



Gas Regulation

in 36 jurisdictions worldwide

Contributing editors:

Florence Ninane, Alexandre Ancel and Jean-Yves Ollier

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Trinidad & Tobago

Donna-Marie Johnson

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Description of domestic sector

- 1 Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments and retail sales and usage.

Natural gas production and proven reserves

The twin island state of Trinidad and Tobago is formerly the fifth-largest and currently the seventh-largest exporter of liquefied natural gas (LNG) in the world, and up until 2009 was the single largest supplier of LNG to the United States, providing 60 per cent of all LNG imported into the country (source: Evolving Technologies and Enterprise Development Limited (eTeck)). eTeck is a special-purpose state enterprise responsible for developing the light industrial estates in Trinidad and Tobago by encouraging diversification of the country's non-energy and downstream production and export bases, exploring niche areas of investment for local and foreign companies as well as providing infrastructural support by development of eTeck parks throughout Trinidad and Tobago.

The country derives its supply of natural gas from domestic offshore fields located in territorial waters off the south-east and north coasts of Trinidad.

According to the Ryder Scott natural gas reserves audit 2009, Trinidad and Tobago's proven reserves of natural gas stood at 14.4 trillion cubic feet (tcf), a decline of about 0.97tcf from 2008. Moreover the total proven, probable and possible reserves have declined from 35.1tcf in 2002 to 28.1tcf in 2009. In 2010 natural gas production averaged 4,325 millions of standard cubic feet per day.

In 2010 natural gas utilisation by sector averaged as follows:

- LNG manufacturing, 57.9 per cent;
- power generation, 7.2 per cent;
- ammonia manufacture, 15.3 per cent;
- methanol manufacture, 14.1 per cent;
- refinery, 0.94 per cent;
- iron and steel manufacture, 2.64 per cent;
- Cement manufacture, 0.3 per cent;
- Urea manufacture, 0.22 per cent;
- Small consumers, 0.249 per cent; and
- Gas processing, 0.97 per cent (source: *MEEI Consolidated Monthly Bulletins 2010* volume 47 Nos. 1-11).

Production and storage of LNG

The country's only producer of LNG, Atlantic LNG (see question 22), currently produces 15 million metric tonnes per year of liquefied natural gas. Atlantic LNG's production facilities currently comprise four liquefaction modules or 'trains'. Each train is owned by a different corporation, which in turn is owned by a consortium of international upstream gas producers, the National Gas Company of Trinidad and Tobago (NGC) and a worldwide industrial and services group. Atlantic LNG train 4 is among the largest in the world, with a production capacity of 5.2 million metric tons of LNG per year.

LNG produced in Trinidad and Tobago is stored in four tanks located on the site of Atlantic LNG's production facilities at Point Fortin. The storage tanks are connected to jetty facilities also located at Point Fortin.

All LNG produced is exported, mainly to Spain, the US and the Dominican Republic. Other destinations for domestic LNG during 2009 included the United Kingdom and Puerto Rico as well as France, Argentina, Mexico, India and Japan. Over the years, there has been a dramatic diversification of the markets for Trinidad and Tobago LNG exports.

Pipeline transportation and distribution

In 1975, the government of Trinidad and Tobago incorporated NGC as a wholly owned state enterprise for the main purpose of monopolising the purchase, transportation and sale of natural gas produced by upstream producers for resale to local downstream natural gas-based industries (excluding the LNG industry).

NGC owns and operates a natural gas transmission and distribution network covering approximately 800km. The network comprises both offshore and onshore pipelines, with a current overall maximum installed transportation capacity of approximately 4,800 million cubic feet per day. All onshore natural gas pipelines are owned by NGC.

NGC is expanding its natural gas distribution network over the next three years to several industrial estates throughout the twin islands, thereby bringing the natural gas option to sites that would otherwise be dependent on traditional sources of energy. By bringing gas to these sectors, NGC hopes that this will attract additional light industrial and commercial manufacturers to accept gas into their operations and facilitate the growth of this sub-sector.

NGC is also in the process of constructing a pipeline to the Cove Estate in Tobago to facilitate a gas supply to the power generation plant at the estate, gas supply to light industry at the estate, a domestic supply to Tobago and the transportation of gas for the Eastern Caribbean Gas Pipeline Company. There will be an extension to this pipeline from Tobago to the eastern Caribbean region to provide gas to other islands, such as Barbados.

Commodity sales and trading segments

There are no commodity sales or trading markets for natural gas in Trinidad and Tobago. This commodity is sold by private contract made between NGC and a buyer, primarily.

Retail sale and usage

NGC markets the natural gas it purchases primarily to local petrochemical producers of ammonia and methanol, power generation and iron ore reduction facilities, and to light industrial and commercial customers including manufacturers working in glass, ceramics, plastics, paper making and food processing, who use the gas mainly for fuel; commercial enterprises such as hotels, malls, laundries, offices, shopping centres and restaurants, which use the gas mainly for cooking, drying and air conditioning. While most of the gas goes

to the 20 or so large industrials, the light industrial and commercial manufacturers comprise the vast majority of NGC's customers.

- 2 What percentage of the country's energy needs are met directly or indirectly with natural gas and LNG? What percentages of the country's natural gas needs are met through domestic production and imported production?

Approximately 95 per cent of Trinidad and Tobago's energy needs (that is, energy needed for power generation and most major industrial plants) is met directly by natural gas. At present, there are no imports of natural gas into Trinidad and Tobago.

- 3 What is the government's policy for the domestic natural gas sector and which bodies set it?

The Ministry of Energy and Energy Industries (MEEI), the NGC and the National Energy Corporation of Trinidad and Tobago Ltd (NEC) set the government's policy regarding the utilisation of the natural gas resources, which is targeted at the domestic market in the first instance and then on exports.

Since 1975, the government's policy has been 'resource-based industrialisation' – that is, a policy of using natural resources to accomplish development and diversification of the economy by way of the establishment of gas-based industries and energy industries that use the chemical components of gas and the energy produced from gas.

The government welcomes investment in the natural gas industry and encourages active exploration and production. In recent times, it has taken a deliberate policy stance to encourage downstream investment in secondary and tertiary manufacturing, especially in petrochemicals and metals.

Regulation of natural gas production

- 4 What is the ownership and organisational structure for production of natural gas (other than LNG)? How does the government derive value from natural gas production?

Subject to certain exceptions, ownership of natural gas reserves is vested in the state, which issues licences to explore for and to produce natural gas.

Trinidad and Tobago does not have a state-owned production company. NGC does, however, hold equity in certain gas production companies.

Natural gas production facilities are predominantly privately operated. In 2009, the major producers of natural gas in Trinidad and Tobago were:

- BP Trinidad & Tobago LLC (58.2 per cent);
- BG Trinidad & Tobago Ltd (23.8 per cent); and
- EOG Resources Trinidad Ltd (12.02 per cent) (source: *MEEI Consolidated Monthly Bulletins 2010*).

The government derives value from natural gas production through the collection of:

- royalties in respect of any petroleum gained and saved;
- petroleum tax imposed on licensees as a levy intended to cover the expenses of public administration of the petroleum industry;
- payment of surface rent in respect of the lease of any part of the licensed area that the licensee may require for exclusive occupation;
- dividends from state companies in the sector;
- payment, in accordance with applicable laws, of:
 - import duties; or
 - other payments, including income tax, petroleum profits tax, unemployment levy, supplemental petroleum tax, petroleum levy, corporation tax, excise duties, charges and fees for services rendered and fees of general application.

Each licence will set forth the rates applicable to the financial obligations of the licensee.

As of 1 January 2006, companies engaged in the following activities are charged corporation tax at the rate of 35 per cent:

- liquefaction of natural gas;
- manufacture of petrochemicals;
- physical separation of liquids from a natural gas strain and natural gas processing from a natural gas stream;
- transmission and distribution of natural gas;
- wholesale marketing and distribution of petroleum products; and
- any other activity prescribed by order of the minister of finance.

Petroleum profits tax is charged at the rate of 50 per cent on the profits earned by businesses in the course of petroleum operations falling under the Petroleum Taxes Act.

- 5 Describe the statutory and regulatory framework and any relevant authorisations applicable to natural gas exploration and production.

The MEEI is responsible for the overall management of the oil, gas and mineral sectors in Trinidad and Tobago. It is also responsible for monitoring, controlling and regulating the energy and mineral sectors of Trinidad and Tobago (which includes the monitoring of drilling and production activities).

Licences for exploration and production pursuant to the Petroleum Act can be revoked or cancelled by the minister where the conditions of the licence relating to exploration and production are breached.

Where a licence is granted and 'ancillary rights' are required by the licensee, he or she may seek to obtain a grant of such rights from either the minister or other person authorised to grant such rights or by compulsory purchase order under the Petroleum Act.

Ancillary rights may include the right to:

- use or occupy the surface for exploration drilling, erecting installations and constructing buildings for the purpose of petroleum operations;
- dispose of water or other liquid matter obtained from petroleum operations or any by-product works; and
- enter upon land and to sink boreholes therein for the purpose of searching for and extracting petroleum, and a right to use and occupy land for the erection of buildings, the laying and maintenance of such pipes and the construction of such other works as may be required for the purpose of searching and boring for, and obtaining, carrying away and processing petroleum.

A certificate of environmental clearance (CEC), issued under the Environmental Management Act 2000, must be obtained for the carrying out of natural gas exploration and production activities.

The government permits the grant of licences of mineral rights. Section 8(1) of the Minerals Act chapter 61:03 empowers the minister to whom responsibility for mines is assigned inter alia to grant, renew, revoke or suspend licences for mining, processing, import and export of minerals and other mining related activities. It is to be noted that the Minerals Act does not apply to any hydrocarbon or petroleum to which the Petroleum Act applies.

The Petroleum Regulations prescribe time frames for certain activities that are required to be carried out by a licensee. Regulation 48 provides that exploration operations on a scale that has been agreed between the minister and the licensee and specified in the licence must be commenced no later than one year from the effective date. Failure by the licensee to comply may result in the termination of the licence by the minister. In addition, pursuant to Regulation 49 a licensee must commence drilling of at least one well within the period specified in the licence. Failure to comply may result in the termination of the licence. Further, in accordance with regulation 50 of the Petroleum Regulations if an exploration and production licensee finds petroleum in commercial quantities, the petroleum must be produced without unreasonable delay and production must continue

without interruption unless the minister is satisfied that the interruption is justified for technical or other reasons.

There are no laws or regulations that govern the quantum of natural gas that may be produced by a licensee.

The Petroleum Regulations provide that, unless notice is given to the minister specifying the location of the survey area, borehole or well and his prior approval is obtained, a licensee may not commence any geophysical activity – drilling, re-drilling deepening or plugging of a borehole or well or any perforation of the casing. In the case of lands the surface of which is required for public purposes, directional drilling from the adjoining lands within the licensed area shall be authorised by the minister on such conditions as he or she considers appropriate.

Regulation of natural gas pipeline transportation and storage

- 6 Describe in general the ownership of natural gas pipeline transportation and storage infrastructure.

Natural gas is not stored in Trinidad and Tobago.

NGC, a wholly owned state enterprise owns and operates a natural gas transmission and distribution network of approximately 800km, comprising both offshore and onshore pipelines with a current overall maximum installed capacity of 4,800 millions of cubic feet per day. See response to question 1.

NGC sells gas in a bundled package – that is, payment is made for the commodity and for transportation.

The upstream producers in many instances own pipelines that are used to transport the gas from the producer's offshore gas platform to the point at which title to the gas passes to NGC.

- 7 Describe the statutory and regulatory framework and any relevant authorisations applicable to the construction, ownership, operation and interconnection of natural gas transportation pipelines, and storage.

The MEEI determines regulatory policies governing the production, transmission, distribution and supply of natural gas. In certain instances, decisions of the MEEI may be challenged by way of a judicial review application made to the High Court of Trinidad and Tobago. Appeals from decisions of the High Court may be made to the Court of Appeal and appeals from that Court may be made to the Privy Council in England. It should be noted, however, that the Petroleum Act provides that differences or disputes between a licensee and the minister must be settled by arbitration in relation to certain matters.

Construction of all pipelines is subject to first obtaining a CEC from the Environmental Management Authority (EMA). Appeals from decisions of the EMA may be made to the Environmental Commission (a Superior Court of record). Decisions of the Environmental Commission on questions of fact or administrative civil assessments are not appealable. An appeal on any question of law may be made to the Court of Appeal.

As indicated above, NGC is the sole owner and operator in Trinidad and Tobago of the existing onshore natural gas transmission and distribution network. There is no statutory regulation or government order of which we are aware that prohibits persons from constructing, owning and operating a natural gas transmission and distribution network and storage facilities in Trinidad and Tobago.

- 8 How does a company obtain the land rights to construct a natural gas transportation or storage facility?

To obtain land rights to construct a natural gas transportation and storage facility, a person would be obliged to negotiate, in the case of state lands (and subject to certain exceptions), with the minister who is authorised by the Petroleum Act to act on behalf of the president

to grant such rights. In any other case, negotiations must be entered into with the person entitled to grant those rights. Additionally, land rights may be granted or acquired by a compulsory purchase order under the Petroleum Act provided certain conditions are satisfied (for example that it is expedient and in the public interest that the right applied for be granted).

In the case of a licence relating to underwater areas, if the licensee needs to occupy a parcel of state lands for the purpose of carrying out underwater operations the minister shall, on receiving an application from the licensee, cause a lease to be granted in consideration of a surface rent.

- 9 How is access to the natural gas transportation system and storage facilities arranged? How are tolls and tariffs established?

NGC purchases natural gas as an aggregator from a number of upstream suppliers and manages its contractual obligations with its suppliers on a daily basis. Adjustments to the gas in terms of quality are made by NGC in accordance with the gas specification provisions contained in its gas purchase contract with downstream purchasers. The prices and terms of service are subject to negotiation between the contracting parties.

- 10 Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities owner or operator to expand its facilities to accommodate new customers? If so, who bears the costs of interconnection or expansion?

As indicated in question 6, there are no storage facility operators in Trinidad and Tobago. NGC is the sole owner and operator of the existing onshore natural gas transmission and distribution network. The enabling legislation does not confer a right on any customer or other natural gas supplier to require NGC to expand its facilities. The MEEI as the authority responsible for setting policy may require the NGC to expand its facilities.

- 11 Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.

The Petroleum Act and the Regulations provide that a person shall not engage in petroleum operations unless he first obtains a licence so to do. Petroleum operations are defined under the Petroleum Act to include natural gas processing.

In Trinidad and Tobago, liquids are extracted from raw natural gas by a centralised processing facility, Phoenix Park Gas Processors Ltd (PPGPL) which also transports, fractionates, stores and sells natural gas liquids (NGLs). PPGPL is incorporated as a non-public limited liability company and a majority of its issued and outstanding shares are owned by NGC. It is the only purpose-built facility for the extraction of NGLs in Trinidad and Tobago.

- 12 Describe the contractual regime for transportation and storage.

NGC enters into gas supply contracts with customers. In the case of gas supply contracts with downstream customers those contracts are typically take-or-pay contracts of 15 to 20 years duration (except in the case of light industrial manufacturing) and contain provisions relating to quantity and quality of supply, price, payment, passing of title, indemnities, force majeure and dispute resolution.

Government policy will influence the basic form of contract that may be negotiated between NGC and its customers.

Regulation of natural gas distribution

- 13** Describe in general the ownership of natural gas distribution networks.

NGC is the sole purchaser, transporter and seller of natural gas (except in the case of supply to Atlantic LNG).

- 14** Describe the statutory and regulatory structure and authorisations required to operate a distribution network. To what extent are gas distribution utilities subject to public service obligations?

The MEEI determines regulatory policies governing production, transmission, distribution and supply of natural gas. A licence granted by the minister under the Petroleum Act and Regulations is required to distribute natural gas. Currently, natural gas is distributed by NGC to customers and measures are taken to break down the gas pressure at the customer's plant gate. The operations of NGC are not subject to public service regulations.

- 15** How is access to the natural gas distribution grid organised? Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?

It is assumed that a 'natural gas distribution grid' means a network that is accessible by commercial and residential end-user customers. Accordingly, there is no natural gas distribution grid in Trinidad and Tobago. NGC supplies gas to commercial customers only via its natural gas transmission network

Prices for distribution services are not regulated in Trinidad and Tobago. The price for distribution services is bundled with the price for natural gas and sold by NGC to customers. The price of commodity and service is negotiated between NGC and its customers (this is not applicable to the sale and distribution of natural gas to Atlantic LNG).

- 16** May the regulator require a distributor to expand its system to accommodate new customers? May the regulator require the distributor to limit service to existing customers so that new customers can be served?

See question 10.

- 17** Describe the contractual regime in relation to natural gas distribution.

See questions 12 and 15.

Regulation of natural gas sales and trading

- 18** What is the ownership and organisational structure for the supply and trading of natural gas?

See question 1. Supply and trading is a matter of contract between buyer and seller.

- 19** To what extent are natural gas supply and trading activities subject to government oversight?

Natural gas supply and trading activities are subject to government oversight via its state enterprises, NGC and NEC. There have been no recent initiatives to impose restrictions or controls on such supply and trading activities.

- 20** How are physical and financial trades of natural gas typically completed?

Standard take-or-pay contracts are used, which are usually long-term contracts. The natural gas is transferred by offshore and onshore gas

pipelines. In the case of all industries utilising natural gas in their operations, except LNG, gas is sold by the producers (BPTT, BG, EOG TRINMAR, PETROTRIN, BHP, and REPSOL) to NGC, which acts as aggregator and sells on gas to downstream industries. In the case of LNG, the producers sell directly to the sole producer of LNG in Trinidad and Tobago.

- 21** Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.

Wholesale and retail buyers of natural gas product are obliged to purchase a bundled product from NGC.

Regulation of LNG

- 22** What is the ownership and organisational structure for LNG, including liquefaction and export facilities and receiving and regasification facilities?

There are no receiving or regasification facilities in Trinidad and Tobago.

As indicated in question 1, the country has only one producer of LNG. Ownership of the LNG facilities is structured through joint venture arrangements. Train 1 operates under an upstream transfer arrangement, where the upstream owners sell feed gas to the LNG plant which in turn sells LNG on a free-on-board (FOB) basis. Trains 2 and 3 operate on a quasi-tolling basis and train 4 operates on a pure tolling basis. Each train owns part of the liquefaction facilities and the export facilities.

Train 1 is owned by Atlantic 1 Holdings LLC (a Delaware company). The shareholders of this company are:

- BP Trinidad LNG BV (34 per cent);
- British Gas Trinidad LNG (26 per cent);
- Repsol LNG Port-of-Spain BV (20 per cent);
- NGC Trinidad and Tobago LNG Company Ltd (10 per cent); and
- Suez LNG Finance SA (10 per cent).

Trains 2 and 3 are owned by Atlantic LNG 2/3 Company of Trinidad and Tobago Unlimited (a Trinidad and Tobago company) which is owned by Atlantic 2/3 Holdings LLC (Delaware LLC). The equity holders are:

- BP Trinidad LNG BV (42.5 per cent);
- Repsol Overzee Financien BV (25 per cent); and
- British Gas Global Investments BV (32.5 per cent).

Train 4 is owned by Atlantic LNG 4 Company of Trinidad and Tobago Ltd (a Trinidad and Tobago company), which is owned by Atlantic 4 Holdings LLC (Delaware LLC). The equity holders are:

- BP (Barbados) Holding SRL (37.8 per cent);
- British Gas Trinidad LNG Ltd (28.9 per cent);
- NGC LNG (Train 4) Ltd (11.1 per cent); and
- Repsol Overzee Financien BV (22.2 per cent).

The trains also supply natural gas liquids to PPGPL under long-term agreements.

- 23** Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.

The authorisations required to build and operate LNG facilities are issued by various government departments. Normally, investors and financiers in an LNG project in Trinidad and Tobago would require that the government and other relevant state corporations (NGC and NEC) enter into a project agreement which would set out the government's agreed fiscal incentive package, leases to the relevant

project site and the grant of requisite authorisations, licences and approvals from the relevant government departments or ministries. The project agreement may be entered into on the recommendation of the energy subcommittee of the cabinet.

One of the licences required to build and operate an LNG facility is a liquefaction of natural gas licence. Approvals from the town and country planning division of the Ministry of Planning and Development, and a CEC, must be obtained for the construction of LNG facilities.

- 24** Describe any regulation of the prices and terms of service in the LNG sector.

There is no regulation of prices and terms of service in the LNG sector.

Mergers and competition

- 25** Which government body may prevent or punish anti-competitive or manipulative practices in the natural gas sector?

There is no governmental body established to prevent or punish anti-competitive or manipulative practices in the natural gas sector.

- 26** What substantive standards does that government body apply to determine whether conduct is anti-competitive or manipulative?

See question 25.

- 27** What authority does the government body have to preclude or remedy anti-competitive or manipulative practices?

See question 25.

- 28** Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?

The Petroleum Act requires that a licence be issued to a person desirous of engaging in petroleum operations. The consent of the minister is required for the assignment or transfer of the rights or obligations under a licence. The licence will normally stipulate that the prior consent of the minister is required for any change of control of the licensee. If the assignee is a non-resident company, it is required under the Regulations to establish a branch or agency in Trinidad and Tobago. Information on the length of time taken to obtain the minister's consent to a proposed assignment or transfer of a licence may be obtained from the MEEI.

- 29** In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?

There are no gas utilities in Trinidad and Tobago.

- 30** Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?

See question 29.

International

- 31** Are there any special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector?

Foreign investment in Trinidad and Tobago is regulated by the Foreign Investment Act 1990. This legislative regime provides for notification to the minister of finance and an approval process for certain proposed investments in Trinidad and Tobago. Notification is necessary for certain types of investments. A licence to own commercial property (freehold or leasehold) in excess of five acres is required to be obtained from the minister of finance. Dividends on profits payable to a non-resident taxpayer may be subject to withholding tax.

Further, the Petroleum Act provides that where a non-resident company is required to apply for a licence to operate under that Act it is a condition prior to the grant of such licence, and thereafter a condition for its continuance, that the company establishes and maintains, during the existence of such licence, an office, place of business, branch or agency in Trinidad and Tobago for the purpose of conducting such petroleum operations as are authorised by the state. The business of a non-resident company to which a licence is granted must be conducted through its office, place of business, branch or agency, which shall be in the charge of an individual who is resident or ordinarily resident in Trinidad and Tobago.

- 32** To what extent is regulatory policy affected by treaties or other multinational agreements?

Trinidad and Tobago has entered into a number of bilateral investment treaties under which it has agreed to adhere to certain standards of treatment of investments in Trinidad and Tobago made by nationals of the other party to the treaty. To the best of our knowledge, except for the recent framework treaty for the unitisation of hydrocarbon reservoirs that extend across the delimitation line between Trinidad and Tobago and Venezuela, signed between the governments of Trinidad and Tobago and Venezuela on 20 March 2007, there are no treaties or multinational agreements to which Trinidad and Tobago is a party that specifically deal with natural gas.



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33 What rules apply to cross-border sales or deliveries of natural gas?

There are no rules that specifically govern cross-border sales or delivery of gas of which we are aware.

Transactions between affiliates

34 What restrictions exist on transactions between a natural gas utility and its affiliates?

See question 29.

35 Who enforces the affiliate restrictions and what are the sanctions for non-compliance?

See question 29.

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