

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

EUROPEAN GAS & ELECTRIC COMPANY
30 Rockefeller Plaza
New York 20, New York

Against the Government of Hungary
Under the International Claims Settlement
Act of 1949, as amended

Claim No. HUNG-20,367

Decision No. HUNG-2135

GPO 942329

Counsel for Claimant:

Grant W. Kelleher, Esquire
30 Rockefeller Plaza
New York 20, New York

Gall, Lane and Howe
401 Commonwealth Building
Washington, D. C.

FINAL DECISION

The Commission issued its Proposed Decision on this claim on May 22, 1959, a copy of which was duly served upon the claimant.

Full consideration having been given to the objections of the claimant, and to the evidence and oral arguments presented at the hearing on July 2, 1959 and to the entire record herein, it is

ORDERED that the Proposed Decision be amended as follows, and that as so amended it be entered as the Final Decision in this claim.

The record shows that claimant owned, directly or beneficially, 100% of the outstanding shares of capital stock of "Hungarian American Oil Company", hereinafter called "Maort", a Hungarian corporation, which in turn owned real and personal property in Hungary. It is also established by the record before the Commission that "Maort" owned a 50% interest in the "Maortgas Marketing Company, Ltd.", a Hungarian corporation which marketed natural gas derivatives in Hungary.

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The Commission finds that certain structures and physical assets of "Maort" were damaged and certain pieces of property of "Maort" were totally destroyed as a result of World War II.

The Commission also finds that the loss thus actually sustained amounted to \$1,769,795.50 and concludes that claimant is entitled to compensation under Section 303(1) of the Act in the amount of \$1,179,863.66 since under this Section, awards are limited to two-thirds of the loss or damage actually sustained.

The Commission finds that "Maort" was nationalized without compensation by the Government of Hungary pursuant to Decree No. 9,960/1948 Korm, of September 24, 1948. The record shows that "Maortgas Marketing Company, Ltd." was likewise nationalized without compensation by the Government of Hungary. The Commission further finds that the value of claimant's interest in "Maort," not including hydrocarbon reserves, was \$9,515,171.00, and concludes that claimant is entitled to compensation under Section 303(2) of the Act for the nationalization thereof.

Claimant also seeks compensation based upon certain reserves in the subsoil consisting of crude oil, natural gas and gas liquids, in which "Maort" had interests. The record shows that "Maort" had acquired certain rights and concessions under which it exploited the land covered by the Agreement of 1933 and extracted crude oil, natural gas and gas liquids. In consideration of the rights and concessions, "Maort" invested large sums of money to exploit the lands in question and was obliged to pay royalties, taxes and other charges to the Hungarian Government.

It is concluded that these rights and concessions constituted "property" within the meaning of Section 301(9) of the Act and that such rights and concessions were nationalized without compensation by the Government of Hungary pursuant to Decree No. 9,960/1948, Korm, of September 24, 1948. The record shows that the land in question

contained reserves in the approximate amounts of 26,871,700 barrels of crude oil, 72,140,000,000 cubic feet of natural gas and 111,846,000 gallons of gas liquids.

In estimating the value of "Maort's" interest in the reserves, the claimant proposes the analytical or engineering method of appraisal which is widely accepted and used by the oil industry in estimating the value of hydrocarbon reserves in the United States and throughout the world. Under this method, the claimant calculates the present worth value of the reserves at the time of nationalization at \$24,724,389.00. In applying the method claimant has used pre-war cost experience "adjusted" to 1948, has figured sales prices on the basis of a competitive free market and projected these costs and prices over the years to 1974.

The Commission recognizes the validity of the method adopted by the claimant, but is not entirely convinced that all of the assumptions as to the costs, prices, taxes, etc., and particularly the reliance upon their continuance throughout the life of the concession, should be accepted without qualification. In arriving at the market value at the date of nationalization, the Commission is not presently convinced that a buyer in a competitive market would be willing to pay the figure asserted by the claimant. It is concluded that a discounting or downward adjustment of the claimant's figure is indicated and, accordingly, the amount of \$17,307,000.00 is awarded for nationalization of the claimant's reserves. /

The claimant also seeks compensation for loss of certain other rights and concessions belonging to "Maort." It appears that these rights and concessions related to certain undeveloped acreage, and a portion of the claim is based upon the taking of said undeveloped acreage. The Commission has consistently held that the burden of establishing all elements of a claim rests with the claimant. It has not been shown that these rights and concessions

of "Maort" had any proved or predictable value. Therefore, it is concluded that claimant has not met its burden of establishing that it sustained any losses with respect to the undeveloped acreage within the meaning of Section 303(2) of the Act, and accordingly, this portion of the claim is denied.

A portion of the claim is based upon the sale of crude oil by "Maort" at prices fixed by the Government of Hungary. Claimant states that the Hungarian Government unilaterally fixed a delivery price for "Maort" crude oil for the year 1947 and from January 1948 to September 1948 of 170 forints per ton, whereas the lowest possible average free market delivery price for Hungarian crude oil was much higher.

Claimant further states that the fixing of such prices by the Government of Hungary was in violation of Clause 11 of the Concession Contract, dated June 8, 1933, which provided that the sales price for crude oil shall be mutually agreed upon by the Hungarian Minister of Finance and "Maort," and in the event of a failure to reach any agreement in this respect, the selling price of the oil products shall be the market prices then prevailing.

The record fails to show and it has not been alleged that the Government of Hungary compelled "Maort" to sell to it any of the oil products involved in this portion of the claim. Claimant has admitted that in 1948, "Maort" actually sold some of the crude oil in question at prices in excess of the 170 forint per ton fixed by the Government of Hungary. The Commission holds with respect to this portion of the instant claim that it has not been established that the circumstances herein constitute war damage within the scope of Section 303(1) of the Act or a nationalization, compulsory liquidation or other taking of property by the Government of Hungary within the meaning of Section 303(2) of the Act. It is to be noted, however, that such holding does not constitute a

finding that the actions complained of are not international wrongs which might give rise to liability under the customary rules of international law.

When this portion of the claim is considered under Section 303(3) of the Act, relating to certain claims for the failure to meet certain obligations expressed in currency of the United States, it is found to be not compensable, for the reasons specified in the attached copy of Proposed Decision No. HUNG-1, In the Matter of the Claim of Vincent I. Varga (HUNG-20,264). Additionally, this portion of the claim is found to be not compensable for the reasons specified in the attached copy of Proposed Decision, No. BUL-20, In the Matter of the Claim of Henry Herbert Gould (BUL-1174), which is for equal application, mutatis mutandis, in similar claims against the Government of Hungary.

Accordingly, this portion of the claim is denied.

The portion of the claim based upon supplies furnished and services rendered to the Soviet Army is denied for the reason that such items do not fall within the purview of Article 26 and Article 27, the only Articles of the Treaty of Peace with Hungary referenced in Section 303(1) of the Act. In this connection, it is noted that specific provisions are made for such items in Article 32, Paragraph 2 of the Treaty of Peace with Hungary, which is not referenced in Section 303(1) of the Act. Paragraph 2 of Article 32 reads as follows:

"The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. The Hungarian Government agrees to make equitable compensation in Hungarian currency to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Hungarian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated Powers arising in Hungarian territory."

It is concluded that the fact that Section 303(1) of the Act references only Articles 26 and 27 of the Treaty of Peace with Hungary clearly indicates a Congressional intent to include under

Section 303(1) only those claims which fall within the purview of the said referenced Articles.

When this portion of the claim is considered under Section 303(2) of the Act, it is found to be not compensable for the reason that the circumstances herein cannot be construed as a taking by the Government of Hungary so as to give rise to a compensable claim thereunder.

A portion of the claim is based upon sales of crude oil made during World War II while "Maort" was under sequestration by the Government of Hungary. Claimant states that the agency of the Government of Hungary, exercising control over "Maort," exported to Germany certain amounts of crude oil belonging to "Maort." This agency paid "Maort" the inland or Hungarian market price and sold the crude oil for prices in excess thereof.

The Commission finds that the circumstances of this portion of the claim do not constitute a nationalization, compulsory liquidation or other taking of property within the meaning of Section 303(2) of the Act. Moreover, the Commission finds that it has not been established that the claimant suffered any loss by reason of the aforesaid acts. Accordingly, this portion of the claim is denied.

Claimant seeks compensation for certain expenses incurred in effecting a return of certain property of "Maort" from Germany. The record shows that the property in question was taken out of Hungary by the German Army and brought into Germany. After cessation of hostilities, representatives of "Maort" located the property in Germany and incurred expenses in returning it to Hungary, including the payment of import duties.

The Commission finds that this portion of the claim does not involve a property loss as contemplated under Articles 26 and 27, the only Articles of the Treaty of Peace with Hungary referenced in Section 303(1), nor does it constitute a nationalization

or other taking of property within the meaning of Section 303(2) of the Act; and the circumstances herein do not give rise to a claim for the failure of the Government of Hungary to meet its contractual obligations expressed in currency of the United States, one of the prerequisites of Section 303(3) of the Act. For the foregoing reasons, this portion of the claim is denied.

The Commission deems it unnecessary to make determinations with respect to other elements of the portions of claim denied herein.

A W A R D

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, the claim is allowed in part, and an award is hereby made to the EUROPEAN GAS AND ELECTRIC COMPANY in the amount of Twenty-eight Million Two Thousand and Thirty-four Dollars and Sixty-six Cents (\$28,002,034.66) plus interest upon that portion of the award granted pursuant to Section 303(2) at the rate of 6% per annum from September 24, 1948 to August 9, 1955, the effective date of the Act, in the amount of Eleven Million Sixty-eight Thousand Six Hundred Fifteen Dollars and Eighty-two Cents (\$11,068,615.82).

Payment of any part of this award shall not be construed to have divested the claimant herein, or the Government of the United States on its behalf, of any rights against the Government of Hungary for the unpaid balance of the claim, if any.

General notice of the Proposed Decision having been given by posting for thirty days, it is

ORDERED that the Proposed Decision, as amended herein, be and is hereby entered as the Final Decision on this claim, and it is further

ORDERED that the award granted herein be certified to the Secretary of the Treasury.

Dated at Washington, D. C.

JUL 24 1959

Whitney Hilliland

Pearl Pace

R. Stuart L. Kunzig
COMMISSIONERS

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IN THE MATTER OF THE CLAIM OF

EUROPEAN GAS & ELECTRIC COMPANY
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New York 20, New York

Claim No. HUNG-20,367

Decision No. HUNG- 2135

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72126-1

Counsel for Claimant:

Grant W. Kelleher, Esquire
30 Rockefeller Plaza
New York 20, New York

Gall, Lane and Howe
401 Commonwealth Building
Washington, D. C.

PROPOSED DECISION

This is a claim against the Government of Hungary under Sections 303(1) and (2) of the International Claims Settlement Act of 1949, as amended, in the amount of \$67,866,570.00 by the EUROPEAN GAS & ELECTRIC COMPANY, a national of the United States within the meaning of Section 301(2)(b) of the Act, for war damages sustained to property in Hungary as a result of World War II, and for the nationalization and other taking of property.

The record shows that claimant owned, directly or beneficially, 100% of the outstanding shares of capital stock of "Hungarian American Oil Company," hereinafter called "Maort," a Hungarian corporation, which in turn owned real and personal property in Hungary. It is also established by the record before the Commission that "Maort" owned a 50% interest in the "Maortgas Marketing Company, Ltd.," a Hungarian corporation which marketed natural gas derivatives in Hungary.

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Act of 1949, as amended

GPO 16-72128-1

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The record shows that claimant owned, directly or beneficially, 100% of the outstanding shares of capital stock of "Hungarian American Oil Company," hereinafter called "Maort," a Hungarian corporation, which in turn owned real and personal property in Hungary. It is also established by the record before the Commission that "Maort" owned a 50% interest in the "Maortgas Marketing Company, Ltd.," a Hungarian corporation which marketed natural gas derivatives in Hungary.

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The Commission finds that certain structures and physical assets of "Maort" were damaged and certain pieces of property of "Maort" were totally destroyed as a result of World War II.

The Commission also finds that the loss thus actually sustained amounted to \$1,769,795.50 and concludes that claimant is entitled to compensation under Section 303(1) of the Act in the amount of \$1,179,863.66 since under this Section, awards are limited to two-thirds of the loss or damage actually sustained.

The Commission finds that "Maort" was nationalized without compensation by the Government of Hungary pursuant to Decree No. 9,960/1948 Korm, of September 24, 1948. The record shows that "Maortgas Marketing Company, Ltd." was likewise nationalized without compensation by the Government of Hungary. The Commission further finds that the value of claimant's interest in "Maort," not including hydrocarbon reserves, was \$7,000,000.00, and concludes that claimant is entitled to compensation under Section 303(2) of the Act for the nationalization thereof.

Claimant also seeks compensation based upon certain reserves in the subsoil consisting of crude oil, natural gas and gas liquids, in which "Maort" had interests. The record shows that "Maort" had acquired certain rights and concessions under which it exploited the land covered by the Agreement of 1933 and extracted crude oil, natural gas and gas liquids. In consideration of the rights and concessions, "Maort" invested large sums of money to exploit the lands in question and was obliged to pay royalties, taxes and other charges to the Hungarian Government.

It is concluded that these rights and concessions constituted "property" within the meaning of Section 301(9) of the Act and that such rights and concessions were nationalized without compensation by the Government of Hungary pursuant to Decree No. 9,960/1948, Korm, of September 24, 1948. The record shows that the land in question

contained reserves in the approximate amounts of 26,871,700 barrels of crude oil, 72,140,000,000 cubic feet of natural gas and 111,846,000 gallons of gas liquids.

In estimating the value of "Maort's" interest in the reserves, the claimant proposes the analytical or engineering method of appraisal which is widely accepted and used by the oil industry in estimating the value of hydrocarbon reserves in the United States and throughout the world. Under this method, the claimant calculates the present worth value of the reserves at the time of nationalization at \$24,724,389.00. In applying the method claimant has used pre-war cost experience "adjusted" to 1948, has figured sales prices on the basis of a competitive free market and projected these costs and prices over the years to 1974.

The Commission recognizes the validity of the method adopted by the claimant, but is not entirely convinced that all of the assumptions as to the costs, prices, taxes, etc., and particularly the reliance upon their continuance throughout the life of the concession, should be accepted without qualification. In arriving at the market value at the date of nationalization, the Commission is not presently convinced that a buyer in a competitive market would be willing to pay the figure asserted by the claimant. It is concluded that a discounting or downward adjustment of the claimant's figure is indicated and, accordingly, the amount of \$17,307,000.00 is awarded for nationalization of the claimant's reserves.

The claimant also seeks compensation for loss of certain other rights and concessions belonging to "Maort." It appears that these rights and concessions related to certain undeveloped acreage, and a portion of the claim is based upon the taking of said undeveloped acreage. The Commission has consistently held that the burden of establishing all elements of a claim rests with the claimant. It has not been shown that these rights and concessions

of "Maort" had any proved or predictable value. Therefore, it is concluded that claimant has not met its burden of establishing that it sustained any losses with respect to the undeveloped acreage within the meaning of Section 303(2) of the Act, and accordingly, this portion of the claim is denied.

A portion of the claim is based upon the sale of crude oil by "Maort" at prices fixed by the Government of Hungary. Claimant states that the Hungarian Government unilaterally fixed a delivery price for "Maort" crude oil for the year 1947 and from January 1948 to September 1948 of 170 forints per ton, whereas the lowest possible average free market delivery price for Hungarian crude oil was much higher.

Claimant further states that the fixing of such prices by the Government of Hungary was in violation of Clause 11 of the Concession Contract, dated June 8, 1933, which provided that the sales price for crude oil shall be mutually agreed upon by the Hungarian Minister of Finance and "Maort," and in the event of a failure to reach any agreement in this respect, the selling price of the oil products shall be the market prices then prevailing.

The record fails to show and it has not been alleged that the Government of Hungary compelled "Maort" to sell to it any of the oil products involved in this portion of the claim. Claimant has admitted that in 1948, "Maort" actually sold some of the crude oil in question at prices in excess of the 170 forint per ton fixed by the Government of Hungary. The Commission holds with respect to this portion of the instant claim that it has not been established that the circumstances herein constitute war damage within the scope of Section 303(1) of the Act or a nationalization, compulsory liquidation or other taking of property by the Government of Hungary within the meaning of Section 303(2) of the Act. It is to be noted, however, that such holding does not constitute a

finding that the actions complained of are not international wrongs which might give rise to liability under the customary rules of international law.

When this portion of the claim is considered under Section 303(3) of the Act, relating to certain claims for the failure to meet certain obligations expressed in currency of the United States, it is found to be not compensable, for the reasons specified in the attached copy of Proposed Decision No. HUNG-1, In the Matter of the Claim of Vincent I. Varga (HUNG-20,264). Additionally, this portion of the claim is found to be not compensable for the reasons specified in the attached copy of Proposed Decision, No. BUL-20, In the Matter of the Claim of Henry Herbert Gould (BUL-1174), which is for equal application, mutatis mutandis, in similar claims against the Government of Hungary.

Accordingly, this portion of the claim is denied.

The portion of the claim based upon supplies furnished and services rendered to the Soviet Army is denied for the reason that such items do not fall within the purview of Article 26 and Article 27, the only Articles of the Treaty of Peace with Hungary referenced in Section 303(1) of the Act. In this connection, it is noted that specific provisions are made for such items in Article 32, Paragraph 2 of the Treaty of Peace with Hungary, which is not referenced in Section 303(1) of the Act. Paragraph 2 of Article 32 reads as follows:

"The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. The Hungarian Government agrees to make equitable compensation in Hungarian currency to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Hungarian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated Powers arising in Hungarian territory."

It is concluded that the fact that Section 303(1) of the Act references only Articles 26 and 27 of the Treaty of Peace with Hungary clearly indicates a Congressional intent to include under

Section 303(1) only those claims which fall within the purview of the said referenced Articles.

When this portion of the claim is considered under Section 303(2) of the Act, it is found to be not compensable for the reason that the circumstances herein cannot be construed as a taking by the Government of Hungary so as to give rise to a compensable claim thereunder.

A portion of the claim is based upon sales of crude oil made during World War II while "Maort" was under sequestration by the Government of Hungary. Claimant states that the agency of the Government of Hungary, exercising control over "Maort," exported to Germany certain amounts of crude oil belonging to "Maort." This agency paid "Maort" the inland or Hungarian market price and sold the crude oil for prices in excess thereof.

The Commission finds that the circumstances of this portion of the claim do not constitute a nationalization, compulsory liquidation or other taking of property within the meaning of Section 303(2) of the Act. Moreover, the Commission finds that it has **not** been established that the claimant suffered any loss by reason of the aforesaid acts. Accordingly, this portion of the claim is denied.

Claimant seeks compensation for certain expenses incurred in effecting a return of certain property of "Maort" from Germany. The record shows that the property in question was taken out of Hungary by the German Army and brought into Germany. After cessation of hostilities, representatives of "Maort" located the property in Germany and incurred expenses in returning it to Hungary, including the payment of import duties.

The Commission finds that this portion of the claim does not involve a property loss as contemplated under Articles 26 and 27, the only Articles of the Treaty of Peace with Hungary referenced in Section 303(1), nor does it constitute a nationalization

or other taking of property within the meaning of Section 303(2) of the Act; and the circumstances herein do not give rise to a claim for the failure of the Government of Hungary to meet its contractual obligations expressed in currency of the United States, one of the prerequisites of Section 303(3) of the Act. For the foregoing reasons, this portion of the claim is denied.

The Commission deems it unnecessary to make determinations with respect to other elements of the portions of claim denied herein.

A W A R D

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, the claim is allowed in part, and an award is hereby made to the EUROPEAN GAS AND ELECTRIC COMPANY in the amount of Twenty-Five Million Four Hundred Eighty-Six Thousand Eight Hundred Sixty-Three Dollars and Sixty-Six Cents (\$25,486,863.66) plus interest upon that portion of the award granted pursuant to Section 303(2) at the rate of 6% per annum from September 24, 1948 to August 9, 1955, the effective date of the Act, in the amount of Ten Million Thirty Thousand Six Hundred Eighty-Eight Dollars and Fifty-Six Cents (\$10,030,688.56).

Payment of any part of this award shall not be construed to have divested the claimant herein, or the Government of the United States on its behalf, of any rights against the Government of Hungary for the unpaid balance of the claim, if any.

Dated at Washington, D. C.

MAY 22 1959

FOR THE COMMISSION:

William Barrett
William Barrett