

NEWSLETTER

Published New Gas Law aiming at the expansion of the national gas pipeline network

On April 9th, 2021, it was published Federal Law No. 14,134/2021, which provides for the activities of transportation of natural gas and of outlet, treatment, processing, underground storage, conditioning, liquefaction, regasification, and trade of natural gas ("New Gas Law").

The New Gas Law aims, especially, to expand the network of transportation gas pipelines, which today are mostly located in the coastal region. Most of the Federal Law No. 11,909/2009, which was, until then, the legal framework of natural gas in Brazil, was repealed. Among the main changes brought by the New Gas Law, the following stand out:

- Inclusion in the law of outlet, underground storage and conditioning activities;
- Changing the single system from "concession" of the transport service to a less bureaucratic "authorization";
- Flexibility of contractual and physical gas flows, with the contracting model for entry and exit (of the capacity for injection and withdrawal of gas);
- Creation of the natural gas market managing entity, responsible for managing transportation contracts, through a technical cooperation agreement with the Brazilian National Oil, Natural Gas and Biofuels Agency ("ANP"); and
- Substantial Increase of ANP's powers, which will play a central role in regulating the New Gas Law.

The New Gas Law also sought to prevent monopoly in transportation, through, among other provisions: (a) the guarantee of free access to transportation pipelines, with rules that oblige companies holding these pipelines and gas processing units to offer their capacity (gas release); and (b) the requirement of "deverticalization" of the activities of production, transportation and distribution of gas, preventing the participation, even indirectly, of a company in more than one of these activities. This measure will impact the companies that operate in the gas sector and are interested in investing concurrently in more than one of those activities.

Although the New Gas Law has sought to provide legal security to attract investment and develop the transportation gas pipeline network, there is a risk of conflicts because, if on the one hand, the Brazilian Federal Constitution determines that the States are responsible for legislating on services of distribution of piped gas; on the other hand, the New Gas Law grants ANP the power to define what is a transportation gas pipeline. There is, therefore, the possibility of dissent with the States as to what are piped gas distribution and transport pipelines, which may affect the piped gas distribution concessionaires.

It is also noteworthy that the transition rules provided by the New Gas Law guarantee until March 5th, 2009: (a) the maintenance of the current regimes and modality of operation of the pipelines that carried out the supply of natural gas in domestic or in imported oil refining facilities and fertilizer production units; and (b) the classifications of pipelines under implantation or in the process of environmental licensing. Similarly, the authorizations for the exercise of natural gas transportation activities issued by ANP until the date of publication of the New Gas Law were ratified.

Finally, as to the transportation service agreements, it was determined the term of up to 5 years; or up to 3 years, as from the edition of the New Gas Law; whichever expires last, for adaptation to reflect the new capacity contracting regimes.

The New Gas Law in force is, without doubt, a breakthrough and it has already become an important milestone for the competitiveness and development of the gas transportation market in Brazil, essential in a country that will have an abundance of gas associated with the pre-salt oil reserves.

It will be up to the efficiency of ANP in regulating, as well as the ability to settle conflicts, so that the new legal framework for gas meets the purpose of expanding and internalizing the national network of pipelines.

Our Regulatory and Energy team is at your disposal for further clarifications.

Sincerely,

Regulatory and Energy team
CTA – Catão, Tocantins & Pacheco Advogados.

Associado à **ECIJA**