

## FREQUENTLY ASKED QUESTIONS FOR THIRD PARTY ACCESS SYSTEM (TPA)

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## INTRODUCTION

One of the objectives of the Economic Transformation Program (ETP) is to liberalize the gas market in Malaysia and one way to achieve such liberalization is to create a third party access (TPA) system where third parties are able to access gas facilities that they do not own or operate. In pursuance of such matter, the Gas Supply Act 1993 was amended in 2016 and came into effect on 16 January 2017 to provide the legal framework for the TPA system.

This FAQ is prepared for the purposes of providing the public with answers to basic questions concerning the TPA system. That notwithstanding, should there be any further questions which remain unanswered, the public is invited to submit their queries in writing to the Energy Commission at the address stated at the end of this FAQ.

## FREQUENTLY ASKED QUESTIONS

### 1. What is the TPA system?

The TPA system will allow any party to have access to and utilize the gas facilities available in Malaysia on the same terms and conditions as other parties for similar utilization. At the moment, there are three types of gas facilities that fall under the scope of the TPA, namely regasification terminals, transmission pipelines and distribution pipelines.

### 2. Why is the TPA system introduced?

#### (a) To ensure security of supply

The recent reduction of domestic gas production requires the importation of gas for security and sustainability of gas supply to meet the nation's increasing demand. Thus, a platform where multiple parties are involved in each stage of the gas value chain in Malaysia need to be established and such platform must:

- (i) secure and enhance effective competition between the relevant parties within the gas value chain;
- (ii) be non-discriminatory in nature as between the relevant parties within the gas value chain;
- (iii) ensure the efficient and economic operation of the relevant gas facilities within the gas value chain; and
- (iv) enable the efficient discharge of the relevant parties' obligations.

#### (b) To create a platform for healthy competition

The TPA system will ensure the access and utilization of gas facilities by all parties on equal terms for equal utilization. This would in turn ensure the existence of healthy competition in the gas market by creating a level playing field amongst the players, which will, at the end of the day, benefit the consumers in the form of competitive gas prices.

#### (c) To provide room for growth of the Malaysian gas industry

The TPA system will provide an opportunity for new players to participate in the Malaysian gas market as a gas supplier by utilizing gas facilities to deliver gas to consumers.

The successful implementation of the TPA system will also provide sustainable gas supply and competitive gas prices, and subsequently attract new investment into Malaysia especially in the manufacturing sector.

### 3. When will the TPA system be implemented?

The TPA system will be implemented on 16 January 2017. There will be a 12-month grace period for existing players to apply for relevant licenses. Meanwhile, new players must apply for and be granted with a licence before being able to carry out any of the 7 licensed activities specified in the Act.

### 4. Where will the TPA system be implemented?

The Gas Supply Act 1993 is the main legal framework which shall implement the TPA system and will be applicable throughout Malaysia except the state of Sarawak. However, the Act may be implemented in Sarawak with the approval of Yang di-Pertua Negeri of Sarawak.

### 5. Who shall regulate or oversee the implementation of the TPA system and what are its functions?

The implementation of the TPA system shall be regulated by the Energy Commission. Figure 1 shows the regulatory scope under the Gas Supply Act 1993. As can be seen, the Energy Commission shall be responsible for the economic and technical regulation of the TPA system as a whole, but shall only be responsible for the safety regulation aspect downstream of city gate stations.

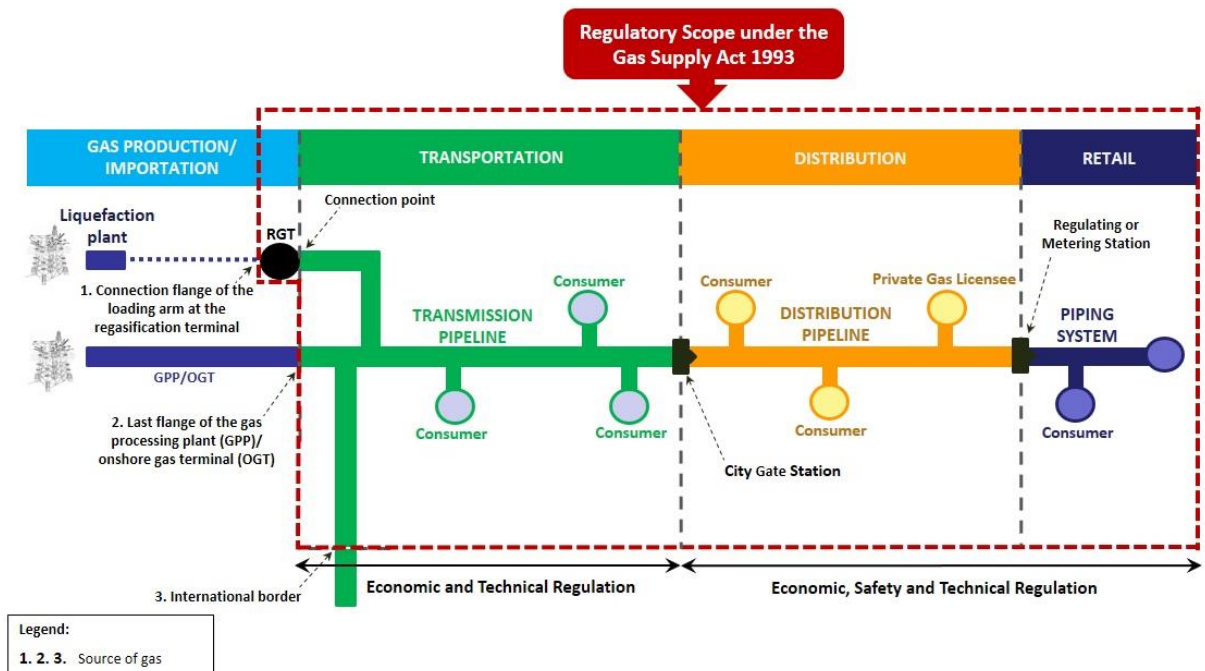


Figure 1: Regulatory scope under Gas Supply Act 1993.

For adequate and effective regulation, the Energy Commission will, among others, carry out the following functions:

- (a) Ensure that gas supply is secure and sustainable via the TPA system.
- (b) Ensure that reasonable and relevant access to gas facilities are given to third parties.
- (c) Protect the rights of third parties or consumers in respect of the continuity of gas supply, utilization of facilities, gas quality and services provided by the owner/operator of the gas facilities.
- (d) Develop and publish relevant Codes, Guidelines and directions to ensure smooth implementation of the TPA system.
- (e) Ensure that the safety of consumers is protected from dangers arising from the activities of distribution, retail and use of gas.
- (f) Promote the existence of healthy competition among the relevant licensees.
- (g) Carry out audit on licensees, institutions, manufacturers, importers and contractors, as applicable.

6. What activities fall within the ambit of the TPA system and who are the parties involved?

The TPA system covers the following activities:

- (a) Import into regasification terminals, i.e. the activity of bringing in liquefied natural gas (LNG) into or within Malaysia by any means other than by transshipment.
- (b) Regasification, i.e. the activity of regasifying LNG including receiving and storing of LNG and the subsequent delivery the regasified gas to transmission pipelines.
- (c) Shipping, i.e. the activity of delivering gas to consumers' premises by the owner/operator of gas molecules by them making an arrangement with a regasification, transportation or distribution licensee for such delivery.
- (d) Transportation, i.e. the activity of owning/operating a transmission pipeline.
- (e) Distribution, i.e. the activity of owning/operating a distribution pipeline.
- (f) Retail, i.e. the activity of using gas for one's own consumption or onselling the gas to consumers through the said retail licensee's piping system.
- (g) Use of gas, i.e. the activity of using gas as a private gas licensee, where the licensee uses the gas for their own consumption and do not get the supply from retail licensee.

7. Will there be any overlap in the safety regulation enforced by Energy Commission and Department of Occupational Safety and Health (DOSH)?

No, the Energy Commission will only regulate the safety aspect of gas supply downstream of city gate stations while DOSH will continue to regulate the safety aspect of gas supply upstream of city gate stations.

8. What are the applicable laws which must be complied in relation to the implementation of the TPA system?

The legal framework for the implementation of the TPA system is contained in the following statutes/documents:

- (a) Gas Supply Act 1993: This is the principal Act that governs piped gas supply activities in Malaysia and is also the enabler for the implementation of the TPA system.
- (b) Gas Supply Regulations 1997: These Regulations contain the procedures for ST to perform its functions, duties and powers under the Act.
- (c) TPA Codes: These contain the principles of the TPA system which need to be adhered by both the owners and users of gas facilities.
- (d) Guidelines and Directions: These documents are developed as a reference/explanatory document relating to the related matter/subject.

#### 9. Who may apply for a licence under the TPA system and how do they submit such application?

Any qualified party who intends to participate in the licensed activities may submit an application for a licence. The Energy Commission will issue the Guidelines on Licence Application which shall assist the interested parties on the necessary requirements and the steps to be taken in applying for the relevant licenses.

#### 10. Will there be any limitation on the number of licenses that can be obtained by a party?

No, there is no limit on the number of licenses that can be obtained by a party, **subject always** to the condition that it will not create a conflict of interest in the performance of the relevant licensee's obligations.

#### 11. What are the fees to be paid under TPA and by whom?

The applicable fees are as prescribed in the Gas Supply Regulations 1997.

#### 12. How will the Energy Commission ensure the existence of a level playing field?

Firstly, provisions which prohibit anti-competitive behaviour have been incorporated into the Gas Supply Act 1993. Under these provisions, the entering into of anti-competitive agreements as well as any abuse of a dominant position in the market is strictly prohibited



and any infringement of these prohibitions shall result in the infringing party incurring a substantial fine.

Next, the Energy Commission will develop and issue TPA Codes which shall contain the standard principles of access to gas facilities. The Energy Commission shall also approve the access arrangement established by a gas facility owner/operator which shall contain the terms and conditions for accessing such gas facility. Together, the Codes and access arrangements shall ensure that all players are subject to the same transparent procedures, terms and conditions for similar use of each gas facility, and are not prejudiced by the fact that they do not own nor are affiliated with such facilities.

The Energy Commission will also issue Guidelines from time to time in relation to competition to complement the Act and TPA Codes. At this moment, the Guidelines on Competition for the Malaysian Gas Market in Relation to Market Definition, Anti-Competitive Agreements and Abuse of Dominant Position are ready and shall provide further explanation on anti-competitive behavior and the relevant method(s) to determine anti-competitive behavior.

### 13. How shall the gas price to end-consumers be determined?

The objective of the TPA system is to create a situation where the gas price to end-consumers will be based on a willing-buyer-willing-seller basis, taking into account healthy competition amongst rival suppliers. However, the Government has the power to regulate the gas price for retail consumers whenever necessary in order to protect the consumer's interest as retail consumers do not have the choice to buy the gas from other gas supplier except from retail licensees.

### 14. How shall the tariff for utilization of gas facilities be determined?

The Energy Commission will determine the tariff for the utilization of the gas facilities. The tariff will be reasonable in order to allow the financial sustainability and good quality of services by the owner/operator and at the same time protect consumers' interest.

## INQUIRY

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