

# ICC award gives Edison €450 million gas price discount

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*Edison has a 25-year agreement to purchase Qatari liquid natural gas for its Adriatic regasification terminal*

An ICC panel has redrafted a long-term gas supply contract between Italian energy utility Edison and Qatari company Rasgas, in an award worth around €450 million to the Italian group.

Argentine arbitrator **Horacio Grigera Naón** and co-panellists **Peter Leaver QC** of One Essex Court and independent energy lawyer **Paul Saba** of Boston handed down the award on 11 September.

The award relates to a 25-year sale and purchase agreement executed between Edison and Rasgas in 2003 for the supply of Qatari liquid natural gas to an Adriatic regasification terminal, beginning in 2009. Edison has contracted to use 80 per cent of the terminal's capacity.

The Italian utility filed for arbitration against Rasgas in March 2011, seeking to reduce the amount it pays for the LNG under the long-term supply contract, pursuant to a clause in the agreement stipulating ICC arbitration in London.

Like several European utilities in recent years, Edison was being forced to sell gas to consumers at a loss because the prices under long-term contracts have historically been indexed to the price of oil – and while oil prices have risen, spot market gas prices have plummeted.

The disparity is a result of continued demand for oil, against the liberalisation of the European gas market, greater liquidity as a result of a fluid LNG trade, too much contracted supply – otherwise known as the “global gas glut” – and uncertainty over demand owing to the recession in Europe.

It is understood that the award imposes a discount on the price Edison pays Rasgas for LNG, which retroactively applies from the date of the request for arbitration. In a statement on the day of the award, Edison said that the tribunal had accepted the merits of its position.

Some energy companies have questioned arbitrators' ability to successfully redraft sensitive gas price formulae. In an article written for GAR last year, **Ben Holland** and **Philip Spencer Ashley** of CMS Cameron McKenna shared a statistic from a gas industry conference in which 65 per cent of delegates said they considered the issues in gas price reviews too complex to leave to arbitral tribunals.

But counsel to Edison, **George von Mehren** of Squire Sanders in London, says: "In my experience, well qualified arbitrators are able to reach good decisions in natural gas price cases if they are well presented by counsel to both parties. That is what happened here."

Von Mehren declined to comment on the details of award.

Edison told media that the award now paves the way for other companies to renegotiate gas prices with Qatar – the world's biggest LNG exporting country.

This gas price renegotiation is the first in the Italian market that has resulted in an arbitral award. Last year, Edison successfully renegotiated its long-term gas supply contracts with Promgas, a joint venture between Russian supplier Gazprom and Italy's ENI, bringing an end to an arbitration before it reached the hearing stage. Edison has also brought arbitration proceedings against its Libyan and Algerian suppliers, which are still pending.

Meanwhile, various other European utilities have attempted to battle it out with Gazprom. Germany's RWE and Poland's PGNiG both have cases pending against the Russian gas supplier, while Eon halted its case following a successful price renegotiation with Gazprom this July. Italy's ENI has also negotiated a price cut from Gazprom this year.

Holland notes that there have been a number of eye-catching reductions to the price certain European buyers are paying for gas and LNG this year.

"Volume flexibility is often agreed first, reducing the volume of gas the buyer must accept. This reduces a buyer's take-or-pay liability when reduced economic performance in Europe leads to less gas use," he says. "Price flexibility (a price reduction) is much more contentious, with temporary deals being offered before more permanent solutions are discussed."

"In addition, as wholesale buyers have sought to offload excess purchases, the market for spot trades and swaps has boomed. Lawyers have experienced a rapidly increasing demand for master spot sales agreements, which create a legal framework to trade gas on a spot basis. These spot trades have developed their own pricing dynamic, which has little or no relationship with existing long-term pricing mechanisms."

**Tribunal**

**Horacio Grigera Naón** (Argentina) (Chair)

**Peter Leaver QC** (UK)

**Paul Saba** (US)

**Counsel to Edison**

Edison's CEO **Bruno Lescoeur**, chief operating officer **Pierre Vergerio** and senior legal officer **Marco Lorefice**

Squire Sanders

Partner **George von Mehren** in London and Cleveland, with partners **Stephen Anway** in New York, **Steven Harris** in Houston and Lisa Henneberry in Washington, DC

**Counsel to Rasgas**

Allen & Overy

Partners **Benno Kimmelman** in New York and **Mark Levy** in London