



Case & Project Experience

NERA's Role in *Moncrief Oil International v. Gazprom* in Texas District Court

The Situation

On 14 May 2009, Moncrief Oil International, a Fort Worth-based oil company, filed *Moncrief Oil International, Inc. v. OAO Gazprom, et al.*, Cause No. 017-229664-08, in the District Court of Tarrant County, Texas. The complaint referred to a plan to import Russian gas, in the form of liquefied natural gas (LNG) into a facility in Corpus Christi, Texas, alleging that Gazprom stole trade secrets from Moncrief and otherwise disrupted a valuable plan to import Russian gas into US gas markets. NERA was retained to provide economic analysis of the \$1.37 billion in damages asserted by Moncrief.

NERA's Role

NERA Senior Vice President Jeff D. Makholm was retained by Baker Botts LLP as a witness to provide economic analysis of the damages asserted by Moncrief. His analysis addressed the claim of damages relating to the development and production of natural gas from the Y-R Field for import to the Corpus Christi facility. It also addressed the value of the damages relating to Moncrief's alleged trade secrets relating to the development, production, import, and re-gasification of Russian gas via that import facility.

Looking at world LNG shipment history during the period 2004-2007, Dr. Makholm concluded that it was apparent at that time that the kind of LNG undertaking anticipated by Moncrief was unprecedented and highly unlikely to be viable, let alone profitable. Russia's would-be competitors for their entry into the international LNG trade with gas from the Y-R Field, such as in Trinidad and Tobago, North Africa, or the Persian Gulf, have long produced vast quantities of gas in the vicinity of warm water ports, which use existing liquefaction

facilities for export. It was those sources of LNG that supported the construction of possible US import terminals roughly a decade ago. Dr. Makholm held that, given the pattern of those historical shipments, the roughly equivalent gas prices (tied to oil equivalent prices at the time) in Europe and the United States, and the rising construction costs of new LNG facilities, that it was not reasonable to conclude that gas from the Y-R Field could reasonably have bypassed the extensive existing pipelines to European markets in favor of the costly new LNG facilities needed for shipping to Texas.

Dr. Makholm explained that gas from the Y-R Field never entered the LNG export market. The Y-R Field was subsequently developed for the European market through new and existing Russian and European pipelines—the most reasonable use for that gas, either ten year ago or today.

The Result

Scheduled to be the defendant Gazprom's last witness before the jury, Dr. Makholm never needed to testify—as the case was withdrawn by plaintiff Moncrief, after three weeks of trial, under highly unusual circumstances (*Bloomberg Business* headlined the result as "Perry Mason Moment Halts Moncrief \$1.37 Billion Gazprom Suit").

Key to Moncrief's trade secret claim was a 2004 document supporting the claim that Gazprom had received trade secrets at that time from Moncrief. However, while preparing to cross-examine the former Moncrief CFO who was sponsoring that exhibit, an attorney for Baker Botts discovered via a Google search that images in the alleged 2004 document were taken

from a 2012 publication from the Department of Economic Geology at the University of Texas, Austin. In its subsequent motion for sanction, Baker Botts produced an affidavit from the author of the 2012 research paper confirming that that particular image in the Moncreif exhibit dated 2004 was not created until 2012.

Faced with evidence of what *Bloomberg Business* called “the case of the doctored document,” Moncrief’s counsel immediately petitioned the court to dismiss the case with prejudice. The judge granted the petition, ending the case and rendering Dr. Makhholm’s appearance unnecessary.

About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA’s economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world’s leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA’s clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world’s largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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