Brazilian New Gas Regulatory Framework

The New Gas Law – Bill of Law No. 4,476/2020

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The Gas Regulatory Framework in Brazil
Gas Regulatory Framework
Overview of Gas Industry Institutional Structure

- Federal
  - Policy
  - Regulation
- State
  - Policy & Regulation

Presidency
- CNPE: National Energy Policy Council
- MME: Ministry of Mines and Energy
- Energy Research Company

National Agency of Petroleum, Natural Gas and Biofuels

States and States Regulatory Agencies
Gas Regulatory Framework

Overview

States must perform directly or through concession the local piped gas distribution services (Federal Constitution, art. 25, §2º)

- Different tariff and by-pass regulations among the states;
- Gas to Growth proposes harmonization of state’s regulation

Federal Legislation

Gas Law
(Law No. 11,909/2009) regulates the processing, storage, liquefaction, regasification and trade of natural gas.

Gas Decree
(Decree No. 7,382/2010) Regulate the Gas Law

Federal Regulation

ANP Resolutions
(governing construction and operation of terminals and pipeline, importation, trading, carrying, transportation tariff, etc)

MME Ordinance
(granting authorization for gas importation)

States’ Regulation

- Bill of Law No. 6,407/2013, as amended by Bill of Law No. 6,102/2016: Incorporates changes discussed under “Gas to Grow” Initiative
## Gas Regulatory Framework

### Evolution of Gas Regulatory Framework

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1953</td>
<td>Monopoly of the Federal Government, carried out by Petrobras (NOC controlled by the Government)</td>
</tr>
<tr>
<td>1997</td>
<td>Petroleum Law terminates Petrobras’ monopoly by law, but Petrobras keeps its dominant position in fact</td>
</tr>
<tr>
<td>2001</td>
<td>Conclusion of fuel prices liberalisation and opening of fuel market</td>
</tr>
<tr>
<td>2009</td>
<td>Enactment of the Gas Law – first reform specifically targeting the gas Market focusing on transportation</td>
</tr>
<tr>
<td>2013</td>
<td>Bill of Law No. 6,407/2013 proposed aiming at promote the industry of Gas in Brazil</td>
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<tr>
<td>2016</td>
<td>Gas to Grow Initiative created to guide the regulatory framework reform and establish the basis for an open and competitive gas market</td>
</tr>
<tr>
<td>2019</td>
<td>Gas New Market Initiative proposed to implement and monitor the measures for opening the gas market in Brazil</td>
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</tbody>
</table>

**Creation of anp**

[Mayer Brown Logo]
Gas Regulatory Framework

New Gas Regulatory Framework: Entities Involved

CNPE

CNPE Resolution No. 16/2019 – established guidelines and improvements of energy policies aiming at promote the competition in the natural gas industry

Committee to Promote the Competition in the Natural Gas Market

- **anp**
  - Obtainment of suggestions and information on how to promote the competition and unbundling in the gas industry, and to increase the gas offer in the market. Prepare Technical Note to promote the competition in the natural gas market

- **epe**
  - Studies on infrastructure investments to promote the offer of pre-salt gas in the Brazilian market, including gas pipelines and LNG terminals projects (under development and future ones)

- **CADE**
  - Studies, technical notes and Agreements with Petrobras (“TCCs”) establishing divestments commitments in midstream and downstream to promote the unbundling of the natural gas market

- **MINISTÉRIO DE MINAS E ENERGIA**
  - Assessment of market standards and analysis for creation of proposals to increase the competition in the sector. Analysis of tax improvements
**Gas to Grow Initiative: Transition to a Competitive Market**

**Purpose:** Set propositions for a new legal framework for the Gas Market in Brazil to encourage private investments.

**Product:** Bill of Law to amend the Gas Law currently under discussion in Congress.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Today</th>
<th>Gas to Grow</th>
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</thead>
<tbody>
<tr>
<td>Processing, Offloading, Regasification and Liquefaction</td>
<td>No open access</td>
<td>Negotiated open access</td>
</tr>
<tr>
<td></td>
<td>State tax (ICMS) inefficiencies for LNG/gas exchanges among terminal users</td>
<td>Symbolic exchanges and monthly accounting</td>
</tr>
<tr>
<td>Transportation</td>
<td>Point-to-point model</td>
<td>Entry-exit model</td>
</tr>
<tr>
<td></td>
<td>No independent network operator</td>
<td>Independent network operator</td>
</tr>
<tr>
<td></td>
<td>State tax (ICMS) based on point-to-point model (physical flow)</td>
<td>State tax (ICMS) based on entry-exit model (contractual flow)</td>
</tr>
<tr>
<td>Distribution</td>
<td>Uneven State laws for by-pass of consumers</td>
<td>Federal guidelines for development of a free market</td>
</tr>
<tr>
<td>Marketing</td>
<td>No organized markets</td>
<td>Organized markets</td>
</tr>
</tbody>
</table>
Gas Regulatory Framework

Previous Scenario: Verticalized Monopoly Structure

- **E&P**: 77% of Production and 100% of supply
- **Offloading**: Almost exclusive operation of routes
- **Processing**: 99% of processing capacity
- **Transportation**: 100% of transportation capacity as shipper (TBG ongoing public call)
- **Distribution**: Equity in 20 of the 27 local gas distribution companies
- **Consumption**: 45% of thermoelectric power plants

Source: Nota Conjunta do Comitê de Promoção da Concorrência no Mercado de Gás Natural no Brasil de 8 de julho de 2019
Gas Regulatory Framework

New Gas Market Initiative: Transition to a Competitive Market

Promotion of Competition
Integration of Gas, Power and Industry
Adequacy of Federal and State Laws and Regulations
Solution of Tax Issues of former regime

E&P
Several Producers

Offloading
Third parties access and new routes

Processing
Third parties access and new projects

Transportation
Divestment of infrastructure and release of gas transportation capacity

Distribution
Divestment of equity in local gas distribution companies

Consumption
Diversification, free market and new projects

Source: Nota Conjunta do Comitê de Promoção da Concorrência no Mercado de Gás Natural no Brasil de 8 de julho de 2019
The New Gas Law – Bill of Law No. 4,476/2020
The New Gas Law – Bill of Law No. 4,476/2020

**Highlights**

**Authorization for Gas Transportation and Storage**

Implementation of the authorization regime for gas transportation and storage, preserving the authorizations current in force to promote the investment and development of new facilities.

**Entry-Exit Transportation Model**

Replacement of the “point-to-point” transportation model currently performed by Transporters by the entry-exit model, based on the transportation network’s gas injection and withdrawal capacities.

**Unbundling/Promotion of Competition**

Promotion of the gas release and limitation of self-dealing to create a competitive scenario with multiple players, reducing the concentration of supply, and, consequentially, increasing the offer, the demand, and reducing the price.

**Third Party Access to Essential Facilities**

Granting of non-discriminatory and isonomic access of Third Parties to natural gas essential facilities (offloading pipelines, processing and LNG terminals) to optimize the use capacity of such facilities.
1. Authorization Regime for Gas Transportation Services

Current Gas Law: The gas transportation services shall be exercised through concession regime, subject to a previous bid process; or authorization.

In practice in Brazil, only one bid process under concession regime took place in 2011 (Guapimirim-Comperj I), suspended by TCU in 2015 and cancelled later on by the ANP.

New Gas Law

Article 4 – The gas transportation activity shall be exercised through an authorization regime, which includes construction, expansion, operation and maintenance of facilities.

ANP will regulate and carry on public call process for granting authorization for construction or expansion of gas transportation pipelines.

Related Study

In 2019, the Brazilian Company of Energetic Research (EPE) has published the Indicative Plan of Gas Processing and Offloading (PIPE), which include potential expansion of gas transportation infrastructure in Brazil¹

2. Authorization for Gas Storage

Current Gas Law: The gas storage activities in hydrocarbons reservoirs and other geological structures shall be exercised through concession regime, subject to a previous bid process under competitive basis.

New Gas Law

Article 20 – The underground gas storage activity will be subject to ANP’s authorization

ANP will define the geological structures subject to gas storage authorization and regulate the granting process for its authorization

Since 2018, the Brazilian Company of Energetic Research (EPE) has been mapping gas storage opportunities in Brazil¹

Related Study

3. **Entry-Exit Regime for Contracting of Gas Transportation Capacity**

Currently, the Shippers have to contract the gas transportation capacity of each “piece” of the gas pipeline infrastructure, considering the physical flow of the molecule within the transportation system, “congesting” the transportation capacity.

**New Gas Law**

Article 14, §1st – The gas transportation services will be offered within the contracting regime of entry/exit, which might be contracted independently one from another.

State tax (ICMS) to be based on the contractual flow, differently from the current physical flow of gas.

SINIEF Adjustment No. 03/2018, as amended by Adjustment 17/2019.
3. **Entry-Exit Regime for Contracting of Gas Transportation Capacity**

**New Gas Law**

Article 3, item III – Capacity Market Area: Delimitation of the Gas Transportation System in which the shipper may contract access to gas transportation capacity in the entry/exit points through standard gas transportation services.

3. **Entry-Exit Regime for Contracting of Gas Transportation Capacity**

Different players negotiating gas sales and purchases, creating a gas market price based on competition.
4. **Creation of Manager of Capacity Market Area**

**New Gas Law**

Article 3, item XXVII – Manager of Capacity Market Area: Agent regulated and supervised by ANP, responsible for the coordination of transporters’ operation within a given capacity market area.

Article 15 – Duties of the Manager of Capacity Market Area:

- Publish, transparently, information related to capacities and transportation fees related to relevant transportation services;
- Coordinate maintenance plans of facilities composing the market area;
- Submit, for ANP approval, a plan for the coordinated development of the gas transportation system;
- Submit, for ANP approval, the system codes to be jointly created by transporters and shippers, as well as contingency plan;
- Coordinate the jointly and clear performance of services by transporters.
4. **Creation of Manager of Capacity Market Area**

**New Gas Law**

Under the coordination of the joint and clear performance of services by transporters, the Manager of Capacity Market Area shall:

- Offer, to potential shippers, standard gas transportation services in the Capacity Market Area, in a transparent and non-discriminatory manner.
- Provide gas transportation services in Capacity Market Areas in an efficient and transparent manner, observing the common network codes.
- Calculate and allocate gas transportation capacity in entry and exit points of Capacity Market Area, as per ANP’s relevant regulation.
- Prepare the plan for the coordinated development of the gas transportation system, as determined by ANP.
- Execute the contingency Plan established in the article 34 of the Gas Law.
- Promote the balancing of the Capacity Market Areas to ensure the integrity of the gas transportation system.
- Provide the relevant information required by the users.
5. **Unbundling**

Current Gas Law: No restriction on corporate participation in different activities in the gas chain.

**New Gas Law**

General Corporate Restrictions.  
Article 5, §1st – Transporters may not have (i) indirect or direct corporate control or (ii) affiliation relationship with companies or consortiums performing activities of exploration, development, production, importation, shipment and commercialization of natural gas.

A company in which the Controller directly or indirectly (through other controlled) holds rights which assure to it, in a permanent manner, preponderance in the decisions of the controlled and the power to elect the majority of the managers of the Controlled

Companies in which the investor has significant influence, which is assumed (i) if the investor holds 20% or more of the voting capital of the company; or (ii) if the investor holds or exercises the power to participate in the financial and operating policy decisions of the company, without controlling it.
5. **Unbundling**

**New Gas Law**

**General Corporate Restrictions.** Article 5, §1st – Transporters may not have (i) indirect or direct corporate control or (ii) affiliation relationship with companies or consortiums performing activities of exploration, development, production, importation, shipping and commercialization of natural gas.

Gas storage, gas distribution and gas processing activities (e.g. liquefaction units, LNG terminals) are not expressly included in the corporate restrictions.

The unbundling rules have the goal to prevent the self-dealing and the control of the entire gas industry by a single dominant agent, as Petrobras currently does.
5. **Unbundling**

**New Gas Law**

**General Corporate Restrictions. Article 5, §2nd** – The ones appointing (i) members of the management board; (ii) members of the executive board; or (iii) legal representatives of companies or consortiums performing activities of exploration, development, production, importation, shipping and commercialization, are not allowed to:

- Exercise its power to designate or vote to elect the members of the management board, of the executive board or legal representatives of the Transporter

OR

- Have access to sensitive competitive information of the referred activities
6. **Third Party Access to Gas Transportation Pipelines**

**Current Gas Law**: Currently, art. 48 of the Gas Decree provides for third party access to gas transportation pipelines, observing the exclusivity period, through contracting of gas transportation capacity or gas swap.

**New Gas Law**

- ANP will further regulate the access, establishing the conditions and criteria for the availability of transportation capacity and its contracting;

- Compulsory capacity assignment mechanisms;

- Possibility of a non-mandatory access period for new gas pipelines that do not integrate the gas transportation system.

- Third Party Access firstly through available capacity (GTA’s for “determined” and “extraordinary” gas transportation services) and only after its entire contracting, access to spare capacity (GTA for “interruptible” gas transportation services);

- Third Party Access must observe the exclusivity period of the initial shipper;

- Capacity Assignment (GTA for “determined” gas transportation services) must preserve the rights of the transporter;
6. **Third Party Access to Essential Facilities**

Current Gas Law: Operators or owners of gas offloading systems, gas processing facilities, and LNG terminals are not obliged to allow third party access.

**New Gas Law**

- Negotiated and non-discriminatory third party access;
- Preference of the owner of the installation to use the facilities itself;
- Owners and stakeholders responsible for drafting the code of conduct and practice for accessing the facilities;
- Remuneration and term of access will be the subject of a common agreement based on objective criteria, previously defined and disclosed;
- ANP's competence to decide disputes over access, under the respective common code, except for the possibility of the parties establishing another means of dispute resolution.
6. **Third Party Access to Essential Facilities**

Essential Facilities Doctrine: Provides third party access not only to gas transportation pipelines, but also to essential facilities (gas offloading systems, gas processing facilities and LNG terminals) to be negotiated in good faith and in a non-discriminatory manner.

- **Third Party Access to Gas Transportation Pipelines**
  - The access existing under the Gas Law, which will not change in the New Gas Law, is a *regulated* access (the conditions of access are previous established by the regulator).

- **Third Party Access to Gas Essential Facilities**
  - The access to essential facilities under the New Gas Law is a *negotiated* access (the conditions of access are supervised ex-post by the regulator).
7. **Gas Release and Promotion of Competition Provisions**

**New Gas Law**

Article 33 – The ANP will supervise the gas market functioning and adopt measures to promote efficiency and competitiveness, including to reduce the concentration of gas offer.

- The mandatory assignment of capacity of gas transportation, gas processing and gas offloading
- Gas sales programs so suppliers with high market participation are obliged to sell, through auctions, part of the gas volumes they hold
- Restrict the sale of natural gas among producers within production areas
8. **Gas Distribution**

**New Gas Law**

- **Clear separation of gas distribution and commercialization activities;**

- In general, the new provisions do not affect the state regulation of piped gas distribution services, preserving the distributors' prerogative to construct the gas distribution infrastructure to provide gas distribution services to free consumers, self-producers or self-importers;

- Generally establish that MME and ANP shall represent the Federal Government in the harmonization and improvement of states’ regulation, especially related to free consumers;

- Expressly provide for ANP’s competence to technically define (compression, metering, pressure reduction, receiving, delivery, or interconnection stations, etc.) gas transportation pipelines

At certain point, the Bill of Law had some language further regulating general aspects of gas distribution (e.g. definition of free consumer), but they were excluded later on, given the polemic discussions among industry players.
8. *Gas Distribution*

**New Gas Law**

- It does not change the status quo of the piped natural gas distribution segment in Brazil, but aims to create the basis for a market that allows new investors to enter the entire natural gas chain, encouraging competition in natural gas supply and sale;

- Each State will continue to define (i) the basis and incentives for attracting new investments in the gas market, which can occur through the modernization of its piped natural gas distribution concessions; (ii) whether or not to privatize the piped natural gas distribution companies; (iii) the creation and expansion of the free market for users in their territories; (iv) how to improve the regulation, including tariff methodologies; (v) the level of independency of their regulatory agencies; and (vi) tax incentives.
9. **Gas Commercialization**

Current Gas Law: generally establishes that commercialization of gas is subject to ANP’s authorization and shall be exercised through contracts registered at the ANP, that must contain dispute resolution provisions.

**New Gas Law**

- Expressly states that subject to ANP’s authorization, the commercialization of gas might be exercised by gas distribution companies, free consumers, producers, self-producers, importers, self-importers and traders;

- Establishes that commercialization of gas shall be made through standard agreements, as per ANP regulation, and that ANP will set forth the minimum content of gas commercialization agreements, as well as prevent clauses that might impair competition;

- Clarifies that commercialization of gas by gas distribution companies to captive consumers is not subject to ANP’s authorization.
10. **Gas Importation and Exportation**

**Current Gas Law:** The activities of importation and exportation of natural gas is subject to MME’s authorization.

**New Gas Law**

- Expressly states that ANP will be responsible to grant authorization for the activities of import and export of natural gas, reducing the bureaucracy of current process.

Currently, in practice, the ANP carries out the entire analysis and sends it to MME for final approval and publication of the authorization.
11. Transitional Rules

New Gas Law

- Preserves the current regimes for gas consumption in fertilizers production plants and petroleum refineries existing in March 5, 2009 (date of enactment of current Gas Law);

- Preserves the current regimes for gas pipelines supporting the supply of fertilizers production plants and petroleum refineries existing in March 5, 2009 (date of enactment of current Gas Law);

- Preserves the existing authorizations for gas transportation services by the enactment date of the New Gas Law;

- Preserves the transporters’ rights under existing GTAs by the enactment date of the New Gas Law, establishing that such GTAs must be adjusted within 5 years as of the publication of the new law, or within 3 years as of the publication of new law’s regulatory decree, in order to reflect the new rules for contracting of capacity, securing the revenue to be obtained by the Transporters under the relevant GTAs.
Legislative Process of the New Gas Law
Proposition of the Bill of Law No. 6,407/2013 ("Gas Bill of Law") to promote the industry of natural gas in Brazil and amend the Gas Law

As the change of the Gas Market in Brazil became urgent, the political pressure resulted in the presentation by the Rappoteur of a new wording and a report to continue the legislative process

A new report on the Gas bill of Law was presented in the Minas and Energy Committee ("CME") containing a new text proposal

The House of Representatives plenary approved the Gas Bill of Law

If approved, the Bill of Law will be directly sent for House of Representatives plenary vote

The Federal Senate has received the Gas Bill of Law to appreciation and voting – renumbered as Bill of Law No. 4,476/2020

If approved, the Bill of Law will be directly sent for Federal Senate plenary vote

From 2013 to 2019, several changes occurred in the legislative process of the Gas Bill of Law such as change of rappoteur, of assessment committee, archiving of the bill, resumption of legislative process, modifications from Gas to Grow Initiative, etc.
Legislative Process of the New Gas Law

Current Status

Brazilian Legislative Branch at the Federal Level

National Congress

Composed by Federal Representatives directly elected by the Brazilian people based on the proportion of the votes of each political party

House of Representatives

Federal Senate

Special and Permanent Committees

Special and Permanent Committees

New Gas Law Bill was approved on September 1st, 2020 by the House of Representatives and is currently awaiting distribution to Committees of the Federal Senate

Composed by Senators directly elected by the Brazilian people based on the majority of the votes
Legislative Process of the New Gas Law
*Complete Process*

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**Gas Bill of Law Approval Process**

1. **Proposition**
   - Committee 1
   - Committee 2
   - Committee 3

2. **Assessment**
   - If causes financial impact: Assessment by the Financial and Tax Committee ("CFT")
   - If does not cause financial impact: Assessment by the Constitution, Justice and Citizenship Committee ("CCJC")

3. **Plenary Vote**
   - Subject to Plenary Vote

4. **House of Representatives**
   - If approved, goes to Senate
   - If approved without changes: Plenary

5. **Senate**
   - If approved, goes to Senate
   - If an Urgency Request is approved within the Federal Senate, the Bill of Law will be directly sent for the vote in plenary of Federal Senate.

6. **Federal Senate**
   - If approved without changes
   - If approved without veto: Law is published

7. **Brazilian Presidency**
   - Law is published

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**Renumbered to Bill of Law No. 4,476/2020**
Upcoming Gas Regulations
On September 29, 2020, ANP republished the Public Consultation No. 1/2020 to review ANP Ordinance No. 251/2000 about non-discriminatory access in water terminals.

On October 16, 2020, ANP has published the Public Consultation No. 18/2020 to obtain suggestions for the definition of independency and autonomy criteria for transporters, as well as the independency certification for such agents.

On September 14, 2020, ANP has published the Public Consultation No. 12/2020 to obtain suggestions for the creation of Good Regulatory Practices focused on the harmonization of federal and state regulation related to the gas distribution segment, aiming to promote the adoption of such practices by the Brazilian States.

New resolution on transfer of revenues among interconnected transporters.

Review of ANP Resolution No. 15/2014 on calculation of gas transportation fees.

Review of ANP Resolution No. 51/2013 on authorization for gas shipment.

Review of ANP Resolution No. 52/2011 on the authorization of gas commercialization and registry of GSAs.

Review of ANP Resolution No. 51/2013 on authorization for gas shipment.

Review of ANP Resolution No. 37/2013 on criteria for capacity expansion of gas transportation pipelines.


Review of ANP Resolution No. 16/2008 on natural gas specifications.
Upcoming Gas Regulation

ANP’s Regulatory Agenda

- Review of ANP Resolution No. 11/2016 on gas transportation access services, assignment of gas transportation capacity, gas swap, open season procedures.

- Regulation on dispute resolution mechanisms related to access to LNG terminals (conciliation and arbitration).

- Review of ANP Resolution No. 52/2015 on construction, expansion and operation authorization of LNG terminals.

- Regulation on the definition of Natural Gas Transportation System.

2022

2023
Thank you!