

TEMPLARS LEGISLATIVE WATCH

Petroleum Industry Bill Overview Series: **Part 4:** **A SUMMARY OF THE NEW MIDSTREAM AND DOWNSTREAM LICENSING PROVISIONS**

Licences

The Petroleum Industry Bill, 2020 (the “**PIB**”) requires the Midstream and Downstream Petroleum Regulatory Authority (the “**Authority**”) to grant, renew, modify, or extend licences or permits for downstream and midstream activities for oil and gas products, with the exception of the refinery licences which are still issued by the Minister of Petroleum Resources (the “**Minister**”) albeit through the Authority.¹

Licences for midstream operations

- **Gas Processing Licence**²—for the installation and operation of facilities for the removal of impurities and production of ethane, propane, butane and other natural gas liquids and marketable natural gas, gas to liquids plants, LNG plants and other plants requiring a gas processing licence.
- **Bulk Gas Storage Licence**³—for bulk storage of natural gas.
- **Gas Transportation Pipeline Licence**⁴—for the exclusive right to own, construct, operate and maintain a gas transportation pipeline.
- **Gas Transportation Network Operator Licence**⁵—for the conduct of activities including the conveyance of natural gas through the gas transportation network, balancing the inputs and offtakes from the gas transportation network, providing third party access to shippers to the gas transportation network under the Gas Network Code.

¹ Section 111(1) of the PIB.

² Section 129 of the PIB.

³ Section 132 of the PIB.

⁴ Section 135 of the PIB.

⁵ Section 138 of the PIB.

- **Wholesale Gas Supply Licence⁶**—for the sale and delivery of wholesale gas to wholesale customers.
- **Crude Oil Refining Licence⁷**—for the procurement, construction, installation and operation of facilities to process crude oil on its own account into derivative products/chemicals and sell such chemicals and petroleum products at the exit of the refinery.
- **Bulk Petroleum Liquid Storage Licence⁸**—for the bulk storage of petroleum liquids for its own account or on behalf of customers.
- **Petroleum Liquids Transportation Pipeline Licence⁹**—for the exclusive right to own, construct, operate and maintain a transportation pipeline for the bulk transportation of petroleum liquids, on its own account with third party access provisions or as common carrier.
- **Petroleum Liquids Transportation Network Operator Licence¹⁰**—for the conduct of activities including the conveyance of petroleum liquids through the transportation network, balancing the inputs and offtakes from the transportation network, providing third party access to the transportation network and charging the use of the transportation network.
- **Wholesale Petroleum Liquids Supply Licence¹¹**—for the sale or delivery of petroleum liquids to bulk customers.

⁶ Section 142 of the PIB.

⁷ Section 183 of the PIB.

⁸ Section 187 of the PIB.

⁹ Section 190 of the PIB.

¹⁰ Section 193 of the PIB.

¹¹ Section 197 of the PIB.

Licences for downstream operations

- **Retail Gas Supply License¹²**—for the sale or retail of marketable natural gas to customers or third party access to gas distribution systems of gas distributors; and establish, construct and operate facilities to deliver compressed natural gas and small scale facilities for liquefied natural gas, not requiring a gas processing licence, for transportation by truck, railcar or marine vessel to customers in compressed or liquified form, including customers using LNG as marine bunker fuel.
- **Gas Distribution Licence¹³**—for the *exclusive* right to establish, construct and operate a gas distribution system and to distribute and sell gas to customers within a local distribution zone, *provided* such customers are not wholesale customers.
- **Domestic Gas Aggregation Licence¹⁴**—authorises the domestic gas aggregator to support the implementation of the domestic gas delivery obligation.
- **Licence for distribution of Petroleum Products¹⁵**—for the sale or retail of petroleum products to customers.
- **Licence for the Establishment, Construction and Operation of a Petroleum Product Retail Supply and Facility¹⁶**—for the establishment, construction and operation of a facility for retail sale/distribution of petroleum products.

¹² Section 146 of the PIB.

¹³ Section 148 of the PIB.

¹⁴ Section 153 of the PIB.

¹⁵ Section 201 of the PIB.

¹⁶ Section 203 of the PIB.

- **Permit for the Establishment, Construction and Operation of a Facility for the Production of Petrochemicals**¹⁷— for the establishment, construction and operation of a petrochemicals production facility for the production and sale of petrochemicals.

Deemed Approval?

The Authority will notify the applicant of its decision to grant a licence or permit within ninety (90) days.¹⁸

- The PIB is silent on what happens in circumstances where the Authority neither grants nor declines to grant a licence or permit within the stipulated timeframe i.e. whether the concept of deemed approval will apply as it does regarding upstream operations.

Assignment or Transfer of Licences

The PIB requires the Authority's consent before there can be an assignment or transfer of an interest, right, or obligation in a licence or permit already granted. The consent must be communicated within the time prescribed by the regulation to the PIB, failing which consent will be deemed to be approved.

Pricing framework

The PIB gives the Authority the power to design a pricing framework for transportation, distribution and processing of petroleum.¹⁹

- The framework shall be valid for six (6) months²⁰ from its effective date.
- Creditworthy customers willing to commit to long term ship-or-pay agreements may be given more favourable tariffs.²¹

¹⁷ Section 204 of the PIB.

¹⁸ Section 111(7) of the PIB.

¹⁹ Section 122 (1) of the PIB.

²⁰ Section 122 (7) of the PIB.

- Negotiated tariffs may also be approved by the Authority if one or more wholesale customers with a pipeline to a transportation network are connected.

Third Party Access

The PIB mirrors the provisions of the Gas Network Code²² and empowers the Authority to develop the petroleum liquids midstream network code²³ which govern the operation of a gas/ petroleum liquids transportation network and allows open access to gas/ petroleum liquids transportation pipeline or a gas/ petroleum liquids transportation network to enable third parties have marketable gas or petroleum liquids transported to points of consumption.

- The Authority is empowered to provide terms to govern isolated gas transportation pipelines.
- Third-party access for petroleum liquids can only commence after the development of the petroleum liquids midstream network code, by the Authority in consultation with licensees and other stakeholders.
- However, due to the non-existence of the relevant petroleum liquids midstream network code and uncertainty on the status of the development, this may expose existing plans to inordinate delays.

Pricing and tariffing

The PIB vests the Authority with the power to regulate tariffs and establish a tariff methodology (after due consultation with stakeholders and in line with the pricing principles) where the Authority determines that a particular licensed activity is a monopoly service, competition has not

²¹ Section 123 (2) of the PIB.

²² Section 160 of the PIB.

²³ Section 178 of the PIB.

sufficiently developed in the market to protect the interests of end-users and a particular license holder is a dominant provider.²⁴

Competition and market regulation

The PIB makes robust provisions for consumer protection (specifically for licensed gas suppliers and distributors) and competition monitoring, subject to the provisions of the Federal Competition and Consumer Protection Act.

- The PIB provides that the Authority may issue regulations regarding consumer protection and competition monitoring.

- It also grants the Authority the power to arrest situations of abuse of dominant power and restrictive business as well as administer, monitor and ensure compliance with competition and market regulations.²⁵

Sundry Matters include

- Conditions for grants.
- Tenures of licences.
- Restrictions to the use of licences (where applicable).

Duties of licensees.

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²⁴Section 205 of the PIB.

²⁵ Section 211 of the PIB.