

Assignment spells success for Egyptian gas supplier

Alison Ross
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Damietta is 200 kilometres north of Cairo

An ICC tribunal has rejected claims for contractual penalties worth more than US\$270 million plus interest against Egypt's state-owned natural gas supplier EGAS, finding that the claimant had assigned all its rights under a gas supply contract to a third party.

Counsel to EGAS, Shearman & Sterling, reports that a tribunal composed of **David St John Sutton**, **Klaus Reichert SC** and **Laurent Aynès** issued the "partial final award" on 24 May, following a hearing late last year. The firm says all the claimant's substantive claims have been disposed of, with only costs claims remaining.

Although Shearman would not confirm the identity of the claimant, GAR has previously reported on an ICC claim brought in 2013 against EGAS by SEGAS, an Egyptian entity majority owned by Unión Fenosa Gas, itself a joint venture between Spain's Gas Natural and Italy's Eni. SEGAS stands for Spanish Egyptian Gas Company, while EGAS stands for Egyptian Natural Gas Holding Company.

Filed in May 2013, the claim concerned Egypt's halt of natural gas supplies from its national grid to a liquefied natural gas plant operated by SEGAS in the Egyptian port of Damietta in the wake of the Arab Spring, when there were reported energy shortages in the domestic market. The plant had previously produced liquefied natural gas for export to Spain.

SEGAS alleged that EGAS was contractually required to pay certain costs while production was suspended.

In a 104-page award, the ICC tribunal examined detailed arguments made by the parties concerning the effect under English law of certain project financing arrangements entered into by the claimant. It concluded that the claimant had assigned its rights absolutely to an offshore security trustee acting on behalf of a large consortium of banks and, as a consequence, could not seek to recover any amounts under the contract, including the US\$270 million plus interest claimed in the proceeding.

Shearman says the tribunal also rejected an attempt by the claimant to salvage its claims by entering into a deed of reassignment with the lenders during the course of the arbitration.

Emmanuel Gaillard, the Paris-based head of international arbitration at Shearman & Sterling says: "This is an important decision not only for litigators but also for project finance lawyers. It confirms the fundamental principle of the law of assignment according to which,

following an absolute assignment only the assignee will be able to enforce any assigned rights vis a vis the debtor.”

Paris-based partner **Mohamed Shelbaya** says: “We welcome this robust and unanimous decision, confirming important and well-established principles of English assignment law, and dismissing in their entirety the claims brought against our client, EGAS, after three years of hard-fought legal proceedings.

The claimant was represented by a DLA Piper team led by the firm’s former international arbitration practice head **Matthew Saunders**, who has recently moved to Ashurst. Saunders tells GAR: “This is a partial award and the case continues.”

The halt of gas supply to the Damietta plant has also given rise to an ICSID claim, filed by Unión Fenosa Gas in February 2014 under the 1992 Egypt-Spain bilateral investment treaty.

That claim is being heard by a tribunal presided over by **VV Veeder QC**, with **J William Rowley QC** and **Mark Clodfelter** as co-arbitrators, which recently issued its sixth procedural order. Unión Fenosa Gas is represented by King & Spalding in Houston, New York and Paris and Egypt by Cleary Gottlieb Steen & Hamilton in Paris.

These are not the only claims EGAS has faced over the termination of gas supplies in the wake of the Arab Spring. Last December, another ICC tribunal ordered EGAS and another Egyptian state-owned entity, Egyptian General Petroleum Company (EGPC), to pay US\$1.7 billion to Israeli Electric Corporation, out of US\$4.3 billion claimed, and US\$288 million plus interest to privately owned Egyptian company Eastern Mediterranean Gas (EMG), which had sought around US\$2.7 billion. The EMG award is currently subject to set-aside proceedings in Switzerland.

EMG is still pursuing a US\$3.6 billion contract claim in Cairo against EGAS and EGPC, while its shareholders have brought two treaty claims against Egypt that recently cleared certain jurisdictional hurdles. Shearman is defending Egypt and its state-owned entities in all those cases.

In the ICC arbitration

Tribunal

- **David St John Sutton** (UK) (Chairman)
- **Klaus Reichert SC** (Ireland) (appointed by the claimant)
- **Laurent Aynès** (France) (appointed by EGAS)

Counsel to the claimant

- DLA Piper
Partner **Matthew Saunders**, senior associate **Emma Martin** and associate **Amy Billing** in London*; partner **Javier Santos** and senior associate **Samuel Rivero** in Madrid

* Saunders and Martin have since moved to Ashurst, while Billing is now based at DLA Piper in Sydney

Counsel to EGAS

- Shearman & Sterling
Partners **Emmanuel Gaillard**, **Yas Banifatemi** and **Mohamed Shelbaya**, counsel **Daniel Reich**, senior associate **James Herbert** and associates **Peter Frilay**, **Yasmine El Maghraby**, **Chaymaa Shady**, **Rayan Keyrouz** and **Ross Galvin** in Paris; associate **Edward Taylor** in London