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LEGAL MEMORANDA

EDITOR'S NOTE

"Legal Memoranda" is a regular section of the Review devoted to reports from corresponding law firms throughout the Hemisphere. The reports are compiled by the Review, but their accuracy is represented by the corresponding firms, to which all inquiries should be directed.

We appreciate the contributions of the corresponding law firms and invite other firms interested in participating in this section to contact us.

ARGENTINA

ENERGY AND MINING BULLETIN

I. OIL AND GAS

A. *Labor Bill for Oil and Gas Receives Severe Criticism*

A bill is being discussed in Congress aimed at regulating the activity of workers in Argentina's oil and gas industry. The draft, which has already received Senate approval, comprises the following activities:

- Industrialization, processing of petroleum, and work on fixed, mobile or semi-mobile off-shore platforms and rigs in any drilling stages, completion, repair and production of oil, gas and their by-products.
- Special operation services.
- Prospecting, exploration, and geophysics exploitation.
- Transport and distribution of gas, oil, and their by-products.

- Refineries, plants and/or deposits for storage and marketing.
- Plants for processing or mixing.
- Services at commercial airports.
- Services at administrative offices and ancillary installations.

The project has up to now been the subject of much criticism, both from the business sectors involved in the petroleum industry and from members of the Executive Branch. The objections are more than well-founded since the draft clearly goes against the current trend in favor of deregulation and flexibility in labor relations. This trend endeavors to simplify and adapt labor regulations, reducing them to a general framework (Contract of Employment Act). Further, this trend leaves the particular conditions for each activity provided under the Collective Agreements to be negotiated by the parties in each particular case.

The passing of the labor bill, however, would imply a step back in the regulation of labor conditions for the oil industry by means of a rigid and somehow regressive instrument; one in which the will of the parties (employees/employers) is arbitrarily replaced by the State. Almost eighty-five percent of the bill's sections are typical conventional clauses that may normally be found in any collective labor agreement, while another high percentage (fifteen percent) relates in an almost textual fashion to the Contract of Employment Act and to other labor laws. Some of the legal rules proposed in this statute, besides representing a ground for future negotiations, are particularly rigid and hinder the reasonable exercise of management powers as granted to the company by ordinary law. On the other hand, the draft grants workers more favorable conditions than those established to date, some of which will have a direct incidence upon companies' costs, such additional payment for special reasons or allocations of up to eight salaries upon reaching retirement age.

Approval of the bill might negatively affect the normal development of the petroleum industry, as it would establish by law regulations usually provided for by convention or normal collective bargaining. This would leave both companies and workers with reduced margins of negotiation vis-à-vis future collective agreements.

For the reasons stated here, it is expected that the many consequences resulting from a law of this nature will be appropriately appraised by the Lower House during its discussion.

B. Abandonment of Wells: New Regulations Enacted

The Argentine government has recently enacted Resolution 5/96 concerning abandonment of wells. The Resolution will apply to wells abandoned after January 9, 1996. According to the Resolution, concessionaires and/or permit holders should categorize abandonments as temporary or permanent.

The Resolution allows the introduction of new techniques for the abandonment of wells and suggests technical procedures for their abandonment. Wells drilled after the enactment of the Resolution should be categorized depending on their location, status and other conditions in order to determine a priority level upon which abandonment periods are calculated.

The Resolution also creates an obligation for operators to file a schedule of the works to be executed in relation to the abandonment of wells, and an annual report. Additionally, the Regulation establishes that four years before the termination of a concession, or at the time of its reversion, the concessionaire and/or permit holder must submit to the Regulatory Authority a technical and economic study on the convenience of abandoning each inactive well in a given area. It is not sufficiently clear if wells already abandoned by the time of enactment of this regulation will have to comply with the abandonment procedures set forth for the relinquishment of acreages or if they have been excluded from those procedures.

C. Vintage Acquires Large Production Properties

Vintage Petroleum, a Tulsa-based company, recently acquired five exploitation concessions in the San Jorge basin, located in the southeast region of Argentina. The Blocks were bought from Shell and from the local oil company Astra, at a U.S. \$56 million cash price. These new blocks, with an estimated production of 3,960 b.p.d. add to those that Vintage already owns in the same basin.

D. Argentine Gas Reserves Increase

The Secretariat of Energy announced that in 1994 Argentine gas reserves increased 3.7%. While gas reserves reached 516 thousand million cubic meters at the end of 1993. By the end of December 1994, they amounted to 535 thousand million cubic meters.

Since 1988, gas reserves had been gradually falling. The following chart shows a negative balance experienced between the years 1989 and 1993. At that time, Gaffney & Cline pointed out that the calculation of reserves had slowed by twenty-five percent. The positive variation experienced between 1993 and 1994 is the result of recalculations made by exploration and exploitation companies in the Austral basin reserves. This positive tendency has lasted throughout 1995.

INCORPORATED RESERVES	MILLIONS OF CUBIC METERS
Reserves up to 31-12-93	516.662
Consumption during 1994	(-27.697)
Incorporated reserves	(+46.363)
Reserves up to 31-12-94	535.328

PERIOD	GAS RESERVES*
1988	773,016
1989	743,927
1990	579,056
1991	592,869
1992	540,899
1993	516,662
1994	535,528

PERIOD	GAS PRODUCTION *	RATIO RES/PROD
1988	22,734	34.00
1989	24,207	30.73
1990	23,018	25.16
1991	24,643	24.06
1992	24,358	22.21
1993	26,664	19.38
1994	27,697	19.32

* in million cubic meters a year.

*E. Brief News***1. Occidental Finds New Oil in Mendoza**

OXY, jointly with the local firm Astra, has discovered a new oil field in the southern portion of Cuyana Basin, in Mendoza (Argentina), close to the fields located at Atamisqui and Punta de las Baradas. Tests on the new Ceferino X-1 well estimate prospective production at 576 barrels of oil per day.

Ceferino X-1 is the second well involved in the three-well drilling commitment for Mendoza block. OXY, owner of seventy percent of the consortium, is the operator of the block, while Astra owns the remaining thirty percent.

2. Hunt's Wildcat Well in General Lavalle Block

Hunt Oil recently finished drilling a 4,800 meter depth wildcat exploration well in "General Levalle" block, province of Cordoba, in the center of Argentina, which led to no discovery. The block was known to be a high risk exploration block because it comprises the entire General Levalle basin; one that had never been drilled before. Chances of finding hydrocarbons were put at only ten to fifteen percent. Prior to the drilling, Hunt reprocessed 375 km. of seismic lines, and shot more than 2,000 km. of seismic lines. Total drilling costs were about U.S. \$10 million, adding to the U.S. \$30 million spent on infrastructure works. Currently, Hunt is analyzing the convenience of drilling a second wildcat exploration well in the block.

3. Petrolera Argentina San Jorge Discovers Oil in Mendoza

On December 26, Petrolera Argentina San Jorge announced that exploratory well Naco X-1, drilled in the CNQ-266 Confluencia Block, located in the South of Mendoza Province (Argentina), tested 740 barrels per day of thirty-five API oil from a depth of 2,008 to 2,016 meters. A second test performed at a depth of 1,959 to 1,979 meters produced 9.5 million cubic feet of gas per day and ninety barrels of condensate per day. Production in both cases is from the Lower Troncoso Member of the Huitrin Formation of the Cretaceous period. San Jorge, as operator of the block, plans to continue exploratory drilling there, as well as

appraisal drilling to evaluate the new discovery.

Other owners of the Confluencia block are Victrix Petroleum, a subsidiary of Petrol Argentina San Jorge, which holds a 62.33% participating interest in the block, Metro Holding which owns thirteen percent, Ampolex and Parker & Parsley which each have a 12.33% interest.

4. Hydrocarbons Production Increased in 1995

As a result of the deregulation and privatization of the oil and gas industry, between 1990 and 1994 oil production increased by 158%. In 1990, the external sales were approximately U.S. \$59 million. During 1994 and 1995 sales increased to U.S. \$1.4 billion. Meanwhile, gas production increased by thirty-three during the last five years, while in the last two years transport capacity rose over eighteen percent. Nowadays, Neuquen Province (Argentina) is the main hydrocarbon production province.

5. Province of Alberta (Canada) and Province of Chubut (Argentina) Sign Cooperation Agreement

The Provinces of Chubut (Argentina) and the Province of Alberta (Canada) signed a Cooperation Agreement last October concerning equipment and services for oil and gas, administration and exploitation regulations for natural resources, technologies for energy generation, engineering services and construction, environmental technology and the promotion of bilateral tourism.

II. GAS INDUSTRY

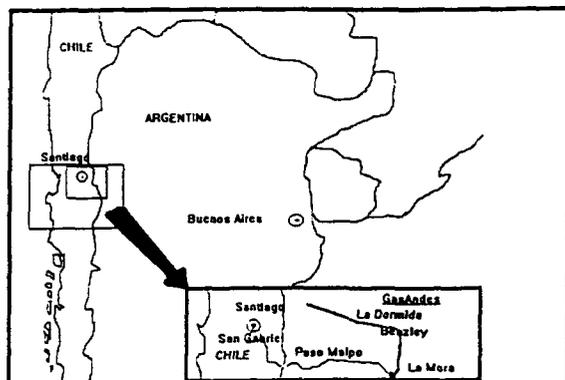
A. *Nova Builds Gas Pipeline to Chile*

GasAndes Company, led by Canadian company Novacorp and composed of Argentine Techinint, CGC and Chilean Chilgener started construction work for an international gas pipeline from Loma de la Lata (Argentina) to Santiago (Chile) on October 15, 1995. GasAndes's pipeline will connect TGN's Center West pipeline in Argentina at La Mora with Santiago through a 450 km. gas pipeline. During an initial period beginning in May 1997, the gas pipeline will supply three million cubic meters of gas per day to Santiago and Greater Santiago. The pipeline will

provide over five million people with natural gas, benefiting about sixty percent of the Chilean population.

The late entry of the Chilean electric company, Endesa, into the GasAndes Consortium enabled this engineering project to take off. Further investment in the whole project will take place during the next few decades and will amount to U.S. \$2.5 billion. Profits, considering a ten to fifteen percent return ratio, will rise to several thousand million dollars within the initial period. Energy costs will fall sharply in Chile as a consequence of this project, as it has already been estimated that the value of electricity will diminish by more than ten percent of its present value.

GasAndes has obtained six gas transportation contracts which will allow it to build the gas pipeline. According to Kent Jespersen, president of Nova Gas International, "With the signing of the contracts with Colbún, Endesa, Empresa Eléctrica de Santiago, Metrogas de Chile and the consortium composed of Chilgener and Compañía General de Gas Industrial, GasAndes has successfully concluded the public offer for gas transportation from Argentina." Once the pipeline starts operating at full capacity, it will carry more than ten million cubic meters of natural gas per day; an amount large enough to justify its construction.



GasAndes project

B. NE Gas Distribution System: Awarding Contest

In the next few months, the Federal Government will launch for tender the Ninth Gas Distribution company to operate in the northeast region, which comprises the Provinces of Formosa, Chaco, Miniones, Corrientes and Entre Ríos. Currently, there are no gas pipelines or distribution networks in the region; therefore, the awardee in the contest will have to build transportation and distribution facilities, as well as develop the gas market for the region. The awardee of the northeast region might easily gain access to Brazil and Uruguay and gas pipelines to be built in the neighboring countries.

Although at this time the requisites for the operation of the distribution license have not been published, government authorities have stated that the distribution license will be granted to operators well known in the international market. It has also been stated that the awarding criteria will depend on the total number of customers serviced by the distribution company to be formed. New users will pay different tariffs from the ones set for the rest of the country.

C. Environmental Regulations for Gas Transportation and Distribution

Resolution 186/95 of the Natural Gas Regulatory Entity (Enargas) approved the "Guide of recommended practices for environmental protection during the construction and later operation of gas pipelines." The purpose of this Guide is to identify possible environmental impacts and mitigation measures during the design, construction, operation, and maintenance of gas pipelines and ancillary facilities. Compliance with this Resolution is obligatory for all works authorized by Enargas as the Resolution is considered as a complementary recommendation to N.A.G.-100 Rules, included in the Materials Guide in Section 4 and in the relevant part of Appendix G-1.

Generally, pipelines shall be designed to be compatible with different types of soil, including:

- vegetation cover (grass, shrubs and trees)
- topography
- rock layers (of a lower or higher degree of hardness)

- nitrous areas
- watercourses and their drainage area and any other environmental factor related to the soil and especially the fauna of damaged areas

The studies requested by the Resolution are: a "Previous Environmental study" (PES) and its subsequent "Environmental Protection Plan" (EPP).

a) The PES should include:

- i) preliminary studies
- ii) detailed studies
- iii) environmental impact assessments
- iv) contingency plans

The PES should identify alternative routings which may be feasible from the technical and environmental perspectives and allow analysis of the advantages and disadvantages of each option. The aim is to choose a route that is technically, economically, and environmentally convenient for the construction of the pipeline.

b) The EPP is a plan to protect the environment during the construction stage and afterward, during operation and maintenance. EPP encompasses many factors which, although not specifically detailed in the PES, shall be included and considered as part of a group of actions and steps to be taken in order to lessen environmental impact resulting from the works. The regulation describes the structure of both studies, taking into account two groups of basic factors: biophysical (geology, physiography, soils, hydrology, vegetation, fauna, etc.) and social (developmental, transport, recreation, historical sites, legislation, etc.).

Resolution 186/95 does not establish a specific procedure or time frame to perform both studies. The only requirement is that they be performed prior to the construction of a pipeline and its complementary facilities and be submitted to Enargas.

D. First Peak Shaving Plant In Argentina

Gas Natural Ban, whose shareholders are Gas Natural (Spain) and CGC (Argentina), has built the first peak shaving gas storage facility at a cost of U.S. \$45 million. The plant will

supply the northern zone of the province of Buenos Aires. Once the full storage capacity is reached, twenty-five million additional cubic meters of natural gas will be available for consumption in the city of Buenos Aires and Greater Buenos Aires, providing a daily volume estimated at 2.5 million cubic meters of gas, an amount equivalent to three percent of winter-time consumption.

III. PETROCHEMICAL INDUSTRY

A. *Dow Chemical Returns to Argentina*

After a twenty-five year absence from Argentina, Dow Chemical returned to the country's petrochemical industry. Together with its partners, local oil company YPF and Japanese ITOCHU, Dow won an international call for bids last November for the control of the two main producers of ethylene in Argentina: Petroquímica Bahía Blanca and Indupa. Dow's offer of U.S. \$350 million was far ahead of the U.S. \$302 million offered by the local Perez Companc holding and Copesul, one of Brazil's largest companies in the petrochemical market.

Dow plans to invest U.S. \$500 million (thereby duplicating the actual existing capacity) in order to meet forty percent of the internal market supply. One of the plants acquired by Dow and its partners, located at Bahía Blanca, province of Buenos Aires, makes ethylene (between 230,000 and 250,000 tons annually) together with ethane, which is gathered in the plant located at General Cerri, next to Bahía Blanca.

In a separate deal, Dow acquired one-hundred percent of the shares of Polisur, a polyethylene and PVC manufacturer, at a price of U.S. \$195 million. This purchase allows Dow to become the largest producer in Argentina for these products and one of the most important producers in Latin America.

IV. ELECTRICAL INDUSTRY

A. *Electrical Power Utilities: Upcoming Round of Privatizations*

The Argentine Government has announced its intention to continue the privatization process for major energy facilities and utilities. The following article summarizes the privatization plans for Yacypretá, nuclear power plants, and for some provin-

cial power plants and utilities in the province of Buenos Aires.

1. Yacyretá

Yacyretá is a large hydro-electric power plant, located on the Paraná river and under the jurisdiction of the Ministry of Foreign Affairs. It is administered by a binational Argentine-Paraguayan entity: Yacyretá's Binational Entity (Ente Binacional Yacyreta or EBY). Operating at full power — 3,100 MW — it will supply thirty-five percent of the total electric consumption in the Argentine Republic. Of the twenty hydro-electric turbines that the plant will eventually have, thirteen remain to be installed (expected completion by 1999). Each turbine has a 155 MW capacity, with the entry into operation of one turbine every seventy-one days. The dam has a length of sixty-six km. with a maximum upper water level of seventy-five meters above river level and a water surface of 1,600 squared kilometers. It is expected that in 1996 Yacyretá will receive around U.S. \$200 million as a result of electricity generation; U.S. \$273 million in 1997, U.S. \$321 million in 1998, and U.S. \$336 million in 1999, when all twenty turbines will be in operation and functioning at full capacity. These figures provide for the dam in its current state, without making the investment necessary to raise the current upper water level. In the event of a go-ahead with the complementary works necessary to reach an upper level of eighty-three meters above river level, the generation capacity would be 20,000 GWH (gigawatts per hour) per year, resulting in an approximate value of U.S. \$600 million annual turnover.

The Government expects to bring in approximately U.S. \$1.8 billion from concession proceeds (of which U.S. \$100 million will go to Paraguay), with a minimum base of U.S. \$750 million in cash and the remainder (that will determine to whom the hydro-electric power station is granted) in foreign debt securities. (The opposition parties — UCR and Frepaso — insist that Yacyretá could never be worth less than U.S. \$5 billion. If the government bears the burden of the U.S. \$7.5 billion debt, the business might be highly attractive and secure for any investor).

It is the intention of the Government that the privatization be effected by means of a forty year concession, according to the following model:

- On the one hand, a marketing company for the electrici-

ty will be created, which shall also be in charge of raising the funds necessary to conclude the main works and the complementary ones (with an approximately U.S. \$635 million cost).

- On the other hand, an operating company will be created and shall administer the power station, control and manage the navigation lock, maintain and collect the dues for the use of the international road and carry out the works for which the marketing company is responsible.

Interested investors who have requested technical information from the Secretariat of Energy and Yacyretá's Binational Entity are: CMS ENERGY CORPORATION (Michigan); CHILGENER (Chile); HYDRO QUEBEC (Canada); ODEBRECHT and CAMARGO CORREA (Brazil), IMPREGILO (Italy), DUMEZ, ELECTRICITÉ DE FRANCE, SADE, and PESCARMONA.

Some obstacles remain which hinder a successful privatization of Yacyretá. The provincial opposition government's lack of definition of the marketing of the electricity to be generated, binational interests affected, large amounts of cash required to be invested, outstanding environmental problems, etc., will probably delay negotiations leading to the successful outcome of this privatization.

2. Nuclear Power Plants

By means of Decree 1540/94, the Federal Government declared the nuclear company Nucleoelectrica Argentina subject to privatization. This company owns and operates two existing nuclear power plants: Atucha I and Embalse Rio Tercero as well as the new power plant Atucha II (under construction).

The generating capacities of these plants are as follows:

Atucha I: 337 MW

Embalse: 600 MW

Atucha II: 745 MW (under construction)

The design of the Embalse power plant allows the production of Cobalt 60 radioisotopes during operation which are later used in medicine, agriculture, and industry. Argentina currently holds eight percent of the world market of these radioisotopes,

exporting them to the United States, France, Belgium, etc.

The nuclear power plants under privatization have the highest rate of availability of maximum power in the world, eighty-seven percent, second only to Finnish nuclear generators. They were ranked first in the world in 1990 — among 340 nuclear power stations — for good running. Last year's total invoicing was U.S. \$250 million with a U.S. \$90 million profit. Once Atucha II (whose budget for completion of construction is approximately U.S. \$800 million) is in operation, total annual invoicing will be approximately U.S. \$500 million.

The Government expects to collect approximately U.S. \$650 million for a package which would include the operation of the two existing power stations, maintenance, construction and the start-up of Atucha II and of new projects. Investigations carried out by the CNEA (National Commission for Atomic Energy) and technological application developed by that institution will remain in the hands of the State.

The method of privatization has not yet been established; therefore, at the current time the project is delayed.

ATOMIC ENERGY of Canada, ONTARIO HYDRO, Canadian ACL, SIEMENS, whose subsidiary KWU designed and built Atucha I, have all expressed an interest in this business.

3. Provincial Power Plants and Utilities

In order to comply with IMF agreements and to prevent fiscal shortfalls, the federal government has urged Provincial authorities to speed up the privatizations still pending.

The largest energy producer and distributor company owned by a province is ESEBA, which belongs to the province of Buenos Aires. Taking into account political and economic goals, the province of Buenos Aires has decided upon the privatization of this company, which has been strongly opposed even by members of the provincial government.

The following figures show the size and capacity of the ESEBA company:

Direct customers:	7,000,000
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Customers through

207 cooperatives: 8,000,000

Annual income:

Generation: U.S. \$200,000,000

Transmission: U.S. \$60,000,000

Distribution: U.S. \$650,000,000

Transmission networks: 10,000 km.

Amount expected from

its privatization: U.S. \$1 billion

The government of the province of Buenos Aires would like to grant the management of the firm in concession, keeping for itself ten percent of the capital stock.

V. MINING INDUSTRY

A. *Environmental Regulation for Mining Activities*

On November, 24, 1995, Law #24,585 — amending the Mining Code — was published in the Official Gazette. The law introduces, through a complementary chapter to be part of the Mining Code, the obligation to protect the environment during mining activities. Among Law #24,585's highlights, the following can be mentioned:

- *Environmental Impact Assessment*: It is mandatory to submit, prior to the commencement of any mining activity, a report on environmental impact. The enforcement authority will evaluate the report and will pronounce in favor of approval by means of a statement of the project and its actual implementation.

The environmental impact statement will be updated at least bi-annually and it will be necessary to file a report detailing the results of the actions of environmental protection taken,

and also any new developments. For those activities, the commencement of which occurred prior to the enactment of the new law, the report of environmental impact must be filed within one year from the effective date of the law's entry into force (i.e., ninety days as from its publication in the Official Gazette).

- *Certificate of Environmental Quality*: Any person that carries out mining activities and meets the requirements of the law may request from the enforcement authority the issuance of a certificate of environmental quality.

- *Registers*: Law #24,585 creates two registers: a) a register of consultants and laboratories for the carrying out of monitoring and external auditing work; and b) a register of violations.

- *Liabilities*: Persons carrying out mining activities and all those under their authority, contractors, subcontractors, and proprietors of mining rights, will be jointly liable in respect to any environmental damage caused as a result of noncompliance with the law. Persons causing present or residual damage to the environment will be obligated to mitigate, recondition, restore, or repair such damage as appropriate. It is important to point out that in respect to those activities, the commencement of which occurred prior to the enactment of the law, the irreversibility and inevitable impacts already caused may under no circumstance affect the activities being carried out.

- *Penalties*: These include warnings, fines, suspensions of the benefit granted by the certificate of environmental quality of the products, repair of the environmental damage, temporary closure and disqualification from other mining activities.

The articles included in this Bulletin are necessarily of a general nature and cannot be regarded as legal advice. The Firm would be pleased to provide additional details upon request and to discuss the possible effect of these matters in specific situations. Should any of the issues included in this Bulletin be of interest to your readers, they should not hesitate to contact us.

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