Arbitrating High-Stake Energy Disputes in Neutral Jurisdictions

Natalia Petrik, SCC legal counsel
World’s Heavy Dependence on Fossil Fuels Projected to Continue

The report forecasts a 2.8% annual increase in renewable energy through 2040, making it the world’s fastest growing source of energy for electricity generation.

Energy security strategy

The EU imports more than half of all the energy it consumes. Its import dependency is particularly high for crude oil (90%) and natural gas (69%). The total import bill is more than €1 billion per day.

Many countries are also heavily reliant on a single supplier, including some that rely entirely on Russia for their natural gas. This dependence leaves them vulnerable to supply disruptions, whether caused by political or commercial disputes, or infrastructure failure. For instance, a 2009 gas dispute between Russia and transit country Ukraine left many
East-West Arbitration Specifics

✓ 1975 Helsinki Conference on Security and Co-operation in Europe: call for the participating states to permit arbitration in a third country

✓ 1977 Optional Arbitration Clause for use in US-USSR trade relations
  
  - neutral dispute resolution seat (Stockholm);
  - neutral appointing authority (SCC);
  - joint panel of presiding arbitrators of neutral nationality;
SCC’s energy caseload (2001 – 2019)

- ECT (32) and BIT arbitrations (9)
- Concessions/PSA agreements (4)
- Contract-based arbitrations (over 150)

13 out of “top 20” arbitrations concerned energy
Claims between 0,5 to 40 billion EUR
Overwhelming majority involve non-Swedish parties
Oil & Gas Disputes (2001 – 2019)

Number of disputes
- Gas: 63 (49%)
- Oil: 66 (51%)

Type of dispute
- Price review: 24 (19%)
- Investment: 16 (12%)
- Other: 89 (69%)

Source: Arbitration Institute of the Stockholm Chamber of Commerce
Pricing Disputes: typical background

Long-term gas supply contract
Price-renegotiation clause
Oil-indexed formula
Long term take-or-pay gas contract

The Seat of Arbitration: Stockholm, Sweden
Number of Experts: 3
SCC costs: EUR 60,000

Issues:
Whether there were changes in a specific gas market that actually affected the value of the gas on that market to a degree that a price review could be triggered and justified.

If the conditions of price review were met, which principles and methods of specific calculations should be applied to adjust the current contract price? Actuals or fair value approach to establish the price?
### Legal costs

<table>
<thead>
<tr>
<th></th>
<th>Claimant</th>
<th>Respondent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal costs respondent</td>
<td>EUR 1,161,338.71, SEK 20,105,698.60 and GBP 473,672.52</td>
<td>EUR 2,857,455, GBP 18,277.16 and SEK 3,096,365</td>
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<tr>
<td>Disputed amount</td>
<td>EUR 420 000 000.0</td>
<td>0</td>
</tr>
<tr>
<td>Who won the case</td>
<td>Won (partially)</td>
<td></td>
</tr>
<tr>
<td>Distribution of costs</td>
<td>2/3</td>
<td>1/3</td>
</tr>
</tbody>
</table>
## Arbitration costs

<table>
<thead>
<tr>
<th></th>
<th>Chairman</th>
<th>Co-arbitrator</th>
<th>Co-arbitrator</th>
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<tbody>
<tr>
<td><strong>Fee</strong></td>
<td>EUR 180,750</td>
<td>EUR 108,450</td>
<td>EUR 108,450</td>
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<tr>
<td><strong>Per diem</strong></td>
<td>EUR 5,000</td>
<td>EUR 4,000</td>
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SCC’s administrative fee – EUR 60,000

Total ink VAT **470,557.00**
Procedural takeaways:

✓ Neutrality of jurisdiction, institution, chairperson’s nationality
✓ Authority of the tribunal to appoint experts
✓ Flexible arbitration costs-structure
✓ Availability of emergency procedure
✓ Overall expeditiousness of arbitral proceedings
Energy Disputes at the SCC

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