MAYER | BROWN

Brazilian New Gas Regulatory Framework

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

Overview of the Upcoming Changes

November 2020

MAYER | BROWN

Index

03 The Gas Regulatory Framework in Brazil

11 The New Gas Law – Bill of Law No. 4,476/2020 (*former Bill of Law No. 6,407/2013*)

32 Legislative Process of the New Gas Law

36 Upcoming Gas Regulations

The Gas Regulatory Framework in Brazil

Gas Regulatory Framework

Overview of Gas Industry Institutional Structure

Presidency

Federal

Policy

- **CNPE** – National Energy Policy Council
- **MME** – Ministry of Mines and Energy
- epe – Energy Research Company

Regulation

- anp – National Agency of Petroleum, Natural Gas and Biofuels

State

Policy & Regulation

- States and States Regulatory Agencies

MAYER | BROWN

Gas Regulatory Framework

Overview

Federal Legislation

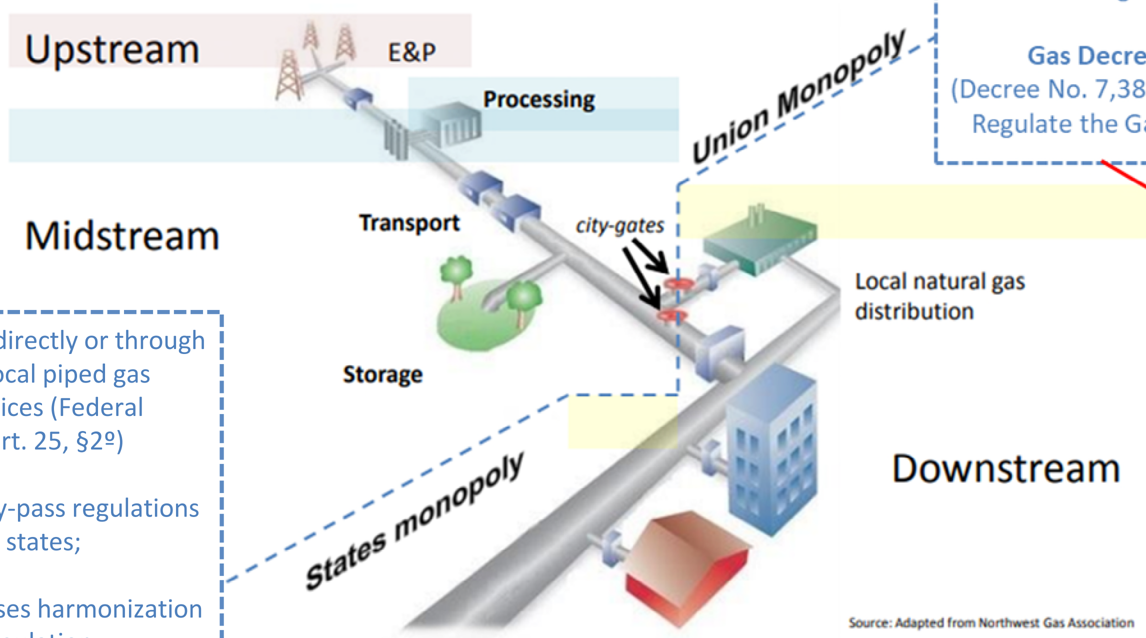
Gas Law
(Law No. 11,909/2009) regulates the processing, storage, liquefaction, regasification and trade of natural gas.

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)



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

States´ Regulation

- 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

Gas Regulatory Framework

Evolution of Gas Regulatory Framework

1953 – Monopoly of the Federal Government, carried out by Petrobras (NOC controlled by the Government)

Creation of anp

Agência Nacional do Petróleo, Gás Natural e Biocombustíveis

1997 – Petroleum Law terminates Petrobras' monopoly by law, but Petrobras keeps its dominant position in fact

2001 – Conclusion of fuel prices liberalisation and opening of fuel market

2009 – Enactment of the Gas Law – first reform specifically targeting the gas Market focusing on transportation

2013 – Bill of Law No. 6,407/2013 proposed aiming at promote the industry of Gas in Brazil

2016 – Gas to Grow Initiative created to guide the regulatory framework reform and establish the basis for an open and competitive gas market

2019 – Gas New Market Initiative proposed to implement and monitor the measures for opening the gas market in Brazil

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 (Agência Nacional do Petróleo, Gás Natural e Biocombustíveis)

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 (Conselho Administrativo de Defesa Econômica)

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 Regulatory Framework

Gas to Grow Initiative: Transition to a Competitive Market

GAS TO GROW

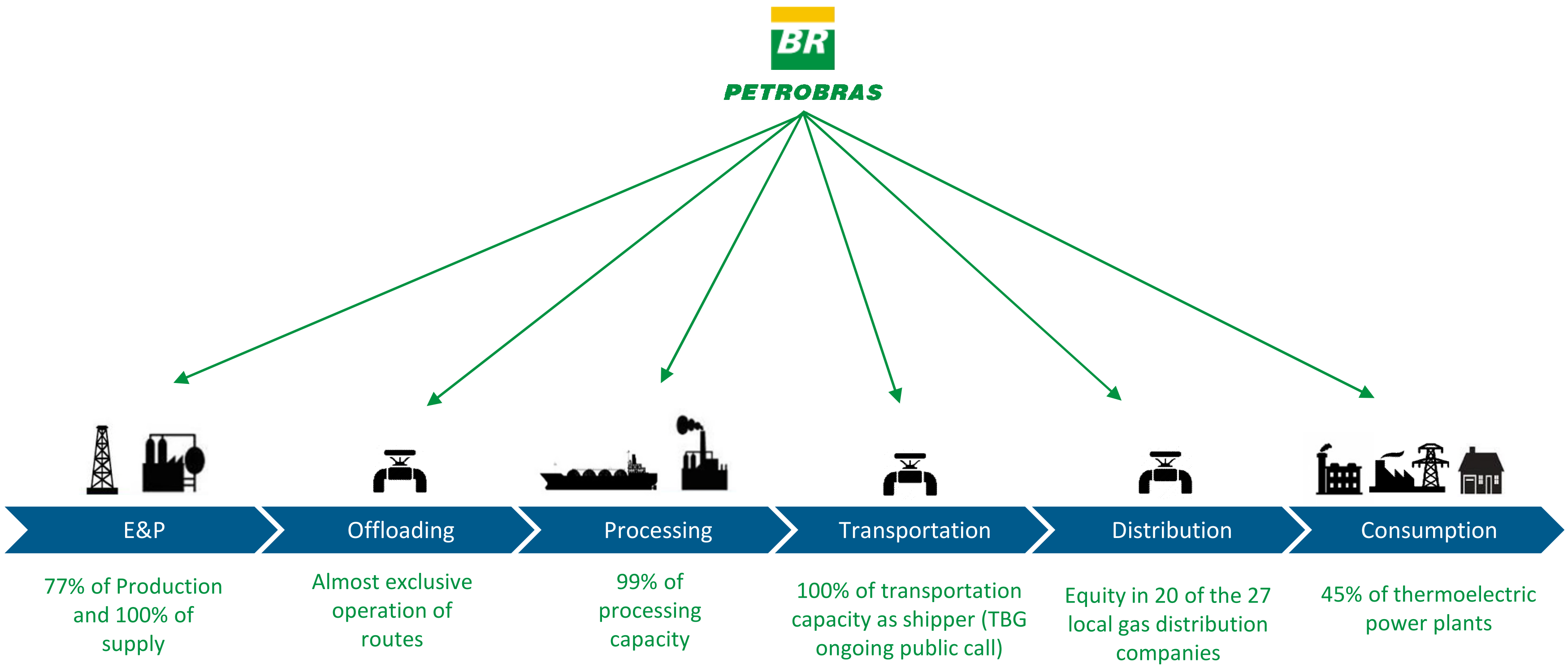
Purpose: Set propositions for a new legal framework for the Gas Market in Brazil to encourage private investments.

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

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

Gas Regulatory Framework

Previous Scenario: Verticalized Monopoly Structure



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

NOVO MERCADO DE GÁS

- 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	Offloading	Processing	Transportation	Distribution	Consumption
Several Producers	Third parties access and new routes	Third parties access and new projects	Divestment of infrastructure and release of gas transportation capacity	Divestment of equity in local gas distribution companies	Diversification, free market and new projects

MAYER | BROWN

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.

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

Main Specific Aspects

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

Only in case of gas pipelines related to international agreements

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.

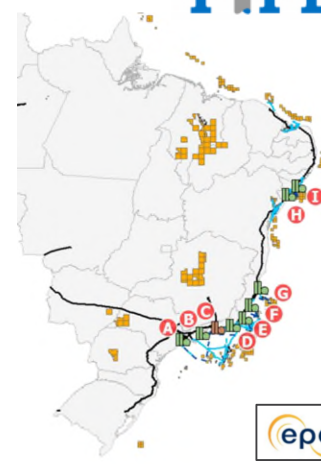
New Gas Law

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 Brazil[1]



[1] Study available at <https://https://www.epe.gov.br/sites-pt/publicacoes-dados-abertos/publicacoesf>

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

Main Specific Aspects

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.

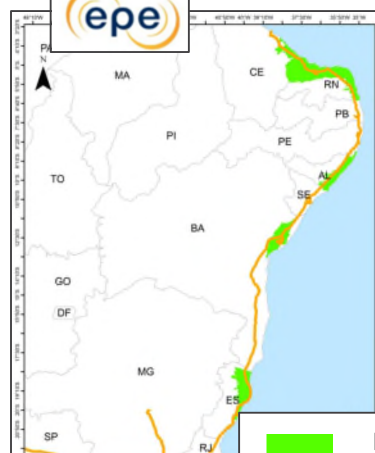
A bid process for gas storage never took place in Brazil

New Gas Law

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

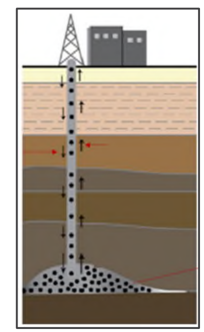
ANP will define the geological structures subject to gas storage authorization and regulate the granting process for its authorization

Related Study



Potential areas for gas storage

Since 2018, the Brazilian Company of Energetic Research (EPE) has been mapping gas storage opportunities in Brazil[1]



MAYER | BROWN

[1] Study available at <https://www.epe.gov.br/pt/publicacoes-dados-abertos/publicacoes/estocagem-subterranea-de-gas-natural-aspectos-gerais-regulatorios-estimativa-de-custos-e-simulacao>

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

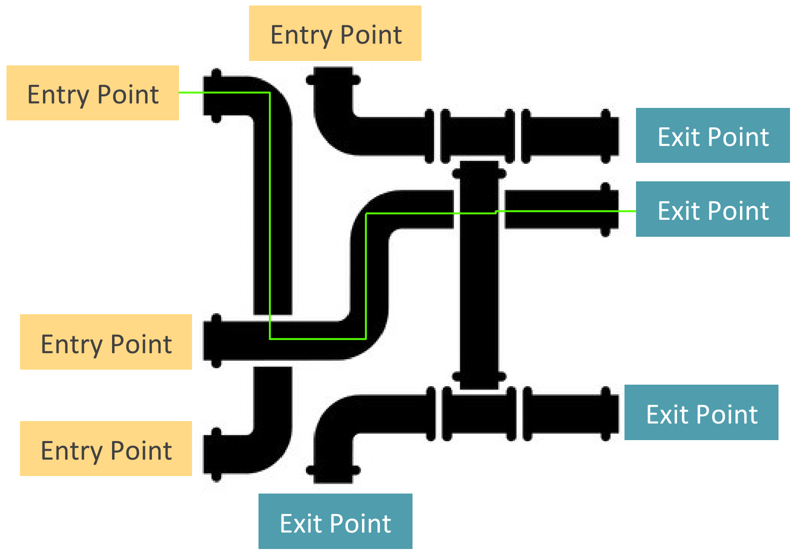
Main Specific Aspects

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.

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

Main Specific Aspects

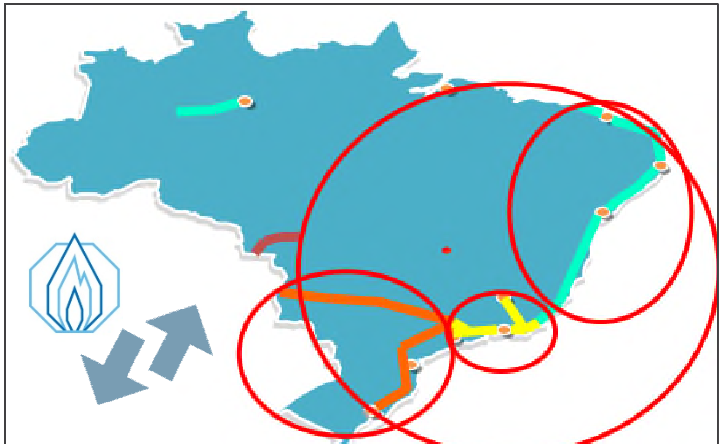
3. *Entry-Exit Regime for Contracting of Gas Transportation Capacity*

Creation of Market Areas[1]

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.

Market modeling based on European design, through entry/exit points, regardless of the physical gas flow in the relevant market areas



Source: ANP

Market Area: National or Local

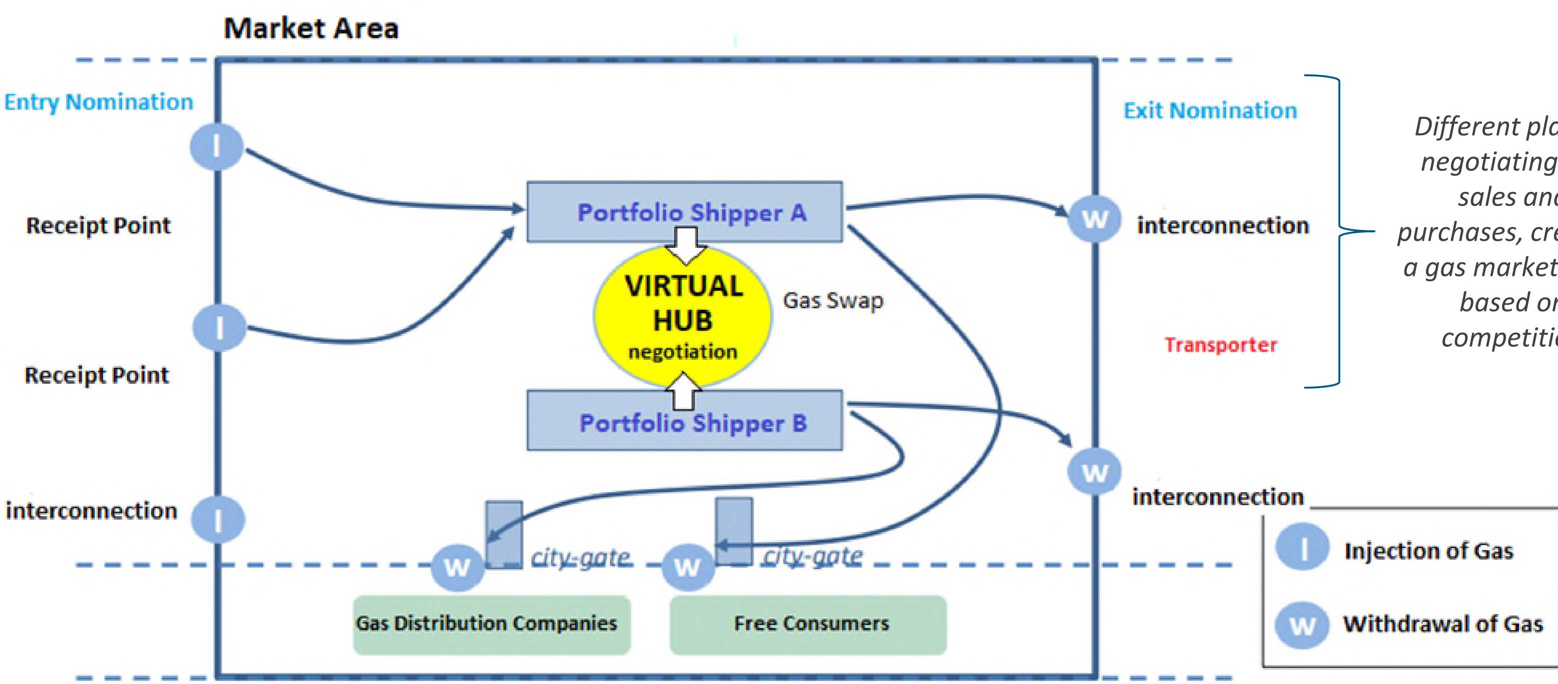
[1] Further information available at <http://www.anp.gov.br/arquivos/apresentacoes/anp-apresentacao-gn-F.pdf>

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

Main Specific Aspects

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

Creation of Virtual Hubs



Different players negotiating gas sales and purchases, creating a gas market price based on competition

MAYER | BROWN

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

Main Specific Aspects

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.

Entity similar to the National Operator of Electric System (ONS)

Operador Nacional do Sistema Elétrico

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.

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

Main Specific Aspects

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
- Promote the balancing of the Capacity Market Areas to ensure the integrity of the gas transportation system
- 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
- Provide the relevant information required by the users

MAYER | BROWN

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

Main Specific Aspects

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.

Controlled

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

Affiliated (*Coligada*)

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.

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

Main Specific Aspects

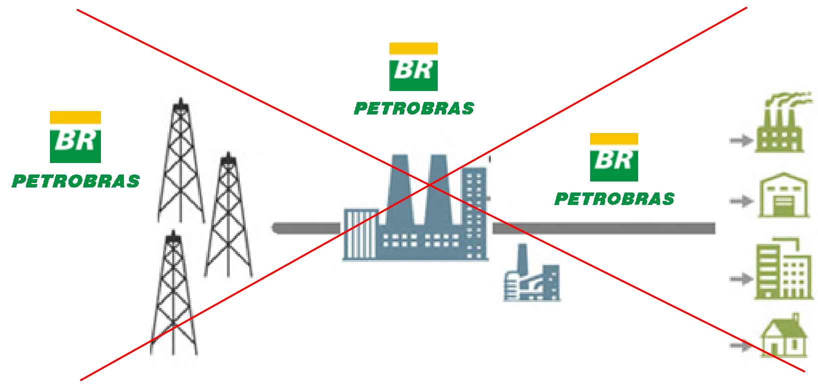
5. *Unbundling*

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:

OR

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

have access to sensitive competitive information of the referred activities

If they have access to sensitive competitive information of the referred activities

MAYER | BROWN

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;

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

Main Specific Aspects

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.

CNPE Resolution No. 16/2019

The transition to a competitive natural gas market shall:

- Establish clear rules for negotiated and non-discriminatory access to essential facilities

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.

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

Main Specific Aspects

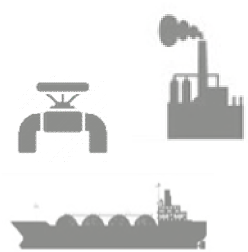
6. *Third Party Access to Essential Facilities*

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)*

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

Main Specific Aspects

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

anp
Agência Nacional do Petróleo, Gás Natural e Biocombustíveis

might determine

- 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

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

Main Specific Aspects

8. <u>Gas Distribution</u>

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.

Legislative strategy to reduce resistance and avoid vetoes, which could obstruct the approval of New Gas Law

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.

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

Main Specific Aspects

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 on the entire analysis and sends it to MME for final approval and publication of the authorization.

~~MINISTÉRIO DE MINAS E ENERGIA~~ → anp Agência Nacional do Petróleo, Gás Natural e Biocombustíveis

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

Legislative Process of the New Gas Law

Previous Path

House of Representatives (Initiator House)

Federal Senate (Reviewer House)

September, 2013 — 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

November, 2018 — As the change of the Gas Market in Brazil became urgent, the political pressure resulted in the presentation by the Rapporteur of a new wording and a report to continue the legislative process

September, 2019 — A new report on the Gas bill of Law was presented in the Minas and Energy Committee ("CME") containing a new text proposal

November, 2019 — Assessment by the Committee of Economic Development, Industry, Commerce and Services ("CDEICS")

July, 2020 — Urgency Request Approval

September 1st, 2020 — The House of Representatives plenary approved the Gas Bill of Law

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

Regular Assessment Process

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.

Urgency Request Submitted

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

It is a possible submission of Urgency Request within the Federal Senate

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

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

Special and Permanent Committees

Federal Senate

Special and Permanent Committees

Composed by Senators directly elected by the Brazilian people based on the majority of the votes

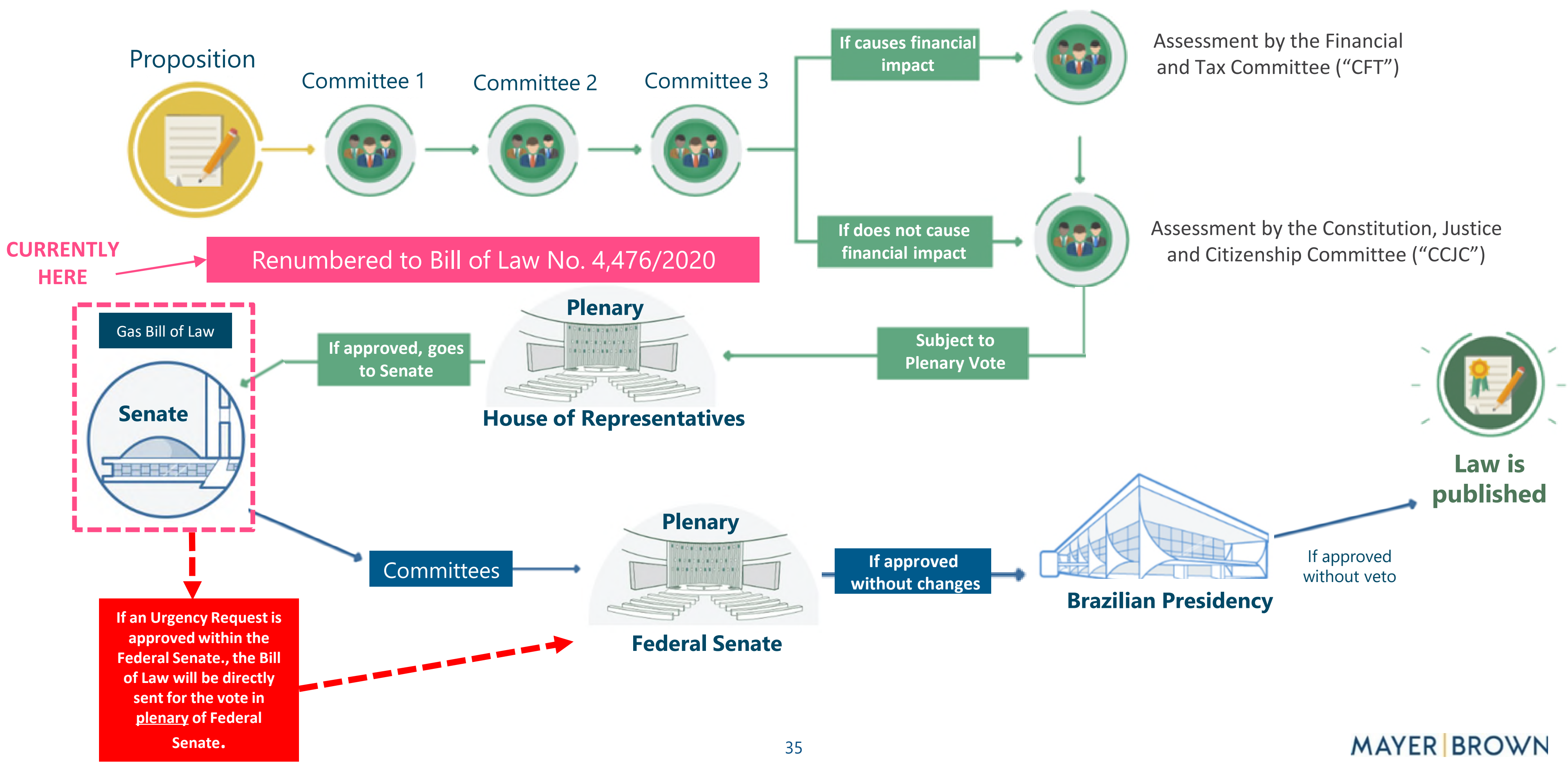
New Gas Law Bill was approved on September 1st, 2020 by the House of Representatives and is currently awaiting distribution to Committees of the Federal Senate

MAYER | BROWN

Legislative Process of the New Gas Law

Complete Process

Gas Bill of Law Approval Process



MAYER | BROWN

Upcoming Gas Regulations

Upcoming Gas Regulation

ANP's Regulatory Agenda

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

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

New resolution on Transportation Network Codes

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. 52/2011 on the authorization of gas commercialization and registry of GSAs

Review of ANP Ordinance No. 118/2000 on LNG and ANP Ordinance No. 41/2007 on CNG and GNL bulk distribution

2020

2021

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

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

New resolution on transfer of revenues among interconnected transporters

Upcoming Gas Regulation

ANP's Regulatory Agenda

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

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)

Regulation on the definition of Natural Gas Transportation System

2022

2023

Americas | Asia | Europe | Middle East

mayerbrown.com