



Energy Dispute: Merits & Quantum

Arbitration, Litigation and Regulatory Appeals

We have intimate knowledge of the **energy sector** and understand the commercial businesses.

For more than a decade, Frontier Economics and its staff have advised public authorities and commercial entities on the design and implementation of market rules and regulations in the energy sector. We have also been involved in shaping contracts to match the evolving institutional settings. We have continually advised on contracts, investments and transactions.

We draw on this wealth of experience, for example, when analysing changes in the economic, commercial, regulatory or technological circumstances at different times and geographies, reasonable expectations held at different points in time or the intentions of different parties. We also understand to what extent historic decisions and contractual arrangements developed in competitive circumstances or where market power may have affected the outcome.

We know that cases with substantial financial implications will rest on our analysis and that for parties and tribunals and courts to be comfortable making those decisions they need to trust our analysis.

With offices in London, Cologne, Madrid, Brussels and Dublin and experience in many more countries, Frontier provides support and insights in many key jurisdictions in Europe, Latin America and the rest of the world.

60+

cases in the past three years

20+

**languages spoken
by the team**





We frequently act as **expert witnesses**. In other cases we support the legal team in deciding on the most relevant **arguments and evidence**.

We often advise on the merits of cases -

Clients value the evidence we can give related to the merits of cases, given our in-depth knowledge of the sector and our understanding of both commercial behaviour and regulatory practice. We find increasingly that economists are asked to give evidence not only on quantum but also on the merits of cases, for example, applying our industry expertise to advising on what is reasonable behaviour by governments and regulators in investment disputes, whether changes of circumstance can be regarded as unforeseen and justify contract amendment, and whether contract terms may be challenged as anti-competitive.

We also support on quantum -

If the merits have been proven, or a case is not bifurcated, quantum becomes a focus. This may involve estimating retrospective or prospective damages, quantitatively evaluating proposed remedies or the estimation of payments between parties that will leave them whole if they ultimately agree to terminate an agreement.

We offer clear structure and the necessary skills and experience -

We distil complex issues to focus on what matters. We help parties and tribunals consider credible arguments and make good decisions, backed up by robust evidence and analysis. While our analysis may be complex, the opinions we provide are clear, honest and delivered using plain language. Where parties use the private enforcement of competition law, we are able to draw on the skills of Frontier's competition practice.

We communicate clearly -

We are skilled not only in applying economics but also in articulating economic concepts clearly to lawyers, tribunal members and judges, using accessible language and avoiding jargon. We are skilled in assisting counsel to prepare the cross-examination of opposing expert witnesses. We are experienced in oral hearings, witness conferencing and in preparing joint expert reports.

We work in several languages -

Frontier Economics has prepared expert evidence in English, German, Spanish and French and the Frontier team comprises staff with native speaking capabilities in over 20 languages.

200+

cases across the firm and in more than 40 countries



Our **expertise**:

We have a team of skilled international experts with local insight into and language capabilities of key countries.

We advise on dispute resolution matters across Europe, South America, the Middle East and Asia.

RWE Transgas, Czech Republic. RWE Transgas has a long-term GSA with Gazprom to import gas into the Czech Republic. A price review under the contract has been triggered and Frontier has been advising Transgas on economic aspects of the Czech gas sector relevant to the price review.

BGE, Ireland. Expert witness on behalf of BGE in a judicial review instigated by Shannon LNG against a CER decision on future gas transmission tariffs. The case hinged on interpretation of the EU gas regulation and the draft framework guidelines for tariff harmonisation.

TECO, Guatemala Holdings. Expert witness on behalf of TECO in a dispute with the Government of Guatemala. TECO brought a case for unfair treatment against the regulator CNEE under the protection DR-CAFTA Free Trade Agreement. For the first time in the history of the International Centre for the Settlement of Investment Disputes (ICSID), a regulator has been found in breach of its statutory duties.

RWE Dea and GDF Storengy, Germany. RWE Dea and GDF Storengy jointly own the underground gas storage in Breitbrunn/Eggstätt, Germany. The storage is leased to a storage system operator (SSO) under a long-term contract. In order to respond to a request for contract price adjustment by the SSO, RWE Dea and GDF Storengy asked Frontier to assess the commercial value of the storage.

Government, Montenegro. Expert arbitrator in a dispute over a power purchase agreement between the power company EPC and a large aluminium smelter accounting for c. 40% of the country's load.

Oil Refinery, South Korea. Acted as an expert economics witness in an ICC arbitration in relation to a dispute concerning a large South Korean oil refinery.



We have been involved in many **high profile** arbitration, litigation, investor dispute and private competition law enforcement **cases**.

Frontier staff have given evidence in a wide variety of fora, including arbitrations under UNCITRAL, ICSID, the ICC, Deutsche Institution für Schiedsgerichtsbarkeit (DIS), the Permanent Court of Arbitration in the Hague, the Vienna International Arbitral Centre (VIAC) and the Arbitration Institute of the Stockholm Chamber of Commerce, as well as before many regulatory bodies and courts. Building on our long-standing experience as a trusted advisor on energy matters to public and private sector clients, Frontier has developed over the last two decades into an internationally renowned provider of independent energy sector expertise.

Our experience covers the gamut of commercial disputes, investment disputes (both under the Energy Charter Treaty (ECT) and bilateral investment treaties (BITs)), judicial reviews and regulatory appeals. In recent years we have been increasingly called upon to support in the private enforcement of competition law, for example, in relation to abusive practices and State Aid. Frontier's expertise is regularly sought when it comes to valuing assets, commodities or intangible rights in the context of long-term contractual relationships with built-in price adjustment, opening or renegotiation clauses. These may be found e.g. in piped and LNG gas supply agreements, electricity supply agreements, gas storage contracts, tolling agreements, transport contracts etc.

expert witness report
Trigger clause
Service agreement Loyalty clause **witness conferencing**
GAS IMPORT ICC **Arbitration** Construction contract
NETWORKS ICSID **Litigation** **GAS STORAGE** Energy Charter Treaty
Investment dispute **ENERGY** Long-term contracts Hardship clause
SWEDISH CHAMBER OF COMMERCE **UNCITRAL** **GAS SUPPLY** Tolling agreement
DIS **LNG** **VIAC** **ELECTRICITY** Change of circumstances
Broker agreement **SUPPLY** Shareholder agreement **joint expert report**
Network access agreement Price Revision
Contract termination Non-performance Termination value

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