

Natural Gas In Brazil

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Since 1997, the government of Brazil has been using a general hydrocarbons law to regulate all upstream, midstream and downstream activities, relating either to oil or natural gas. This sometimes resulted in situations that were difficult to address or projects that were impossible to implement due to the lack of legal authorization. After many years of anticipation, on March 4, 2009, the government finally published the Natural Gas Law (Law No. 11,909) to regulate the natural gas industry in Brazil. Even though the Natural Gas Law was published early in 2009, the necessary decree to implement and allow the enforceability of the law was not issued by the president of Brazil until December 2, 2010. The Decree (No. 7,382), among other stipulations, provides: (i) the rules for access to the gas transportation activities upon the grant of a concession regime or issuance of authorization; (ii) the creation of the Ten-Year Plan for Expansion of Gas Pipelines (Pemat), to be issued by the Ministry of Mines and Energy; (iii) the rules for third-party access to gas pipelines; (iv) the natural gas swap and (v) the rules applicable to the exclusivity period of gas pipelines, which shall be at most 10 years. Although the law and the decree are relatively recent, and it is not possible to anticipate how certain provisions will work in the “real

world,” this move by the government of Brazil was seen as very positive by the private sector, as it creates some competition for the construction and operation of pipelines, which was still under monopoly.

It is important to mention that the Decree enhances the enforceability of the Natural Gas Law by structuring the new regulatory framework. However, there are certain outstanding issues that shall be regulated later by the Brazilian Ministry of Mines and Energy and the National Petroleum Agency through the issuance of additional rules for the effective implementation of new regulations for the natural gas industry.

Even with the current uncertainties and regulatory gap, it is possible to say that the Natural Gas Law and the Decree create incentives for private investment in the Brazilian Natural Gas sector. This is especially in relation to the construction and operation of gas pipelines, gas storage and liquefied natural gas (LNG) facilities, once it provides for the (i) allocation of government funds to invest in some projects, (ii) creation of mechanisms to regulate competition and to facilitate financing and (iii) establishment of stronger competition rules regarding open access to existing pipelines.

Generally speaking, the Natural Gas Law represents an important development in the Brazilian oil and gas sector, as it allows private companies to submit proposals to the Brazilian Ministry of Mines and Energy to develop a new pipeline project or to enhance the capacity of any existing pipeline. Such proposals may be authorized by the Ministry directly or may require a public tender conducted by the Brazilian National Petroleum Agency, depending on the evaluation of the Ministry of Mines and Energy. In addition to the submission of proposals by private companies, the Natural Gas Law also authorizes the Ministry of Mines and Energy to propose new pipeline projects or capacity increases to existing pipelines through public tenders, ensuring certain guidance power over the market. Although the Natural Gas Law allows such initiatives by private companies, the law also directs the National Petroleum Agency to organize a public call for natural gas carriers to make capacity commitments before any new pipeline project or capacity increase is approved, as part of a commitment to ensure a reasonable demand for every existing pipeline. Additionally, the law authorizes the Ministry of Mines and Energy to grant exclusive rights to owners of new pipeline projects, during which open access rules will

not apply. Existing pipelines are entitled to a 10-year exclusivity period, beginning on the commercial operation date, after which open access is made available to third parties. LNG and processing facilities are not subject to open access obligations.

Finally, the Natural Gas Law allows the Ministry of Mines and Energy to use Public-Private Partnerships to encourage and promote the economic feasibility of any new pipeline project or capacity increase. It also allows self-production of natural gas, including the construction of pipelines by self-producers, but requires that self-producers assign the operation and maintenance of their pipelines to the local natural gas distributor. This requirement might be considered positive by companies already doing or interested in doing business in Brazil.

Even with the issuance of the Decree, there are several implementation details open for development through future rules and actions by the Ministry of Mines and Energy and the National Petroleum Agency. However the Natural Gas Law establishes a number of very important principles and would appear to bring more assurance to investors and more reliability to the natural gas markets.