

Twelve years on: the new Gas Law

Since it was enacted in 1997, Brazil's Petroleum Law (Law 9,478) has generally been considered a major positive feature for the country's oil industry, and its ten-year anniversary was celebrated with various seminars, debates and other events. One of the issues raised in these discussions was the lack of provisions applicable to natural gas. Ironically, the Gas Law (Law 11,909 of 2009) has appeared just as the Petroleum Law faces its first serious "existentialist crisis," with proposals to alter the regulatory framework.

The new law regulates economic activities related to the treatment, processing, storage, liquefaction, regasification, import, export and commercialization of natural gas, and its transportation via pipelines.

The time interval between the enactment of the two laws is due to the fact that, twelve years ago, natural gas played a very small role in the country's energy market. In 1997, legislators did not see the need to create rules for the sector.

Demand for gas has since grown to significant levels, while major reserves of the fuel (both associated and non-associated) have been discovered in Brazil. Accordingly, the country's energy system needed to be reorganized, to meet forecasts for gas production and consumption, and to restructure the infrastructure used to transport it from producing to consuming centers. The Petroleum Law did not answer many of the specific questions raised for the gas sector, despite the framework of rules created by the National Petroleum Agency (ANP).

The Gas Law provides answers to these questions. Third party access, a recurring theme since the construction of the Bolivia-Brazil gas pipeline (Gasbol), finally has a firm legal foundation in addition to the ANP's regulations. Article 32 of the new law guarantees third parties' access to gas pipelines, after an exclusivity period, which is ten years for pipelines already authorized or in the process of obtaining environmental licenses, but not yet authorized by the ANP when the law was published. For future pipelines, the exclusivity period will be specified in the public bid documents. In terms of the sharing of gas pipeline infrastructure designed to transport natural gas production, the law does not guarantee third party access (Article 45). We believe, however, that access to this



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kind of infrastructure would provide for greater utilization of natural gas reserves, possibly increasing the feasibility of exploration and development projects in areas with little gas transport infrastructure.

Another important part of the new law relates to the interface between federal and state authorities, which is covered in Chapter VI. This allows contracts to be signed giving state distributors the right to build, maintain and operate gas pipelines to serve free consumers, self-producers or self-importers not currently served by the state distributor. This infrastructure will be incorporated into the state's property at the end of the concession period, through a declaration of public utility, with fair compensation. The state regulator, observing the principles of reasonableness and transparency, will be responsible for establishing charges for operating and maintaining this infrastructure.

The law also allows the federal government to delegate to the ANP the power to make declarations of public utility, in order to make compulsory purchases of areas required to build gas pipelines (Article 3, Section 4). This decentralization would speed up this process, as is already

seen in the case of electricity regulator ANEEL, which is able to exercise eminent domain over areas allocated for electricity generation, transmission or distribution facilities.

Article 4, Section 2, and Article 7 state that the Ministry of Mines and Energy may propose the construction of gas pipelines. The ministry is able to fund these projects using resources from the CIDE fuel tax and CDI electricity tax, or through public-private partnerships; the latter were instituted in Brazilian legislation by Law 11,079 of 2004, as a means of attracting investment in infrastructure projects.

The law also provides for the use of arbitration to settle disputes between parties to both gas sale and gas transportation contracts. This applies to companies owned or partially owned by the government, as well as private companies (Article 49). This provision is in line with the Superior Court of Justice's position concerning the possibility of government-owned companies submitting to arbitration.

In conclusion, the Gas Law is undoubtedly good news in these times of crisis, providing clarity and stability for investors who want to believe in the potential of Brazil's gas market. ■