

NATURAL GAS LEGAL  
FRAMEWORK IN BRAZIL

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## PRESENTATION

The present book showed the ability to bring together a single work of scientific articles from the best minds of the Institute of Environment and Energy of the University of São Paulo to analyze the legal, regulatory, and technical architecture of the natural gas exploration chain in Brazil. The theme is current and relevant, considering that global conflicts are relevant to the energy issue and access to means of energy generation.

Also, with the change of the Brazilian regulatory framework for the gas market, to promote its deconcentration and facilitate the entry of new entrants, knowledge of the current rules is of paramount importance for scholars on the subject. According to many scholars, the deconcentration of the market will result in increased competitiveness and investment by the private sector in the gas sector, resulting in a reduction in fuel prices. The reduction of Petrobras' presence in the Brazilian market is seen as an obstacle to investment in the internalization of the gas pipeline network in Brazilian territory, which is necessary for expanding access to fuel in the country.

The book is organized into eight chapters. Chapter 1 seeks to describe and analyze the evolution of the Gas to Grow Initiative, culminating in the enactment of Law n. 14,134 of 2021, which deals with the new regulatory framework for the sector. Chapter 2 analyzes the foundations that gave rise to institutional and legal improvements for developing the Brazilian gas market. Chapter 3 makes a historical and analytical analysis of the changes present in the regulation of American and Brazilian industries in the last decade. Chapter 4 aims to study the effects of the natural gas distribution and transport model within the limits of state action.

Chapter 5, on the other hand, seeks to describe and compare the main aspects of regulating the distribution and commercialization of natural gas, pointing out similarities between the models adopted by the United States, the European Union, and Argentina. Chapter 6 compared electric power and piped natural gas by focusing on the trade segment. Chapter 7

brings an overview of general aspects regarding environmental licensing for natural gas exploration and production, introducing controversial matters that have emerged in the last years due to the Brazilian regulation model and advancements in understanding the man/nature relationship.

Finally, Chapter 8 analyzes the legal viewpoints and the current relevance of non-conventional gas exploration in Brazil.

The search for new solutions for accessing energy in more sustainable ways and less impact on the environment must be the objective of all participants in the global energy market. According to the Intergovernmental Panel on Climate Change – IPCC, a United Nations organization, emissions related to burning fossil fuels in energy generation are the leading cause of global warming and the climate crisis. Thus, natural gas presents itself as a transition fuel for cleaner energy generation sources.

A result of the scenario presented in this Book ‘Natural Gas Legal Framework in Brazil’ contributes to more in-depth and scarce knowledge about natural gas in the Brazilian regulatory environment, helping and promoting the debate on the issue with the scope of improving regulatory models in force in the country.

**Hirdan Katarina de Medeiros Costa**

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# Brazilian Natural Gas Market I: History of Gas to Grow Initiative

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*Eduardo Guedes Pereira*

**Abstract:** The aim of this chapter is to describe and to analyze the evolution of Gas to Grow Initiative into the New gas law (Law n<sup>o</sup> 14.134, in April 8th of 2021). In order to do so, the content of each one of the reports presented by the Ministry of Mines and Energy were analyzed during Public Hearing dated back to late 2016. Results of the analysis carried out in this chapter have shown that the regulatory propositions by this initiative bring crucial advancements that are on the hands of the future agenda of the government and of the dynamics of the gas market itself, which remains quite linked to one single supply agent.

**Keywords:** Oil Law and Gas Law, Brazilian gas industry, comparative analysis, regulatory background, Gas to Grow Initiative.

## 1. INTRODUCTION

The oil exploration activity was launched as monopoly of the federal government based on Law n. 2.004/53, which only excluded the distribution activity (downstream), but it was made constitutional in the 1967 Federal Constitution, given the changes issued through Constitutional Amendment (CE) n. 01/69. There was no expressed information about natural gas, but it was seen as implicitly covered by the constitutional standard. However, such a standardization was only expressed in the 1988 Federal Constitution,

which mentions the activities linked to the natural gas chain<sup>1</sup>.

Back in 1995 and 1998, the political-economic guideline was changed and four important standards were issued. They changed the natural gas profile in Brazil: (i) Constitutional Amendment n. 5 (accountable for the concession of the gas utility); (ii) Constitutional Amendment n. 9 (accountable for removing the constitutional barrier to the concession to the private sector); (iii) creation of the National Energy Policy (accountable for creating the bases of the oil industry legal framework); (iv) the Executive Order decree n. 2.455 (accountable for ANP structuring).

Constitutional Amendment n. 5 changed paragraph 2 of article 25 in order to give to the Federative States the right of concede gas utility services to the private sector instead of only the direct exploration, based on law – but the edition of Provisory Measures to regulate this law was forbidden. Before that, such an exploration would be on the hands of state companies that would have the exclusivity of distribution rights.

Constitutional Amendment n. 9 changed article 177 in order to make it possible the search and mining of mineral resources to companies based on the Brazilian laws that have their managerial offices located in Brazil – it was only authorized to Brazilian companies. Yet, it created the legal need to ensure oil derivatives' supply countrywide, as well as the hiring and structural conditions, and competences of the organ regulating the Federal Monopoly.

Law n. 9.478/1997, known as Oil Law, addressed the national energy policy, activities related to oil monopoly, and created the National Energy Policy Council and the National Oil, Natural Gas and Biofuel Agency (ANP). The standard sets the energy policy aims as the increase in natural gas using through economic bases. It was done to achieve free competition and to attract investments in energy production and in broadening Brazil's competition in the international market.

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<sup>1</sup> LANZILLO, Anderson Souza S.; MOREIRA, Aron Abrahão; FABRICIO, André Rodrigues. *A Lei 11.909/11 e Políticas Extrafiscais Na Indústria Do Gás Natural*. Revista Direito Energia, v. 4, nº 2, 2014.

As an evolution to gas sector, the Gas Law – Law n. 11.909/2009 – was an attempt to boost the gas transport market by a specific legislation. Such a law sets standards for the exploration of natural gas transport economic activities through pipelines, and import or export, as well as for the exploration of its treatment, processing, storage, liquefaction, regasification and trade activities. As another attempt in the Evolution of this field, the governmental program named “Gas to Grow” was launched in order to boost the gas market development. It aims at identifying bottlenecks, challenges and opportunities for the effective introduction of natural gas in state planning and to promote the emergence of a diversified and competitive market.

As a result, it was published the Law n 14.134, in April 8th of 2021 to reduce prices in the sector and attract more investor to the country, as reduce prices to final consumers. Some changes can be considered important to the sector such as the regime to contract (authorization regime); new tariff rule; third party access to pipeline, natural gas treatment and processing units and Liquefied Natural Gas (LNG) terminals, among others.

It is possible observing that, nowadays, the Brazilian natural gas chain is regulated by two different jurisdictions, namely: the federal and the state ones. The Federal Government accounts for all policies and regulations concerning the upstream<sup>2</sup> and midstream<sup>3</sup> activities, whereas state governments inspect the downstream<sup>4</sup> activities and approve prices for the final consumer<sup>5</sup>.

At municipal level, the Constitution gives counties the competence of regulating local interests, which are limited to the county’s action in energy matters.

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<sup>2</sup> The world upstream corresponds to exploration and production activities (E&P), as well as to gas processing FGV ENERGIA. *Gás Natural*. Cadernos FGV Energia. Ano 1. N° 2. Nov, 2014.

<sup>3</sup> Midstream encompasses natural gas transport and storage activities. FGV ENERGIA. *Gás Natural*. Cadernos FGV Energia. Ano 1. N° 2. Nov, 2014.

<sup>4</sup> Downstream covers the activities regarding the distribution and sales for final natural gas consumers. FGV ENERGIA. *Gás Natural*. Cadernos FGV Energia. Ano 1. N° 2. Nov, 2014.

<sup>5</sup> GOMES, I. *Brazil: Country of the future or has its time come for natural gas?* The Oxford Institute for Energy Studies. University of Oxford. OIES PAPER: NG 88. 2014.

The aim of the present article was to describe and to analyse the Gas to Grow Initiative and the changes viewed by the gas sector.

## 1. THE GAS TO GROW INITIATIVE

The “Gas to Grow” initiative was launched by a group led by the Ministry of Mines and Energy, with support by ANP, EPE and the participation of class associations representing different economic agents. It was launched to “suggest measures to enhance the normative references for the natural gas sector, having in mind the Petrobras’ reduced participation in the sector”<sup>6</sup> and the expectation about the entrance of new agents in it. In order to support to the goals of the Gas Law and according to the technical report issued by the Gas to Grow initiative, the idea is to launch new bases for the effective rise of a natural gas market counting on different agents, liquidity, competitiveness, access to information and good practices in order to help the country’s growth<sup>7</sup>. In order to achieve such a goal, there is the estimate for the action in ten work forces whose subjects are the object of discussions with agents from the public and private sectors who represent several segments in the natural gas industry and over whom it is expected to build regulatory innovations to help the natural gas industry and the country.

### 1.1 NATURAL GAS TRADE

The Gas to Grow initiative advocates for the adoption of measures to increase competition in natural gas offer and to limit market concentration in order to allow the existence of multiple sellers. The initiative also aims at including measures to encourage short-term and secondary markets to the gas molecule, and capacity contracts to work as mechanisms to mitigate risks of natural gas physical entrance. Both producers and consumers can require these mechanisms in order to make sure that contracts will be followed.

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<sup>6</sup> MINISTÉRIO DE MINAS E ENERGIA (MME). *Gás para Crescer*- technical report available at: <http://www.mme.gov.br>. Accessed on Nov 26, 2021.

<sup>7</sup> *Ibidem*.

Nowadays, Petrobras acquire gas from all private producers in the Brazilian integrated system before the transport stage given the lack of mandatory access to natural gas production flow pipelines and natural gas processing plants (NGPP). The effective development of natural gas trade in Brazil, along with the mandatory access, are prerequisites for the solution of the self-dealing issue imposed by the current structure<sup>8</sup>.

The Ministry of Mines and Energy suggests the establishment of a transition policy. Sub-committee 07 – Natural Gas Use by the Federal Government – presented the following guidelines: natural gas use by the Federal Government, mainly to provide to the national market; trading through short-term auctions, preferably; trade flexibilization in order to meet different share and production points.

Trade is seen as public policy for market development, so it must be implemented based on two stages, the transition policy and the long-term policy. The transition policy was approved by the National Energy Policy Council (CNPE) on December 14, 2016, and it is limited to Libra prospection and to the useful sites. The proposition concerns a transition time of 36 months to allow experience to be acquired before building the long-term model and the adoption of guidelines of general character based on the performance of different operational models.

Petrobras accounts for pointing out challenges for natural gas monetization in the aforementioned sub-committee, as well as the uncertainties about the production volume and allocation. When it comes to production, it addresses similarities with the oil industry, due to high geological risks. With respect to the demand side, it points out that natural gas matches the networks' industry, having high transportation costs, low liquidity in regional markets and the need of high investments in flow and transport infrastructure. Historically, the adopted solution lies on long-term contracts aimed at sharing the risks among users.

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<sup>8</sup> MINISTÉRIO DE MINAS E ENERGIA (MME). *Gás para Crescer*- technical report available at: <http://www.mme.gov.br>. Accessed on Nov 26, 2021.