



Techint settles ICC claim over Mexican gas pipeline

Sebastian Perry 17 August 2016

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Italian-Argentine engineering group Techint has settled a gas pipeline dispute with a Mexican unit of California-based Semptra Energy that led to an ICC emergency arbitrator order.

The payout to Techint, made earlier this month, ends an ICC claim it had brought against Gasoductos del Sureste (GDS), a 50-50 joint venture between Semptra's Mexican energy infrastructure unit Ienova and Mexico's state oil and gas company, Pemex.

Techint signed a turnkey contract with GDS in 2012 to build a 220-kilometre ethane pipeline across the southern Mexican states of Veracruz, Chiapas and Tabasco. After delays to the project, Techint brought the ICC claim against GDS and another Ienova unit in May this year, seeking money for work performed.

In June, GDS obtained a partial drawdown on letters of credit that Techint had provided as a guarantee for the contract. GDS said it was owed the sums as penalties for Techint's failure to perform all its obligations under the contract.

This led Techint to apply for relief under the ICC's emergency arbitrator procedure on 15 June. In the same month, Techint also obtained a pair of injunctions from a Mexican court restraining GDS from drawing on the letters of credit pending resolution of the ICC claim.

Three Crowns partner **Gaëtan Verhoosel** was appointed by the president of the ICC Court as emergency arbitrator on 17 June and issued his order on 4 July, following two rounds of submissions and a teleconference. The parties agreed on Mexican law as the law of the arbitration.

Techint told Verhoosel that it still needed an order to prevent GDS from drawing further on the letters of credit because the Mexican court injunctions could be challenged and there was a risk that GDS would treat the remaining amounts under the letters of credit as its “personal piggy bank”.

For its part, GDS said it had already collected the penalties it was owed and undertook not to draw further on the letters of credit, on the condition that Techint keep the letters in effect to guarantee pending works under the contract. Techint refused to maintain the letters unless GDS paid the amount it had already drawn into an escrow account, which GDS declined to do.

In his order, Verhoosel ruled that GDS should refrain from drawing further on the letters of credit until the ICC tribunal was constituted and had reviewed the order – on the condition that Techint maintain the letters on the same terms as in the contract.

While Verhoosel said there was no evidence that further drawdowns by GDS on the letters of credit would cause Techint serious harm, the relief was still appropriate to preserve the status quo and did “little more than give effect to the stated intended conduct of both parties”. As neither side had clearly prevailed, he ruled that each side should bear its own costs.

The parties settled the dispute before a tribunal was formed. While the final payout has not been disclosed, GDS is understood to have paid around 40 per cent of what Techint had sought in the ICC claim, as well as returning the money it had drawn down.

Both sides used Mexican counsel in the case. Techint used Wöss & Partners, with Malpica Iturbide Buj & Paredes also advising in the Mexican court proceedings. GDS retained Von Wobeser y Sierra.

The ICC introduced its emergency arbitrator provisions in the 2012 version of its rules. Ten such applications were received in 2015, according to ICC statistics. The procedure appears to be increasingly popular in Mexico: Von Wobeser has previously used it to obtain emergency relief on behalf of construction group ICA (<http://globalarbitrationreview.com/article/1036363/kirby-issues-emergency-order-in-mexican-port-dispute>) and shareholders in Mexican insurer Seguros Argos (<http://globalarbitrationreview.com/article/1035345/mexican-insurers-shareholders-win-award-after-interim-measures-order>).

A recent attempt by General Electric to seek emergency relief from the ICC in a dispute with French rail transport group Alstom was stymied in May when a New York court ordered a halt (<http://globalarbitrationreview.com/article/1036384/ge-gets-red-light-for-claim-against-alstom>) to the proceeding.

Techint v Gasoductos del Sureste and Gasoductos de Chihuahua (ICC case)

Emergency arbitrator

- **Gaëtan Verhoosel** (Belgium) (appointed by the president of the ICC Court)

Counsel to Techint

- In-house counsel **Diana Leiva** and **Diego Zonis**
- **Wöss & Partners**

Partners **Herfried Wöss** and **Adriana San Román Rivera** in Mexico City, **Dante Figueroa** in Washington, DC, and **Christian Carbajal** in Lima, and counsel **Devin Bray** in Amsterdam

- Malpica Iturbide Buj & Paredes (in Mexican court litigation only)

Carlos Malpica Hernández and **Rolando Zarate** in Mexico City

Counsel to Gasoductos del Sureste and Gasoductos de Chihuahua

- Von Wobeser y Sierra

Partners **Claus von Wobeser**, **Fernando Moreno** and **Marco Tulio Venegas** and associates **Montserrat Manzano**, **Katarina Lundahl** and **Rodrigo Macín** in Mexico City

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