid having to negotiate an entirely new contract for each instance of Extra Work. Compensation for such Extra Work, which is payable in addition to the "normal" payment scheme for scheduled maintenance, is frequently

based upon an agreed pricing schedule. While this “standard” concept of Extra Work is intended to be simple and straightforward, this simplicity can easily be shattered when additional concepts are forced under the rubric of an Extra Work definition. Herein lies a second common LTSA pitfall.

The concept that is most commonly “forced” into an Extra Work definition involves defining “Extra Work” to include the provision by the OEM of extra parts or labor that become required for the OEM to perform its “normal” scheduled maintenance work scope as a result of certain circumstances. Typically, these are events for which the Owner bears the risk under the LTSA (e.g., the Owner’s operation of the equipment outside certain expressly assumed parameters). Thus, a provision might read that “Extra parts or labor to perform scheduled maintenance that becomes required as a result of Owner’s operation of the equipment in a manner other than as expressly assumed in this agreement shall constitute Extra Work.” Such a typical provision is flawed from its inception, because it mislabels normally required *scheduled maintenance* work as “Extra Work,” when in fact, there is nothing “extra” about the OEM’s performance of such work.

To illustrate this point, imagine an LTSA that expressly assumes that the Owner will operate the gas turbine at a baseload level, with a high overall annual hours/starts ratio. If market conditions change such that the Owner instead operates the turbine as a “peaker” unit, with a lower annual hours/starts ratio, then the OEM may be required to perform a combustion inspection that would not otherwise have been required under a baseload operating profile. The additional combustion inspection *should*, by definition, be part of the OEM’s required scheduled maintenance work scope under the LTSA; an unforeseen part of it, but a part of it nonetheless. However, an Extra Work provision like the one described above would inadvertently label such work as “Extra Work.”

Oftentimes, the motivation behind this blending of concepts is that the parties want the additional costs of such extra parts or labor to be chargeable based upon the same pricing schedules that happen also to apply to “standard” Extra Work. Thus, the shortcut is simply taken to label such extra parts and labor as “Extra Work,” so that they are priced as such. However, such a shortcut results in a fundamental inconsistency between the concept of Extra Work being provided *per the Owner’s request* (with OEM discretion to accept or reject the proposed work) versus the concept of maintenance work that is *already* required to be performed by the OEM (i.e., without need of a request by the Owner and without the ability for the OEM to elect not to perform the work). Such an inconsistency creates risks for the Owner insofar as the LTSA may be interpreted to make certain scheduled maintenance work “optional” to the OEM pursuant to the standard Extra Work concept. Would the extra combustion inspection described above be “optional?” This would certainly not be the Owner’s intention, but this contractual pitfall could lead to that interpretation.

In addition, further risks arise when other LTSA provisions that specifically relate to Extra Work inadvertently apply (as a result of this blending of concepts) to portions of the OEM’s work scope that are not at all intended to be “extra.” For example, if an LTSA provides that the OEM’s warranty obligations under the LTSA do not apply to Extra Work (not an uncommon provision), then the contract could be interpreted so that certain scheduled maintenance work performed by the OEM (again, consider our “extra” combustion inspection from above), but (mis)labeled as “Extra Work,” may not be warranted at all!

To avoid this pitfall, Owners must avoid blending the “standard” concept of Extra Work with the concepts of scheduled and unscheduled maintenance. All of these concepts should be kept separate and distinct from each other. The parties should strive to keep the definition of Extra Work “short, simple and separate” so that it applies only to optional work that is not included in the OEM’s

“normal” maintenance work scope. In addition, Owners should insist that the LTSA include a complete and specific list of all items of maintenance that are not included in the “relatively fixed” pricing of the LTSA. Regardless of the status of such items, this list should *not* be labeled as Extra Work in the LTSA. Instead, the LTSA should simply describe the basis for pricing such items in a provision of the LTSA that is separate from the provisions discussing the basis for pricing Extra Work. The language may be repetitive insofar as these two pricing bases may be parallel; however, the resulting clarity will be well worth such repetition.

3. Appropriately Allocating Prolonged Start-up Risks

The typical LTSA involves the OEM’s providing maintenance for equipment that the OEM itself has, under separate contract (perhaps via an OEM affiliate), sold to the Owner. Under most standard equipment procurement contracts, the OEM would have certain obligations to ensure that the equipment is capable of achieving commercially operational performance levels. An OEM, in trying to meet such obligations, may spend weeks at a site troubleshooting equipment commissioning issues. During this time, the equipment may be repeatedly started-up, run for several hours, and then (intentionally or unintentionally) shut down. Finally, the long awaited day arrives when the equipment “goes commercial,” and the champagne corks fly.

Oftentimes, however, it is in the LTSA that the hangover is hidden. After all, the pricing for many LTSAs is based upon the number of “hours” of equipment operation or the number of equipment “starts,” or a combination of both. In many an LTSA, such pricing basis fails to distinguish between hours and/or starts occurring before or after the commercial operation date (“COD”). As a result, such pre-COD hours/starts can be charged to the Owner under the LTSA, even if

they resulted from defects in the OEM-provided equipment. In this respect, many a strong argument exists as to why the Owner should not take the monetary risk of equipment defects that burn unanticipated hours and starts prior to commercial operation. For example, one can argue that the OEM is in a better position to take on the risks related to troubleshooting defects in the equipment that it itself has manufactured. Thus, a smart Owner will insist that it is most appropriate for the OEM to shoulder this risk completely, so that all pre-COD hours and starts related to equipment defects are not charged under the LTSA. An even smarter Owner will make certain, through careful negotiation and communication, that the OEM does not simply premium price this risk into the LTSA, so that the Owner ends up paying for the assumed potential costs associated with this risk, whether they are actually incurred or not.

4. Protecting Owner Interests in the Absence of Performance Guarantees

Consider this scenario: An Owner’s equipment suffers an unscheduled outage during the summer peak period. The Owner desperately needs to get the equipment back up and running, and the LTSA requires the OEM to handle the job. But how can the Owner ensure that the OEM is focused on the same objective, namely, returning the equipment to revenue producing operation as soon as possible? Oftentimes, this is accomplished through contractual guarantees regarding OEM performance under the LTSA. Performance guarantee provisions normally provide financial incentives (e.g., bonuses and/or liquidated damages) that help ensure that OEM response time for unscheduled outages is immediate, that scheduled (and unscheduled) maintenance outages are completed quickly and efficiently, and that the reliability level of the equipment is as high as possible. Tomes could be written about the intricacies of correctly structuring such guarantees in LTSAs. Frequently, however, overall project

economics, which are affected by such financial incentives, result in LTSAs being executed without such performance guarantees. Thus, Owners are faced with the issue of how an LTSA can be structured so as to provide the correct incentives for OEMs to meet the required level of service without financial impacts on project economics. A common pitfall in LTSAs is the absence of these non-financial incentives altogether.

Owners can avoid such pitfalls by insisting that their LTSAs establish contractual requirements for OEM behavior, with clear, non-financial remedies if such requirements are not met. For example, an LTSA can mandate a given response time for unscheduled outages or set maximum outage time requirements for scheduled maintenance outages. Furthermore, an LTSA can require that the OEM's services be provided in a manner that generally ensures a minimization of unscheduled outages for the sake of overall plant reliability. Once the parties have agreed upon such desired objectives, the LTSA should then include one or more clear Owner remedies for violations of these requirements. For example, if, as described above, the OEM is not adequately responding to an Owner emergency as a result of an unscheduled outage, then the Owner may want the clear contractual right to perform the necessary work itself in order to return the equipment to commercial operation as quickly as possible. The Owner will then want to outline a contractual right to backcharge the OEM for costs resulting from the Owner's having to perform such work. As an ultimate remedy, Owners should insist that repeated or substantial violations of performance requirements by the OEM will amount to an outright contractual default, allowing the Owner to terminate the LTSA for cause.

5. Clarifying Responsibilities as between Unscheduled Maintenance and Warranty Obligations

Imagine this scenario: An expensive capital part in the equipment breaks, causing an outage. The

Owner calls the OEM's on-site technical specialist to the scene, and both of them have their LTSA copies in hand. As pages are turned, one thing is clear: the OEM will have the responsibility to address the outage under the LTSA. What is not clear, however, is whether the cost of performing such work will fall on the Owner or the OEM. One read of the LTSA would require that such part be repaired or replaced under the OEM's contractual warranty obligations. Assuming that the warranty is in force, under a typical warranty provision, it would be standard fare for the OEM to repair or replace the part at its own expense. However, an alternative read of the contract would focus on the fact that an unscheduled outage occurred, and that the OEM's primary obligation is to perform the "unscheduled maintenance" work required to remedy the outage. Depending upon the way that unscheduled maintenance is paid for under the contract, the costs of the OEM's performing such work could be borne entirely by the Owner. Which interpretation is the correct one?

Here again is a pitfall that frequently results from the complexities of an LTSA. And once again, the way to avoid this pitfall is somewhat simple (and a recurring theme throughout this article): draft for clarity. A single sentence requiring the OEM's warranty obligations to take precedence over its unscheduled maintenance obligations would, in this situation, settle the issue in the Owner's favor from the very beginning.

6. Early LTSA Cancellation

The most important question on every Owner's mind when entering into an LTSA (especially merchant plant Owners) is whether the pricing inherent in the LTSA will remain competitive over time *vis-à-vis* a self maintenance program. As the availability of after-market parts continues to develop, self maintenance programs may indeed become an increasingly competitive alternative to LTSAs. However, such an alternative may not

even be a possibility for an Owner who is “locked” into a long term contract with the OEM. Therefore, it is always imperative that an Owner consider its rights to terminate the agreement prior to the “natural” expiration of its term. It is not uncommon for OEMs to take the position that an Owner’s commitment to a long term service agreement is exactly that: a long term commitment -- that cannot be terminated, except by breach of contract. After all, a “deal is a deal,” and the “deal” most commonly offered by the majority of OEMs in today’s market involves a firm, long term commitment by the Owner.

As a result, a major pitfall for unwary Owners is to abandon altogether their quest to secure the right to cancel the contract prior to the “natural” expiration of its term. This can set the Owner up for crippling results (especially in a merchant market context) if the pricing of the LTSA, at some point years into the future, is significantly higher than the price of self maintenance. Instead, Owners would be well advised to negotiate firmly on this point, and to seek possible middle ground with an unwilling OEM that will get both parties to the proverbial “yes.” For example, if the reason for an OEM’s resistance on this point relates to its concern about losing out on the long term profits that accompany a long term commitment, then perhaps the parties could agree to a liquidated damages style fee that would be payable in order to allow the Owner to exit the contract. Such a fee would be designed to provide the OEM with at least partial payment of its long term profits. In all cases, Owners must be vigilant to protect their early termination rights at some level so as to ensure that the LTSA pricing will never have a material adverse effect on overall project economics.

7. Negotiating an Extended End-of-Term Parts Life Warranty

Despite the “long term” nature of LTSAs, Owners often make the mistake of not focusing on events

under the contract that will occur in the distant future. For example, upon the completion of the last major inspection that, assuming a maintenance-based term, will signal the end of the LTSA term, a number of important issues will arise. These include: What quality of parts will be installed into the equipment at that time? And what obligations will the OEM have with regard to those parts after the LTSA expires? It is best for an Owner to focus on and avoid these potential pitfalls from LTSA inception.

To illustrate this point, consider the scenario where an OEM installs a refurbished turbine blade during a scheduled maintenance overhaul occurring in the middle of an LTSA’s term. Under most LTSAs, the OEM will have many incentives to ensure that, at least during the term of the contract, the quality of such a blade, is such that it will last as long as possible. For example, some LTSAs require the OEM to bear a certain amount of the costs related to unscheduled maintenance. Other LTSAs will require that the OEM pay liquidated damages if the equipment’s reliability does not meet certain guaranteed levels. In either case, during the term of the LTSA, the OEM is motivated to install top quality parts to maximize endurance levels, and thereby minimize its own risks. However, once the LTSA term ends, these incentives disappear. As a result, if one or more substandard parts are installed at the end of the LTSA term, an Owner may be left with no remedy under the LTSA (past a standard limited parts warranty claim, which may expire within as early as one year) for outages caused by these “last-installed” parts. In this respect, Owners would be well advised to insist upon a complete “end-of-term” warranty for parts installed in the equipment at the end of the term. Ideally, the OEM would warrant these “last-installed” parts until the next scheduled maintenance event during which such parts would normally be replaced.

8. Preventing the “Absurdly Long” Long Term Service Agreement

Oftentimes, the “term” of an LTSA will expire upon the conclusion of a given scheduled maintenance cycle or interval. For example, the term for an LTSA for a gas turbine may expire after the conclusion of the second scheduled “major inspection” on the turbine. The potential pitfall of using this approach to define the term of the agreement becomes evident in a situation where the operational profile of the equipment changes at some point during the term of the LTSA. For example, an Owner might anticipate that its gas turbine will operate approximately 8,000 hours per year. Based upon these projections, the Owner enters into an LTSA with a term that endures through the completion of the second scheduled “major inspection” on the unit. Assuming that such an operating profile would result in a major inspection being conducted about every six years, the Owner anticipates that the LTSA would therefore expire in approximately twelve years. The Owner’s plans, however, are destined to go awry if, for example, unforeseen market forces result in the unit’s only being operated 4,000 hours per year. Suddenly the presumed twelve year term is stretched out to a term that may be in excess of twenty years, and the Owner ends up being locked into a much longer contractual commitment than it had ever anticipated.

Several solutions are available to avoid this pitfall. One approach is to have a “sunset clause” whereby the LTSA term will automatically expire after a given anniversary (e.g., 13 years) of the initial commercial operation date of the equipment. But Owners should be forewarned that this approach will likely require that the parties agree upon an appropriate “true-up” of costs (so that, for example, the OEM does not gain a windfall of accrued payments) at the time of such expiration. A variation on this approach is to give the Owner the discretion to terminate the LTSA after the

completion of a given scheduled maintenance outage if, by that time, the term has extended beyond the originally envisioned time duration. Depending upon the LTSA’s overall payment structure, this approach may avoid the need for any “true-up” upon such termination.

9. Structuring Appropriate and Enforceable Liquidated Damages for Termination

Many LTSAs contain clauses that provide that if one party “defaults,” then such party must pay liquidated damages to the other party as an exclusive remedy for such default. A common LTSA pitfall may often be found within the context of such a liquidated damage clause. This pitfall involves a situation where the amount of liquidated damages payable by a defaulting Owner are identical to the amount of liquidated damages payable by a defaulting OEM. Such parity of liquidated damages payments must be met with skepticism and concern. The reason for this lies in the fact that under most, if not all, applicable laws, in order to be enforceable, the amounts of liquidated damages of this nature must constitute a reasonable estimation of a party’s actual damages resulting from the other party’s default. Thus, a provision outlining “equal damages” would suggest - and would base the very enforceability of the liquidated damage provisions themselves on the suggestion - that an Owner and an OEM would suffer exactly the same damages in the case of the other’s default.

Such a suggestion is highly suspect when one compares an Owner’s likely damages in the event of an OEM default (i.e., the cost of purchasing parts and services from other vendors in order to self-maintain the equipment) against an OEM’s likely damages in the event of an Owner default (i.e., loss of profit or the “benefit of the bargain”). It is extremely unlikely that true estimates of such damages would result in identical amounts. At the risk of oversimplifying the point, if an Owner’s extra cost of self-maintaining were exactly equal to

the OEM's profit for providing maintenance services, then the Owner would not likely enter into the LTSA in the first place, based upon the assumption that the Owner enters the LTSA because paying the OEM's profit is less expensive than paying to self-maintain. Thus, when discussing liquidated damages for termination, an Owner should insist that the parties separately analyze and truly estimate the actual damages that each respective party would suffer in the event that the other party defaults. By following such an approach, the parties will protect their liquidated damages clause from legal scrutiny, rather than take the risk that the liquidated damages clause will be struck down as legally unenforceable.

10. Structuring Appropriate Limitations of Liability and Exceptions

Clauses that limit an OEM's liability for damages under the LTSA often bring to Owners' minds the old adage of "taking the good with the bad." While most Owners would like to see these clauses deleted in their entirety, they have to resolve themselves to the reality that such clauses are standard in market LTSAs. However, not all limitation of liability ("LOL") clauses are created equal. In this respect, it is by addressing the deviled details that Owners can avoid several pitfalls often found in these clauses.

The first pitfall involves the manner in which the OEM's liability is limited. Although approaches vary, it is not uncommon for the maximum amount of OEM liability to the Owner to fluctuate over the term of the contract. Many LTSAs establish LOLs that directly correlate with the amount of money that the OEM has previously been paid under the LTSA during a given time period (e.g., during the prior one or two years or during a given maintenance interval). Owners must beware of LOL clauses that are structured in this manner. If payments to the OEM vary based upon equipment operation, then such a structure can lead to an unreasonably low LOL any time that

the operation of the equipment results in inordinately low LTSA payments. Instead, Owners should insist upon an LOL structure that sets a single, aggregate LOL amount that is applicable for the full term of the contract, and that is not associated with fluctuating OEM payments or time periods shorter than the full term.

Yet another pitfall relating to LOLs involves an important exception to the concept of limiting the OEM's liability. As many LOL clauses are broadly drafted to include a limitation of OEM liability under indemnity claims, a well-advised Owner will focus on whether an OEM's liability to indemnify the Owner for claims of third parties (e.g., claims for personal injury, property damage, and patent infringement) is excluded from the LOL clause. If an Owner is not careful, the LOL can be drafted so as to cap the OEM's responsibility for such third party claims, enabling the OEM to avoid liability for a third party claim to the extent that the cost of such a claim exceeds the LOL amount. If this happens, then one or more multimillion dollar third party lawsuits that are covered by such an indemnity and allowed to count against the LOL could consume the OEM's entire LOL capacity.

Consider this admittedly extreme example: Assume an LTSA has one aggregate LOL for the OEM of \$90,000,000. In "week one," the Owner is sued by a third party, claiming that parts provided by the OEM infringe upon that third party's patent. The lawsuit demands damages of \$50,000,000. During that same week, as a result of the OEM's negligence, an explosion at the site kills five people, whose survivors sue the Owner for claims totaling \$70,000,000. Under its indemnification obligations under the contract, the OEM indemnifies the Owner for the patent claims, incurring \$50,000,000 in liability. The Owner never loses a dime in that case. However, with regard to the third party personal injury claims, the OEM only accepts indemnity liability for \$40,000,000, standing behind its LOL cap

(remember, it was \$90,000,000). Suddenly, the Owner is facing a \$30,000,000 liability shortfall. Can it get worse? Yes. What if during “week two,” the OEM defaults on the contract, leaving the Owner in a position of having to find alternative sources for parts and services (at premium prices) for an imminent scheduled maintenance outage? The Owner tries to sue the OEM, but is stopped in its tracks because the OEM’s liability has already hit its contractual cap.

As we have demonstrated in this rather extreme example, an LOL clause can be very dangerous for the Owner, and it must be drafted with care. If not, such a clause could easily cause the Owner to essentially act as the OEM’s insurer against any third party claim over the LOL amount, regardless of whether the Owner itself had anything to do with the claim. Just as troublesome, if the LOL is fully depleted by such third party claims (as in the example above), the Owner would have no recourse at all for claims against the OEM for breach of the LTSA itself! The bottom line here is that the OEM’s indemnification liability for third party claims -should not be capped at all under the LOL.

CONCLUSION

By their very nature, *long term* service agreements are going to be a significant part of Owners’ businesses for a very long time. Indeed, in the coming years (and especially as Owner and OEM companies go through common personnel changes), these documents will become the critical reference point for discerning the agreement that was originally struck between the Owner and the OEM. Owners who are entering into LTSAs for the first time must realize, as a matter of ensuring the long term success of these maintenance programs, the importance of avoiding the many pitfalls that these complex documents can present (and these pitfalls number well past the ten described in this article). The same holds true for those Owners who are in the midst of

implementing LTSAs signed and put on a shelf years ago (either by themselves, or different owners altogether) when the equipment was originally purchased. These Owners should be mindful of the symbiotic relationship struck between Owners and OEMs under most LTSA arrangements. In most cases, an existing “pitfall” can be just as detrimental to the OEM as to the Owner. Consequently, such Owners should not discount the possibility of renegotiating and amending documents for the sake of improving them for all parties involved. After all, joint cooperation is a key to any successful long-term relationship. Thus, the important thing to remember is to avoid these pitfalls if you can, but if you find yourself at the bottom of one, all is not lost. You can always climb your way out.

About the authors: Jason Yost and Chip Thompson are partners with Mercer Thompson LLC (www.mercerthompson.com), a boutique law firm that focuses on assisting clients with transactional matters in the electric power industry. Over the past decade, they have represented power companies around the world in negotiations of LTSAs that cover over 300 gas and steam turbines, with an aggregate transactional value of over \$7.5 billion.