

SPECIAL ASPECTS OF INSURANCE OF GAS PIPELINES AS CONSTRUCTION FACILITIES

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This article describes special aspects of insurance of gas pipelines as construction facilities. Construction of main gas pipelines is a complex, costly and long-term process. Construction thereof is conducted in different climate zones using expensive and hi-tech, sometimes even unique, equipment. Insurance helps protect investments in construction and covers sudden, unexpected losses. Insurance coverage for construction of gas pipelines is based on the “all risks” concept with general and special insurance exclusions and can be corrected by including specific terms and clauses. Considering the need to ensure an adequate reinsurance level, a number of insurance companies, when determining insurance coverage, use CAR (Contractors’ All Risks) or EAR (Erection All Risks) insurance terms, as well as a combination with or without additional types of insurance coverage. The author suggested insurance coverage models taking into account special aspects of gas pipelines construction and erection risk insurance by including specific terms and clauses in the insurance policy. In addition, the author specified requirements for insurance companies providing coverage for gas pipelines construction and erection risks based on the research he has conducted.

Keywords: energy law, contractual regulation in the energy sector, construction and erection risks insurance policy for main gas pipeline construction.

Construction of main gas pipelines is a complex, costly and long-term process. Construction is conducted in different climate zones using expensive and hi-tech, sometimes even unique, equipment.

The objective of the article is to suggest insurance coverage models considering specific aspects of gas pipelines construction and erection risks and define criteria an insurance company is to meet to provide coverage for gas pipelines construction and erection risks.

Insurance helps protect investments in construction and covers sudden, unexpected losses.

As aptly noted by V.V. Romanova, although Article 741, Clause 1, of the Civil Code of the Russian Federation (hereinafter referred to as the Russian Civil Code) states that the provision on construction site insurance is optional, construction and erection risks insurance is a common practice when entering into gas pipelines construction contracts. [1]

As per Article 741 of the Russian Civil Code, the contractors bear risks of accidental destruction of, or accidental damage to, a construction project until it is accepted by the customer, the contractors are also responsible for safe-keeping

of the property provided by the customer and the quality of the finished facility as defined by Articles 714 and 755 of the Russian Civil Code.

The customer has a stake in reliable protection of its property rights and timely completion of the construction project.

It is common practice for customers to take out an insurance policy for construction and erection risks for risk management themselves. This was also noted by S.V. Dedikov. [2] In this case, a policy is made for the benefit of the customer and/or contractors at all levels in respect of property and/or operations for destruction, loss of, or damage to which they are liable. Investors can also be beneficiaries under the contract. Third party liability insurance is made for the benefit of parties that may be harmed and are legally entitled to compensation of damages if the victim dies.

The insurance amount is based on the cost of construction and erection operations inclusive of value added tax (hereinafter referred to as VAT) according to the contractor's agreement or other documentary confirmations, and the cost of equipment inclusive of VAT. However, as a measure of cost saving by application of differentiated insurance rates, it makes sense to break out the costs of production facilities, equipment, and infrastructure (roads, bridges, warehouses, security systems, civil engineering buildings, including those built at the production site as separate sub-facilities). Additionally, a limit of third-party liability for fatal or non-fatal injury and/or damage to property of third parties, as well as for environmental harm caused by the work performed.

L.N. Klochenko [3] stated that insurance coverage for construction and erection is based on the "all risks" insurance coverage concept.

The insurance contract (policy) should include the following risks:

- Destruction, loss of, or damage to, the facility under construction/erection, including materials, building structures, equipment, and other property used or designed to perform operations up to the full contract price, including equipment, under "all risks" conditions, from the commencement of operations up to facility delivery under a certificate of acceptance of the constructed facility by the acceptance committee;

- Destruction, loss of, or damage to, the facility in operation due to errors and defects that occurred during construction and were found during operation within the warranty period;

- Incurring third party liability for fatal or non-fatal injury and/or damage to the property of third parties during work performance;

- Incurring liability for environmental harm occurring during work performance.

It should also be noted that insurance coverage for materials and equipment under a construction and erection risk policy is valid:

- During transportation of materials and equipment from the storage place to the construction site or on-site storage facility, from their receipt for transportation, including transfers and transshipments, up to delivery to the contractor at the place of construction/erection, including loading and unloading;

- During storage by the contractor at the on-site storage facility/construction site;

- During construction, erection, commissioning, and other operations at the construction site throughout the construction period up to commissioning.

At all other times, materials and equipment are not covered under a construction and erection risks insurance policy, and insurance coverage for these risks has to be provided under a separate property insurance policy.

Considering the need to ensure an adequate re-insurance level, a number of insurance companies, when determining insurance coverage, use CAR (Contractors' All Risks) or EAR (Erection All Risks) insurance terms, as well as a combination with or without additional types of insurance coverage.

For instance, the rules of construction and erection insurance of Joint-Stock Company Gas Industry Insurance Company (hereinafter referred to as the Rules) stipulate insurance policies under CAR and/or EAR conditions. [4]

According to the Rules, the interests insured include property interests of the policy holder related to the risk of loss, destruction of, damage to the insured property, as well as property interests of the policy holder (the person whose liability risks is insured) related to the risk of incurring liability for fatal or non-fatal injury or damage to the property of individuals, property of legal

entities, municipal institutions, constituent territories of the Russian Federation, or the Russian Federation, as well as environmental harm during work performance.

Considering specific features of construction of gas pipelines, the following special insurance conditions (CAR and/or EAR clauses) should be included in the insurance policy:

— **002 Coverage for Cross Liability.**

According to the third party liability insurance clause, the insurance policy covers liability of the specified persons.

— **004 Extended Maintenance Coverage.**

When the clause is used, insurance is valid throughout the warranty period of the commissioned facility.

— **006 Coverage of Charges for Overtime and Night Work, Work on Public Holidays, Express Delivery.**

According to this clause, in case of an insured event, insurance is extended to cover costs of overtime and night work, work on public holidays and express delivery.

— **116 Coverage for Insured Facilities Accepted or Put into Service**

When using this clause, the insurer covers damage to parts of the facilities accepted or put into service.

— **208 Warranty for Underground Cables and Pipes.**

When using this clause, insurance extends to cover civil third party liability for damage to existing underground cables, pipes or other underground facilities occurring during the works.

— **217 Special Conditions Concerning Open Trenches for Installing Pipelines, Cable Tunnels, and Cable Laying**

According to this clause, the insurer is to indemnify the insured in case of damage caused by storms, rains, inundations, floods, in particular, sand-up, silting, clogging, erosion, breakdown and surfacing of pipes, cable tunnels, and damage to fully or partially open trenches and/or facilities installed in them within the established maximum length of an open trench per insured event.

— **218 Coverage of Detection of Leakages during Pipe Laying.**

According to this clause, the insurer covers the costs of:

— detection of leakages after water pressure tests;

— excavation at an undamaged trench provided that no leakages need repairing.

— **219 Conditions Concerning Controlled Drilling of Crossings of Rivers, Railway Embankments, Streets, etc.**

When this clause is included, the insurer covers the damage caused during controlled drilling in places where pipelines cross water bodies, railroads, streets, etc.

— **220 Inland Transportation.**

When this clause is used, the insurer covers damage to the insured property that occurs:

— during transportation to the construction site (except for transportation by sea or air) within the specified territory;

— as a result of a collision, impact, flooding, earthquake, inundation, landslide, stone fall, soil subsidence, burglary, or fire.

— **Seventy-Two-Hour Clause.**

Destruction, loss of or damage to the property arising during any period of 72 consecutive hours caused by a natural disaster are deemed to constitute one insured event.

— **Professional Fees.**

If this clause is used, the insurance covers the cost of works and services performed by third-party professionals when repairing the damaged property.

— **Costs of Retesting.**

Retesting of the restored property is covered.

The list of clauses provided herein is not constant, insurance coverage for gas pipelines construction and erection risks can be adjusted on a case-by-case basis by excluding some of the clauses above or adding other clauses not covered by this article.

Insurance coverage for construction of gas pipelines is based on the “all risks” concept with general and special insurance exclusions and can be corrected by including specific terms and clauses.

Insurance of gas pipelines construction and erection risks should only be obtained from reliable insurance companies.

The author believes that, apart from the requirements of the law, an insurance company should meet the following criteria:

- Experience in business insurance of at least 5 years, including in the oil and gas industry;
- Fully paid authorized capital;
- Compliance with all good standing and financial solvency requirements imposed on insurance companies by the insurance laws;
- A top-rated insurer according to the Expert RA Rating Agency's rating (A++) ("Exceptionally high reliability", outlook "Stable") and/or the international financial strength ratings of such international rating

agencies as Standard and Poor's, A.M. Best, Fitch, Moody's, with a "Stable" outlook;

- No outstanding orders of an insurance oversight authority, the company should not be undergoing bankruptcy proceedings, liquidation or restructuring, its property should not be seized;

- An adequate risk reinsurance level;

- There should be no reported cases of improper performance of insurance payment obligations, violation of other contractual obligations, insurance-related violations by the insurance company over the past 2 years. ■

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