

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Unión Fenosa Gas S.A.

v.

Arab Republic of Egypt

(ICSID Case No. ARB/14/4)

Annulment Proceeding

DECISION TO TERMINATE THE STAY OF ENFORCEMENT OF THE AWARD

Members of the Committee

Mr. Andrés Jana Linetzky, President of the *ad hoc* Committee
Judge Bernardo Sepúlveda Amor, Member of the *ad hoc* Committee
Dr. Inka Hanefeld, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Milanka Kostadinova

January 24, 2020

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I. PROCEDURAL HISTORY

1. On April 24, 2019, the Arab Republic of Egypt (“**Egypt**” or the “**Applicant**”) filed a communication requesting the continuing stay of enforcement of the Award of August 31, 2018, in ICSID Case No. ARB/14/4 (the “**Award**”) in a dispute between Unión Fenosa Gas S.A. (“**UFG**” or the “**Respondent**”) and Egypt.
2. After hearing the Parties on July 22, 2019, following two rounds of written presentations on the matter of the continuation of the stay, the Committee issued its Decision on the Applicant’s Request for a Continued Stay of Enforcement of the Award, dated October 18, 2019 (the “**Stay Decision**”), deciding as follows:
 - (1) To continue the stay of enforcement of the Award of August 31, 2018, in ICSID Case No. ARB/14/4 pending a decision on the Application and subject to the conditions established in this Decision;
 - (2) Within the period of 60 calendar days, the Applicant shall issue a financial security and provide a written undertaking in the terms established by the Committee in paragraphs 79 to 82 of this Decision, and submit a copy of both instruments to the Committee;
 - (3) The decision on costs in relation to the Request for the Continuation of the Stay of Enforcement of the Award is reserved until the conclusion of the annulment proceeding.
3. In paragraph 81 of its Stay Decision, the Committee instructed the Parties to liaise and agree on the modality and exact terms of the financial security established by the Committee. In addition, the Committee instructed the Parties to inform the Committee on the progress of their discussions within 15 calendar days following the notification of the Decision and, if no agreement could be reached on the exact terms of the financial security, to request further instructions from the Committee.
4. By letter of November 4, 2019, Egypt requested an extension of the 15-day deadline until November 15, 2019, which the Committee granted on November 5, 2019.
5. On November 15, 2019, Egypt informed the Committee that it had not yet been able to obtain the necessary approvals from the competent authorities to be able to make a decision regarding the terms of the financial security.
6. On November 18, 2019, UFG sent a letter pursuant to paragraph 81 of the Stay Decision, informing the Committee that no agreements could be reached on the exact terms of the financial security, and requesting further instructions from the Committee. In particular, UFG requested the Committee to:

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- a. Order Egypt to confirm in writing that it will comply with the Committee’s Stay Decision by providing acceptable security in UFG’s favor by December 17, 2019; and
- b. Require Egypt to state its position on the following five points: (a) the amounts of post-Award interest that Egypt must secure; (b) whether the security Egypt provides by December 17 will take the form of a bank guarantee or escrow account; (c) whether Egypt prefers to issue one or multiple bank guarantees or escrow payments; (d) the “reputable international bank” outside Egypt to be used for the financial security; and (e) the signatory of the written undertaking.

Further, UFG requested that in absence of a sufficiently meaningful response by Egypt with respect to the above matters the Committee proceed to order the modality and terms of the security according to UFG’s proposal included in its letter.

7. On November 25, 2019, in response to the Committee’s invitation to provide comments on UFG’s letter of November 18, Egypt stated that “[d]espite best efforts, Egypt has unfortunately not been able to obtain necessary approvals from the competent authorities for a decision regarding the conditions stated in the Committee’s Stay Decision”. In addition, Egypt expressed certain disagreements with respect to UFG’s post-Award interest calculation included in UFG’s letter of November 18, 2019, in particular, with respect to the amount to be used as principal and the actual number of days to consider in the calculation. For demonstration purposes, Egypt provided an annex containing its calculation of post-Award interest from September 2019 until November 2020.
8. On November 27, 2019, in response to Egypt’s comments of November 25, 2019, UFG requested that the Committee (i) issue an Order providing further guidance on the terms of security, and (ii) include a provision that permits the automatic lifting of the stay on enforcement should Egypt fail to provide security that complies with the Committee’s directives by December 17, 2019. UFG expressed its disagreement with Egypt’s calculation of the financial security in its letter of November 25, 2019, but declared it is amenable to adopting Egypt’s calculations for the purpose of posting security in the Annulment proceeding, so long as Egypt posts security at least in the amount of US\$ 200,165,770 by December 17, 2019.
9. On December 6, 2019, the Committee issued Procedural Order No. 2, denying UFG’s request of November 27, 2019, absent a decision by Egypt’s competent authorities regarding the conditions stated in the Stay Decision, and under the terms of that Decision. With respect to the Parties’ disagreement on the post-Award interest calculation, the Committee directed the Parties to consider for the financial security the undisputed amount of post-Award interest, as calculated by Egypt in its November 25, 2019 letter, for the sole purpose of indicating the amount of the financial security and without prejudice to the positions the Parties may have in this matter.

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10. By December 17, 2019, Egypt did not post any security nor did it provide a written undertaking as instructed by the Committee in the Stay Decision. Furthermore, Egypt did not provide any further explanation as to why it had not complied or could not comply with the conditions established by the Committee for the continuation of the stay of enforcement of the Award.
11. On December 27, 2019, the Committee invited the Parties to inform about the status of the conditions set out in paragraphs 79 to 82 of the Stay Decision.
12. On December 30, 2019, UFG requested the Committee to immediately lift the stay of enforcement of the Award, pursuant to the Committee's Stay Decision and Procedural Order No. 2. UFG also informed the Committee that Egypt had not communicated with UFG since its November 25, 2019 letter.
13. On December 31, 2019, the Committee invited Egypt to present its comments on UFG's request to immediately lift the stay of enforcement of the Award on or before January 11, 2019.
14. On January 11, 2020, Egypt informed the Committee that "[d]espite its best efforts to obtain the necessary approvals from the competent authorities, the Arab Republic of Egypt has unfortunately not been in a position to meet the conditions stated in the Committee's Stay Decision of October 18, 2019."

II. CONSIDERATIONS AND DECISION OF THE COMMITTEE

15. The Committee notes that it ordered a continuation of the stay of enforcement of the Award, subject to the conditions established in the Committee's Stay Decision of October 18, 2019. These conditions are that the Applicant shall, within 60 calendar days following notification of the Decision, issue a financial security and provide a written undertaking in the terms established in paragraphs 79 to 82 of the Decision. Accordingly, these two conditions had to be fulfilled by Egypt no later than December 17, 2019.
16. The Committee notes that Egypt did not comply with either of the conditions established under the Stay Decision by December 17, 2019, nor volunteered any explanation as to why it had not done so.
17. In response to the Committee's communications of December 27 and 31, 2019, requesting Egypt to inform about the status of the conditions and to present its comments on UFG's request of December 30, 2019 to immediately lift the stay of enforcement of the Award, Egypt stated on January 11, 2020 only that "[d]espite its best efforts to obtain the necessary approvals from the competent authorities, the Arab Republic of Egypt has unfortunately not been in a position to meet the conditions stated in the Committee's Stay Decision of

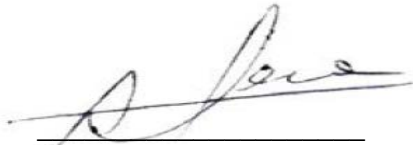
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October 18, 2019.” Egypt did not provide any further explanation nor request any further instructions as provided for in paragraph 81 of the Stay Decision. Egypt did not request any additional time in order to meet the conditions set by the Committee, either.

18. In these circumstances, the Committee concludes that, given that Egypt has not complied with the conditions for the continuation of the stay of enforcement of the Award set out in the Stay Decision of October 18, 2019, the stay of enforcement must consequently be terminated as requested by UFG.
19. THE COMMITTEE HEREBY DECIDES that, according to Rule 54(3) of the Rules of Procedure for Arbitration Proceedings, and as requested by UFG in its communication of December 30, 2019, the stay of enforcement of the Award in ICSID Case No. ARB/14/4 is terminated as of the date of notification of this Decision.

For and on behalf of the *ad hoc* Committee:



Mr. Andrés Jana Linetzky
President of the *ad hoc* Committee
Date: January 24, 2020