



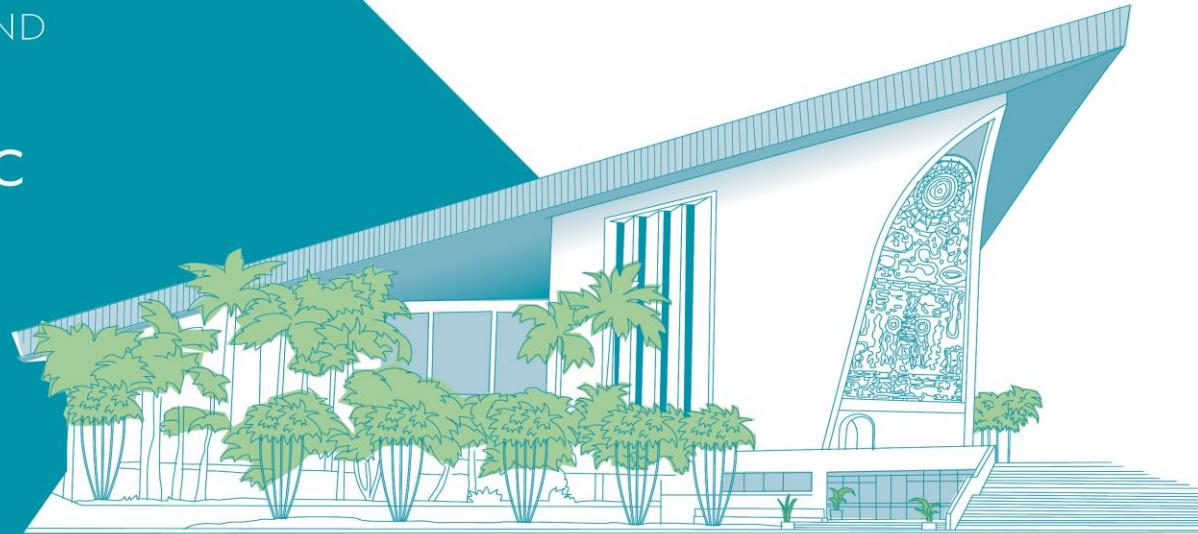
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Gas Supply Transactions and Disputes

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Overview of Gas Supply Transactions

- ▶ **Three general phases to the gas supply chain:**

- Gas production and processing (where natural gas is extracted, purified and broken out into its component hydrocarbons)
- Sales from gas producers (exploration and production companies or states) to the wholesaler in a particular market
- Sales from wholesalers (directly or indirectly) to end users of gas.

- ▶ **These phases can be international or domestic**



Overview of Gas Supply Transactions

► Who is involved?

- **Sovereign governments** – own the resources in the ground, and enter into agreements with producers to develop gas resources
- **Producers** – enter into agreements with sovereign governments to extract gas, before selling that gas to wholesalers (or, sometimes, direct to end users).
- **Wholesalers** – purchase gas from producers and supply it to end users (sometimes via resellers).
- **End users** – i.e., consumers such as power plants, petrochemical plants, retail and residential customers



Gas Supply Transactions

► **Three stages of gas supply after exploration:**

1. Production and processing
2. Sales from the producer to the wholesaler in a particular market
3. Sales from wholesalers to end users



1. Production and Processing

► Gas extraction

- Gas is generally extracted by drilling gas wells
- Producers often enter into drilling contracts with an oilfield services contractor

► Processing

- The producer enters into a gas processing contract with a processor
- The producer constructs the processing facilities itself

After processing, gas is ready to be transported and sold.



2. Sales from Producers to Wholesalers

► Transportation

- By pipeline
- As LNG

► Gas Supply Agreements Between Producers and Wholesalers (e.g., GSPAs)

- Historically, supply has been via long-term contracts (typically 10-30 years in duration).
- Increasing use of short and mid-term contracts



3. Sales from Wholesalers to End Users

- ▶ Once gas has been delivered from producer to wholesaler, the next stage is for the wholesaler to sell on to end users.
 - Sometimes wholesalers sell on to resellers, who then sell to end users. Some large end users (e.g. power plants) also purchase directly from producers
- ▶ Gas is supplied by wholesalers via a transmission (pipeline) grid



3. Sales from Wholesalers to End Users

- ▶ Depending on how liberalized the market is, there can be many different gas supply transactions at this stage, including:
 - Agreements for sale of gas
 - Transportation
 - Storage



3. Sales from Wholesalers to End Users

- ▶ The nature of the market substantially impacts the transactions at this stage
 - **Monopoly** – one entity is responsible for supplying, transporting and storing all gas
 - **Limited competition** – more than one supplier in a market, each with their own transportation and storage infrastructure
 - **Fully liberalized** – wholesalers, transportation systems and storage operators all separate companies



3. Sales from Wholesalers to End Users

► Agreements for sale of gas

► Range of different possible transactions

- Wholesalers directly supply all end users (e.g., large industrial users, power plants, small retail, residential customers)
- Wholesalers sell to further intermediaries (resellers), who can then sell the gas onwards
- End users purchase directly from producers or gas hubs, thereby bypassing wholesalers completely

► Transportation – can be highly regulated

► Storage – can also be regulated



Gas Supply Disputes



- ▶ **Huge range of gas supply transactions. Correspondingly broad range of disputes that can arise, including:**
 - a) Gas price review arbitrations
 - b) Disputes over supply failures
 - c) Competition law and regulatory issues
 - d) Disputes regarding transportation infrastructure
 - e) Storage disputes
 - f) Construction disputes

- ▶ **Supply contracts usually include dispute resolution provisions (litigation, arbitration, expert determination)**



a. Gas Price Review Arbitrations

- ▶ Long-term supply agreements often contain price review provisions
- ▶ Price review provisions usually contain arbitration clauses, for when parties cannot agree on a revision to the formula
- ▶ Recent years have seen a wave of gas price review arbitrations in certain parts of the world
- ▶ Price reviews can have very significant financial consequences (even a small change in the price of gas can have huge financial implications, given the volumes of gas supplied under some long-term agreements)



a. Gas Price Review Arbitrations

- ▶ **Factors leading to rise in disputes in Europe include:**
 - Liberalization of the European gas market and development of gas hubs in Europe
 - “Decoupling” of oil prices and market prices for gas available at gas hubs in certain markets in the late 2000s
 - Growth for renewable energy
 - Global financial crisis beginning in 2008
 - Development of U.S. shale gas and shift of LNG supply to Europe
 - Fukushima disaster in Japan and greatly increased demand in Asia
 - Dramatic decrease in oil prices since mid-2014



b. Disputes Over Supply Failure

- ▶ E.g., claims that the seller (producer, wholesaler or reseller) has not supplied the contracted volume of gas
- ▶ Reasons for supply failures include:
 - Political issues (e.g. dispute between a gas-producing and gas-receiving country)
 - Commercial dispute (e.g., belief that no obligation to supply under the contract)
 - Circumstances allegedly outside seller's control (often coupled with claim for force majeure)

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c. Competition Law and Regulatory Issues

- ▶ Party claims that actions of the counterparty violate competition law
- ▶ Alternatively, a regulator may investigate whether the terms in a gas supply contract violate anti-trust or competition laws

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d. Disputes Regarding Transportation Infrastructure

- ▶ **Disputes include commercial disputes** – e.g., breach of framework agreement)
- ▶ **Disputes relating to government regulation** – e.g., a tariff reduction on the use of gas transportation infrastructure to boost gas exploration and development



e. Storage Disputes

- ▶ **Wide range of issues** – including issues about title to gas following removals or additions of gas



f. Construction Disputes

► Two common types of claims in construction disputes:

- Delay claims (facilities were not constructed within the contractually-required time)
- Defect claims (facilities were defectively constructed)



Looking Forward



- ▶ Importance of gas to increase due to the threat of climate change, which demands a switch to comparatively cleaner gas
- ▶ Transactions for production, transport and sale will grow
- ▶ Increasing use of spot and shorter term transactions
- ▶ Aspects of extraction, processing, transporting and storage are technically challenging and expensive
- ▶ Disputes about terms of gas supply and related agreements to increase



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