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Energy: Oil & Gas 2023

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Brazil: Trends & Developments

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Trends and Developments

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Schmidt, Valois, Miranda, Ferreira & Agel (SVMFA) is the first law firm in Latin America fully dedicated to natural resources and related infrastructure, particularly energy. Since 2007, the firm has been involved in a wide range of diversified deals covering the whole oil & gas economic chain from the wellhead to the retail station. Such broad coverage also applies to gas & power, advising clients in power generation, transmission, distribution, and marketing activities. SVMFA has acted at the forefront of natural gas projects, navigating clients across regula-

tory changes in the transportation and storage sectors. The firm is following the worldwide energy transition closely, towards a cleaner energy matrix of non-fossil fuels. SVMFA's lawyers have worked on cross-border transactions involving Angola, Argentina, Australia, Bolivia, Canada, Chile, China, Colombia, France, Guinea-Bissau, India, Italy, Japan, Malaysia, Mozambique, Namibia, Nigeria, Norway, Portugal, Peru, Singapore, Spain, Sweden, Venezuela, the UK, and the US.

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financial institutions, and suppliers in oil & gas, M&A, private placements, offshore supply, pipeline construction, LNG projects, infrastructure, and tax-related matters. He represents international and domestic clients in international tenders promoted by the Petroleum Agency and Petrobras for the divestment of onshore and offshore blocks, as well as in complex bidding procedures for the charter of FPSOs, FSRUs, and FSOs. Recently, he has become directly involved in financing projects for renewable energy (wind and solar) and green hydrogen.



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Brazil's Energy Matrix: Oil and Gas in the Era of Renewables

The Brazilian energy matrix is diversified, even though the importance of oil and gas has been steadily growing in the country. Oil and gas currently represent 15.43% of energy usage – still relatively low when compared with hydropower, which provides 56.19% of total energy demand. In accordance with the Brazilian National Agency for Petroleum, Natural Gas, and Biofuels' (ANP) May 2023 Production Bulletin, Brazil produced 3.201 million barrels per day (MMbbl/d) of oil and 144,410 million m³ of gas per day, totalling 4.110 million barrels of oil equivalent per day (MMboe/d). According to the ANP's 2022 Annual Resources and Reserves Bulletin, the total proven reserves are estimated at 14,856 MMbbl of oil and approximately 406,324 million m³ of gas. Production in the pre-salt layer reached 2.510 MMbbl/d of oil and 109.16 million m³ per day of natural gas in May 2023, totalling 3.196 MMboe/d, which represented 77.8% of the total production in Brazil.

The Brazilian oil and gas industry has been fostered by the ramp-up of the oil and gas prices

caused by the ongoing war between Ukraine and Russia and the regular decisions of the Organisation of the Petroleum Exporting Countries (OPEC) members to cut their production.

Petrobras divestment plan

Until August 2022 Petrobras had divested a total of around USD57 billion in assets. These sales included:

- the totality of its participating interest in Vibra, a listed company in charge of Petrobras' retail business;
- the sale of RLAM refinery;
- the totality of Gaspetro, the Petrobras gas holding, with participating interest in several local distribution companies;
- the entire participating interest in *Nova Transportadora do Sudeste* – NTS, a pipeline company in charge of gas transportation in the south-east region of Brazil;
- the totality of its participating interest in BSBios, the country's largest biodiesel producer; and
- the totality of its participating interest in *Transportadora Associada de Gás* – TAG, a

gas pipeline company which primarily operates in the north and north-east of Brazil.

More recently, Petrobras concluded the divestment of other non-core upstream assets, such as *Norte Capixaba* and *Potiguar* clusters, and the REMAN refinery.

As a result of the October 2022 elections with the inauguration of President Lula, the National Council for Energy Policy (CNPE), in March 2023, revoked the CNPE Resolution No 9/2019 which provided the guidelines for Petrobras' divestment of refining assets. At the same time, the Mines and Energy Ministry required the suspension of all ongoing procedures for the sale of Petrobras' assets.

Due to such recent changes in government, Petrobras has opened a chapter in its strategic plan, for reinvestment in renewables, including offshore wind and green hydrogen projects. This is a major paradigm shift, given that, in previous years, Petrobras has primarily chosen to concentrate its investments in upstream opportunities located in the pre-salt.

ANP bidding rounds – permanent offer

The permanent offer consists of the continuous offer of fields and/or exploratory blocks returned to the ANP (or in the process of relinquishment). As of 2019, the ANP has held three cycles of permanent offer in the concession regime and one cycle in the production sharing regime.

The CNPE Resolution No 27/2021 determined the permanent offer as the preferred format for the offer of onshore and offshore areas for exploration and production of oil, natural gas, and other fluid hydrocarbons. Since then, blocks located in the pre-salt, strategic areas, or on the continental shelf beyond 200 nautical miles were

included in the permanent offer. Thus, after such Resolution, all offers of areas are to be made through the permanent offer format.

The permanent offer grants companies with the opportunity to bid for areas which are permanently on offer. Therefore, the interested companies do not have to wait for a “traditional” bidding round for the opportunity to bid for an area. The companies may even appoint the areas through a manifestation of interest, which they would like to have included by the ANP in the next permanent offer cycle. In addition, companies have as much time as they deem necessary to study the technical data of these areas before submitting a manifestation of interest, without the limited timeframe of a bidding round.

Due to its simpler format, the permanent offer has attracted several companies, including Petrobras, majors, and supermajors from the oil and gas market.

In April 2022, the “Third Permanent Offer Cycle – Concession” tender was held by the ANP. During this public bid, 59 exploratory blocks were acquired, with a total signature bonus of around USD90 million.

In December 2022, the ANP called for the “First Permanent Offer Cycle – Production Sharing”, with a total signature bonus of around USD174 million. Of the 11 exploratory blocks offered, the blocks acquired were:

- *Água Marinha* by a consortium formed by Petrobras (30%), Total (30%), Petronas (20%), and Qatar Energy (20%);
- *Norte de Brava* entirely by Petrobras;
- *Bumerangue* entirely by BP Energy; and
- *Sudoeste de Sagitário* by a consortium formed by Petrobras (60%) and Shell (40).

The ANP expects to call a new cycle of the permanent offer in the next few months.

The New Gas Law

In 2021 the New Gas Law (Law 14,134/21) was enacted to set the new landmark for the gas transportation activities in Brazil.

The New Gas Law's major changes include:

- the authorisation regime for the construction and operation of gas transportation pipelines;
- the storage in geological formations;
- third-party access to the LNG outflow, processing, and terminal facilities; and
- the gas market unbundling.

Authorisation regime

During the validity of the prior gas law, gas pipeline construction and operation were subject to the concession regime through a bidding procedure, which proved to be impractical and bureaucratic and did not encourage expanding the network. The authorisation regime for gas transportation activities brought by the new law aims at being straightforward, and foresees some steps to be taken for its final granting:

- open season to estimate gas demand to the new facility;
- public hearing for the maximum revenue permitted to the pipeline company and transportation tariffs;
- term of expression of interest by other shippers; and
- in case there is more than one interested shipper, a selective process to choose the most beneficial project based on technical and economic aspects.

Storage in geological formations

The New Gas Law also establishes that the authorisation regime should be applied to gas storage in geological formations. The goal is to foster investments in the storage activities, ensuring natural gas supply to the market.

Third-party access

Another improvement arising from the New Gas Law is the third-party access to production outflow pipelines, processing units, and LNG terminals through direct negotiation with their owners, based on general access practices and codes of conduct previously established. The ANP must regulate the preference of the owner of the facilities.

Unbundling

The New Gas Law imposes barriers to the gas market verticalisation, prohibiting direct or indirect corporate relationships, control, or coalition between pipeline companies and entities engaged in the exploration, development, production, importation, loading, and marketing of natural gas.

According to the law, professionals in charge of selecting the members of the board of directors, executive officers, or legal representatives of entities operating in the exploration, development, production, importation, loading, and marketing of natural gas must not have access to the pipeline company commercial sensitive information, as well as elect members of its board of directors and executive committee.

The ANP will monitor the natural gas market, adopting mechanisms to stimulate efficiency and competitiveness and reduce natural gas offer concentration, including:

- the decentralisation of supply and compulsory capacity release, production flow, and processing capacity;
- a natural gas sales programme whereby traders with a significant market share are required to sell, through auctions, part of the volumes held by them with a minimum initial price, quantity, and duration to be defined by the ANP; and
- restrictions on the sale of natural gas between producers in production areas, except in the case of technical or operational situations that may compromise oil production. To apply such measures, the ANP must previously consult with the Brazilian Antitrust Defense System (SBDC).

Regulation by the ANP

Since the enactment of the New Gas Law, the ANP has handed down two important Resolutions.

- Resolution ANP No 850/2021 regulates the activities of natural gas production, storage, commercialisation, and the provision of gas processing services (promotes the simplification of the gas processing activity).
- Resolution ANP No 881/2022 regulates the access to waterway terminals for the flow of oil, oil by-products, and natural gas. The access to LNG terminals is not subject to this Resolution.

Even with all the improvements brought forth by the New Gas Law, there are still relevant topics which need to be regulated by the ANP, such as:

- the negotiated and non-discriminatory third-party access to production pipelines, natural gas treatment or processing facilities, and LNG terminals;
- the definition of technical criteria for transportation gas pipelines;
- gas pipeline classification;
- storage activities and logistic operations for the movement of bulk LNG by alternative modes other than pipeline; and
- storage activities and logistic operations for the movement of compressed natural gas.

Finally, it is worth mentioning LNG opportunities. In accordance with the ANP's 2023 Statistical Yearbook, the size of the gas market in 2022 continued to grow, showing an increase of 3.1% when compared to 2021, totalling approximately 50.3 billion m³. Natural gas imports amounted to nearly nine billion m³, a decrease of 47.1% in comparison to 2021, of which 2.6 billion m³ corresponded to LNG imports.

Closing remarks

Based on the foregoing, we expect opportunities for new investments in 2023 and 2024 in oil and gas and renewables in the Brazilian market.

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