
THE ENERGY REGULATION AND MARKETS REVIEW

FOURTH EDITION

EDITOR
DAVID L SCHWARTZ

LAW BUSINESS RESEARCH

THE ENERGY REGULATION AND MARKETS REVIEW

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This article was first published in The Energy Regulation and Markets Review - Edition 4
(published in June 2015 – editor David Schwartz).

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THE ENERGY
REGULATION
AND MARKETS
REVIEW

Fourth Edition

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LAW BUSINESS RESEARCH LTD

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
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www.TheLawReviews.co.uk

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ISBN 978-1-909830-51-6

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

AFRIDI & ANGELL

ANDERSON MÕRI & TOMOTSUNE

ANGOLA LEGAL CIRCLE ADVOGADOS

ARZINGER

AVENT ADVOKAT

BASHAM, RINGE Y CORREA

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MICHAEL DAMIANOS & CO LLC

Acknowledgements

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS, SOCIEDADE
DE ADVOGADOS RL

MOZAMBIQUE LEGAL CIRCLE ADVOGADOS

ORRICK, HERRINGTON & SUTCLIFFE (EUROPE) LLP

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EDITOR'S PREFACE

Our fourth year of writing and publishing *The Energy Regulation and Markets Review* has been marked by significant infrastructure development needs, low oil and gas prices, financial and economic sustainability measures, and carbon reduction programmes.

As many of the world's economies have begun to regain their financial footing following the global economic crisis, we are seeing a strong focus on infrastructure development. India is heavily engaged in providing economic incentives for the development of generation, transmission and distribution facilities, and many countries have acknowledged significant generation development needs to meet growing demand, including in Central Africa, Egypt, Uzbekistan, Indonesia and Malaysia. In the wake of Russia's annexation of Crimea, Ukraine is seeking IMF financing assistance to invest in power sector infrastructure, and New Zealand is looking to build large transmission projects.

We have also seen continued efforts to promote sustainability and development of green energy resources. Denmark has created a climate council and new regulatory requirements to encourage development of green energy and to promote conservation. France has adopted an aggressive new energy efficiency and conservation law that includes a new 'carbon' tax. The United States Environmental Protection Agency has proposed a Clean Power Plan to limit CO₂ emissions from existing generation facilities by 30 per cent by 2030. At the same time, however, a federal court of appeals in the United States has determined that the Federal Energy Regulatory Commission (FERC) had no authority to treat demand responsiveness (a form of conservation) with the same economic value as generation. Korea has been exploring eco-friendly sources of energy independence, and Brazil has encouraged renewable energy development to make up for reduced hydropower in recent years. Even China appears to be working to develop clean, safe and sustainable energy that reduces reliance on coal generation.

Oil and gas prices remain low, which appears to have allowed largely energy-dependent countries (such as Japan) to secure longer-term oil purchases, but appears to have had negative impacts on countries that largely rely upon oil export revenues, such

as Russia, Angola and Iraq. Efforts to reduce reliance on nuclear generation continue to create demand for other energy sources in Germany, Japan and France.

We have seen significant energy sector regulatory reforms in many countries. In Spain and Portugal, there have been efforts to reduce the tariff deficit and promote financial and economic sustainability. Poland has worked to reform its regulatory system to encourage competition and development, while, at the same time, protecting state-owned companies from hostile takeovers. Romania has sought to encourage competition and reduce political interference with the regulatory process. The United States has continued to struggle with how to allocate transmission costs fairly and efficiently under FERC's Order 1000.

Certain countries have continued their efforts to privatise state-owned companies. Turkey has engaged in an effort to privatise its generation facilities. Cyprus is continuing its efforts to privatise its state-owned utility company. India is privatising its coal mines, and Mexico is encouraging private oil companies to bid for exploration and production rights.

On the nuclear energy front, Turkey has moved forward in its efforts to develop its first nuclear generation facility. At the same time, Japan and Korea have sought to reduce their reliance on nuclear energy, and Germany has continued on its path to shut down all nuclear facilities, all in the wake of the 2011 events at the Fukushima facility in Japan.

I would like to thank all the authors for their thoughtful consideration of the myriad of interesting, yet challenging, issues that they have identified in their chapters in this fourth edition of *The Energy Regulation and Markets Review*.

David L Schwartz

Latham & Watkins LLP

Washington, DC

June 2015

Chapter 2

ANGOLA

*Catarina Levy Osório and Helena Prata*¹

I OVERVIEW

Angola's energy sector is characterised by strong public activity, with state companies acting throughout the value chain of the oil, natural gas and electricity industries.

Despite the prominent public presence in the energy industry, the country is progressively widening entry to private players, creating the necessary mechanisms to allow private companies to take part in the industry's activities alongside and in close cooperation with the respective public companies.

The electricity industry is the one that requires the most significant investment, undergoing transformation and expansion plans that amount to US\$13 billion, between 2009 and 2025, in order to meet growing demand.

In accordance with the measures set out by the Policy and Strategy for the National Energetic Security,² the Angolan government is committed to reforming the energy industry. With this intention, among other measures, in the electricity industry the government is mainly focusing on:

- a* restructuring public companies;
- b* developing a strategic and regulatory framework for renewable energies;
- c* reinforcing powers of the Regulatory Institute of the Electrical Sector (IRSE);
- d* revising the legal framework for the electricity sector;
- e* defining an attractive model for private investment and development of its legal framework; and
- f* progressively eliminating electricity price subsidies.

1 Catarina Levy Osório and Helena Prata are partners at Angola Legal Circle Advogados.

2 Put into force by Presidential Decree No. 256/11 of 29 September.

In the oil and natural gas industry, the focus is on:

- a* ensuring the 'Angolanisation' of upstream activities by defining a plan for upgrading Sonangol's management and integration capacities on deep-water projects;
- b* implementing the liberalisation of the market and creating a new legal and regulatory framework;
- c* enacting a natural gas regulatory framework;
- d* reinforcing existing refining capacity;
- e* finishing short-term projects such as pipelines and railways; and
- f* defining a new tariff model and removing fuel price subsidies.

The Angolan electricity system is divided into two separate segments:

- a* the Public Electricity System (PES), which encompasses the Electricity National Transmission Network (NTN)³ and all generation and distribution infrastructures tied to the NTN; and
- b* the Non-Tied Electricity System (NTES), which encompasses non-tied producers, self-producers and non-tied customers (together referred as 'non-tied agents').

The commercial relations between the aforementioned agents is governed by the General Electricity Law⁴ and the Commercial Relationships Regulation.⁵

The producers tied to the PES are public service concessionaires or licence holders who have the obligation to sell electricity to the NTN concessionaire. Under its capacity as a 'single buyer', the NTN concessionaire is required to acquire all power generated by tied producers. In order to do so, tied producers and the NTN concessionaire must enter into power purchase agreements (PPAs), which set out the terms and conditions of their commercial relations.

Subsequently, the NTN concessionaire (in which the Angolan state must have a majority equity participation or a veto right) must sell the electricity acquired under the PPAs to the high-voltage (HV) distribution network operators, at a single price, including those who operate in isolated systems.

In turn, HV⁶ distributors sell electricity to medium-voltage (MV) distributors who then sell electricity to low-voltage (LV) distributors, who in turn sell the electric power to the customers, therefore acting as suppliers.

Without prejudice to the necessities of the PES, the non-tied agents are committed to the role of strengthening the competitive regime on the supply and consumer markets of the Angolan electric system. Hence, non-tied producers and customers are entitled to establish bilateral agreements, freely negotiated between the parties, governing the terms

3 Mainly composed by ultra high-voltage networks, which operate at a voltage greater than 60kV.

4 Put into force by Law No. 14-A/96 of 31 May.

5 Put into force by the Presidential Decree No. 2/11 of 5 January.

6 The HV networks operate at a voltage between 35kV and 60kV, the MV networks between 35kV and 1kV and the LV networks below 1kV.

and conditions of the supply of electricity. Nonetheless, the terms and conditions of such agreements must comply with the Regulation for the Licensing and Security of Electric Facilities and the Networks Access Regulation, as well as the rules and procedures put into force by the IRSE. If, at any given moment, the non-tied producers wish to sell their electricity to the PES, they will need to enter into generation concession agreements or request the attribution of a power generation licence, under the terms of the Electricity General Law.

The commercial relationships established under the regime of the PES are therefore regulated, with contractual terms and sale prices administratively set, as opposed to relations with non-tied agents, whose contractual terms and prices can be freely established by the parties. It should be noted that any tied customer who wishes to migrate to the non-tied electric system is allowed to do so.

II REGULATION

i The regulators

The IRSE, created by Decree No. 4/02 of 12 March and its governance, currently governed by the provisions of Presidential Decree No. 208/14 of 18 August, is the Angolan regulatory authority in the electricity sector, a public institute with management, administrative and financial independence, responsible for regulating the activities of generation, transmission, distribution and sale of electricity in the PES.

The IRSE is, *inter alia*, in charge of regulating the business relationship between agents included in the PES and between the PES and non-tied agents, and the specification of tariffs and of revenue transfer models between different players in the electricity industry, as well as the performance of duties related to national arbitration and the composition of interests of different stakeholders of the industry.

The Oil Derivatives Regulating Institute (IRD), created by Presidential Decree No. 133/13 of 5 September, is the Angolan regulatory authority with management, administrative and financial independence, responsible for regulating the activities of the oil-derived products sector.

The IRD is, *inter alia*, responsible for defending the consumers' rights and interests in matters of price, services and quality of service, fostering competition among industry players, ensuring fairness and transparency of commercial relations, monitoring compliance with public service obligations, performing duties related to national arbitration and proposing public policies to the executive power regarding the oil-derived products industry.

ii Regulated activities

Exploration for and production of oil and gas

Exploration and production activities related to oil and natural gas in Angola are governed by Law No. 10/04 of 12 November.

The right to produce and explore for oil or natural gas is granted by concession agreement, generally preceded by a public tender procedure.⁷

The concession for exploration and production, after the public tender procedure, is granted by concession decree, issued by the Angolan government, attributing to the national concessionaire Sonangol⁸ the right to develop a specific oil concession.

All successful companies that wish to explore for and produce oil or natural gas in Angola have to form an association with Sonangol in one of three possible ways: incorporation of a joint company, a consortium agreement or a production sharing agreement. The concession agreement must subsequently be signed by the parties within 30 days of the publication of the concession decree.

Companies that wish to undertake preliminary exploration and prospecting works may do so by applying to the Ministry responsible for oil exploration and production matters for the grant of a prospecting licence. After hearing the national concessionaire, the said Minister decides on the request and grants the licence by executive decree.

Refining, storage, transportation and markets of oil derived products

The construction, exploration, capacity transformation, licence renewal and any activity that affects the safety condition of (1) oil refining facilities, (2) storage structures, (3) transportation via pipelines, (4) oversight of the oil-derived products system, or the (5) functioning of the oil-derived products wholesale and retail markets are subject to licensing procedures set out in accordance with Presidential Decree No. 132/13 of 5 November.

The activities mentioned in (2), (3) and (4) above are classified as activities of strategic interest for the country and are subject to public service concession agreements, which are granted after completion of a tender procedure, except when such concessions are attributed to entities controlled by the state.

Oil refining is authorised by the grant of a licence and is developed under market conditions, except for the case of the Refinaria de Luanda, which is a refinery that operates under a special regime.

Construction of electric facilities

The construction of electric facilities⁹ is subject to the licensing procedures prescribed in Decree No. 41/04 of 2 July, the Regulation for the Licensing and Security of Electric Facilities.

Under this Regulation, any entity interested in developing new electric facilities is required to obtain an establishment licence (which grants the authorisation for the construction of the facility) and, subsequently, an exploration licence, which grants the necessary authorisation to start operating the facility.

7 Decree No. 48/04 of 1 September governs the Rules and Procedures for Public Tenders in the Oil Sector.

8 Sociedade Nacional de Combustíveis de Angola, EP, the exclusive concessionaire for mining rights in Angola.

9 Meaning generation, transmission or distribution facilities.

The request for these licences is made to the licensing entity (which is the competent entity, within the Ministry responsible for the energy sector,¹⁰ to conduct the licensing process), enclosing the respective project and all other elements necessary to understand the project as a whole.

The licensing entity may impose any modifications it deems essential to ensure the safety of the population and assets as well as complying with the applicable security regulations. In certain situations, the project may be subject to various consultation procedures, namely with affected populations or official departments in charge of activities that are affected by the project in question.

After all the foregoing formalities are successfully concluded, an establishment licence is granted after the payment of the fee, allowing the commencement of construction. Usually, the project developer is obliged to finish the construction works within two years of the establishment licence being granted, although this may be extended depending on the circumstances.

Following the completion of the construction works, the project developer should request an inspection to ensure compliance of the facility with all applicable rules. If it complies, the exploration licence is granted (no later than 15 days after the inspection) and the facility may enter into operation.

In certain cases – mostly construction of small facilities that do not interfere with public domain terrains or assets – there may be an exemption from obtaining the establishment licence, or both the establishment and exploration licences.

Authorisation to develop generation, transmission or distribution activities

The authorisation to develop generation, transmission or distribution activities is granted through concession agreements,¹¹ entered into with the Angolan government, or through licences granted by the local authority, depending on the circumstances.

Concession agreements

The attribution of concession agreements is made after a public tender procedure and the concession has a maximum of 50 years, determined on a case-by-case basis. At the request of the concessionaire, the concession agreement may be renewed, if such renovation is of public interest. At the term of the concession agreement, all assets that integrate the concession shall become property of the state.

10 At the present, the Ministry of Energy and Water.

11 The concession agreements are signed and approved by the Council of Ministers. Although the law grants the Council of Ministers the power to approve the concession agreements, considering the governmental structure established by the Constitution of 2010, the Council of Ministers ceased to develop executive functions, thus becoming a mere advisory body. As such, given the concentration of executive powers operated in 2010, it is presumed that such competence now rests with the holder of the executive power.

Licences

Licences regulate the activities of public supply to isolated localities (not included in the concession areas) of self-generation and of private supply. Licences are attributed by the local authorities within their jurisdiction areas, authorising the generation, transmission and distribution under a public service regime. Licences are attributed for each facility and any entity may hold several licences, regardless of its category or nature.

Generation

As previously noted, the right to develop generation activities is granted either by concession agreement or the attribution of a generation licence, depending on the circumstances, without prejudice to the obtainment of the foregoing establishment and exploration licences.

The producers tied to the PES hold concession agreements or licences for power generation and must comply with public service obligations. Thus, the electric power generated by the tied producers is earmarked to supply the PES. As compensation for such obligation, these producers are entitled to receive a fair price¹² for the sale of the electric power they generate, established in the PPAs entered into with the NTN concessionaire.

Alternatively, non-tied producers hold concession agreements or licences for the generation of electric power, but are exempt from public service obligations, and therefore free to dispose their electric power by entering into bilateral agreements, with terms and conditions set by the parties.

The integration of new generation plants by tied producers into the PES depends upon the generation needs of the country, provided in the Electric System Expansion Director Plan, in accordance with the National Energetic Plan. If the generation plant uses public domain water resources, the project developer must also obtain the correct authorisation for the use of public domain resources.

The granting of the right to explore a generation plant via concession agreement is made through a public tender process.

The contractual position on a concession agreement may be assigned to third parties, but it is subject to the IRSE's opinion and dependent upon authorisation by the Ministers' Council.

Licences for the development of generation activities are granted by local authorities to entities who ensure supply to isolated localities, whose power needs are equal to or under 1MW, as well as to those who generate power under a self-generation or private supply regime and that provide power to the PES (and therefore need to obtain a generation licence). Such licences are valid for a minimum of 15 years.

In order to obtain a generation licence, a request must be submitted to the local authority, which shall request the opinion of the Energy and Water Ministry. In turn, the Energy and Water Ministry must request the opinion of several official bodies that may be involved or affected by the project. These opinions must be submitted to the local

12 Considering an adequate return on the investment made.

authorities within 90 days.¹³ Upon receipt of such opinions, within 60 days, the local authority must attribute a provisional generation licence, and the project developer then has 180 days in which to obtain the establishment licence from the Energy and Water Ministry.

Distribution

Similarly to generation of electric power, distribution activities are authorised via concession agreements, entered into with the state, or a licence, granted by local authorities.

In general terms, the authorisation to operate HV and MV distribution networks is granted via concession agreements and distribution in LV networks is authorised by granting of a licence.¹⁴

iii Ownership and market access restrictions

Oil and gas

As previously mentioned, companies who wish to develop exploration and production activities must do so in association with Sonangol in one of three ways: incorporation of a joint company, consortium agreement or production sharing agreement. Only commercial companies may become associates of Sonangol, and if such association is made via incorporation of a joint company, or via consortium agreement, Sonangol is legally required to hold an equity participation greater than 50 per cent.¹⁵

Companies that intend to dedicate their activities to oil refining, storage and transportation of oil-derived products, oversight of the oil-derived products system, or that wish to operate in the wholesale or retail markets of oil-derived products must be controlled¹⁶ by Angolan citizens. Furthermore, oil refining, storage and transportation of oil-derived products (activities subject to the attribution of concession agreements) must be developed by companies with management and headquarters effectively established in Angola, must have the said activities as their primary scope of business, and must demonstrate they possess the technical and financial capacity to develop such activities.

13 Or 120 days, in case of a hydropower generation unit.

14 Except for localities with more than 50,000 inhabitants or networks with a maximum peak power required by the system equal or greater than 4MW, in which cases the right is attributed via concession agreement, under the terms of Article 5 of the Electric Power Distribution Regulation (Decree No. 45/01 of 13 July).

15 In duly justified situations, the government may authorise Sonangol to hold a smaller equity participation.

16 In accordance with Presidential Decree No. 132/13 of 5 September, 'control' means owning at least 51 per cent of the company's share capital, hold the more than half the voting rights, being able to appoint more than half the members of the board of directors and having the power to set operational and strategic policies of the company.

Electricity

Concessions and licences for generation, transmission and distribution activities may only be granted to legal persons, private or public, and the development of new electric facilities is dependent upon the attribution of the aforementioned establishment and exploration licences.

Companies that develop generation, transmission or distribution activities authorised by licence are allowed to hold several licences, regardless of their category or nature. Consequently, there are no impediments to the development of such activities by vertically integrated companies.

The Angolan state is legally required to hold a majority equity participation in the share capital of the concessionaire of the NTN, or a veto right.

iv Transfers of control and assignments

Oil and gas

The assignment of a contractual position in the exploration and production concession agreement requires the prior authorisation of the Minister responsible for the exploration and production of oil matters, provided that the transferee is of proven competence, and technical and financial capability, unless the assignment is made between subsidiary companies of the transferor.

In the event such assignment is authorised, Sonangol has a right of pre-emption. If Sonangol does not exercise this right, Angolan companies that are party to other concession agreements at the time of the transfer are entitled to exercise such pre-emption right.

The concessionaires of oil refining, storage and transportation of oil-derived products activities cannot transfer or encumber the assets pertaining to the concession, such acts being subject to prior authorisation of the grantor.

Electricity

Subject to prior authorisation by the Ministers' Council, concessionaires for generation, transmission or distribution activities may assign, sell or encumber their contractual positions to third parties. Licensees may also transfer their licences to third parties, provided that the licensing entity agrees to such transfer and the requirements that determined its attribution are fulfilled at the time of the transfer.

III TRANSMISSION/TRANSPORTATION AND DISTRIBUTION SERVICES

i Vertical integration and unbundling

As previously noted, the energy industry in Angola is strongly dominated by the presence of public companies.

Oil and gas

In the oil and gas industries Sonangol is party to every exploration and production agreement made with foreign companies, being responsible for the technical management of such agreements in order to maximise both the state and the company's interests.

Sonangol Group, through its multiple subsidiaries, operates as a vertically integrated company that has its main activities concentrated in all phases of the oil chain of business. Its activities include exploration, production, development, marketing, transportation and refining of hydrocarbons and its derivatives. Those activities can be performed independently or in association with other companies, national or foreign.

The activity of oil-derived products' storage and transportation is now subject to a functional and accounting unbundling regime.

The activity of overseeing the oil-derived products system¹⁷ is subject to a legal unbundling regime.

The exploration, evaluation and development of natural gas reserves are the responsibility of Sonagas, a subsidiary of Sonangol Group. Sonagas create joint ventures with partners with financial capability, expertise and willingness to contribute to the development of the natural gas industry in Angola.

In 2007, an agreement was made to develop the Angola LNG Project,¹⁸ where Sonagas is a partner. Angola LNG operates one of the world's most advanced liquefied natural gas (LNG) processing facilities in Soyo, in Zaire province, under a consortium of companies which includes Sonangol (22.8 per cent), and subsidiaries of Chevron (36.4 per cent), Total (13.6 per cent), BP (13.6 per cent), and ENI (13.6 per cent).

Electricity

In the electricity industry, the main public players are, after the formal unbundling of the public entities of the electricity sector effected by Presidential Decree No. 305/14 of 20 November, Rede Nacional de Transporte de Electricidade, EP (RNT) (which is responsible for managing the NTN, for the global management of the system, offtake and acting as market operator), Empresa Pública de Produção de Electricidade, EP (PRODEL) (which is responsible for the operation, under a public service regime, of publicly owned power generation facilities) and Empresa Nacional de Distribuição de Electricidade, EP (ENDE), whose sole purpose is the distribution and supply of electricity in the PES.

This reorganisation stemmed from the Policy and Strategy for the National Energetic Security, whereby the government has approved an ambitious reform plan for the electricity sector, which foresees provision of access to electricity for between 50 and 60 per cent of the population by 2025.¹⁹ As part of the reform, the government envisaged:

- a* a public company exclusively dedicated to the management of generation assets, resulting from the merger of ENE and GAMEK, resulting in the incorporation of PRODEL;

17 Currently developed by Sonangol Logística, EP.

18 More information about this project can be found at www.angolalng.com/project/default.htm.

19 Today, only around 30 per cent of the Angolan population has access to electricity.

- b* a public company dedicated to the transmission of electricity in ultra-high and HV networks and to the management of the national electricity system, resulting in the incorporation of RNT; and
- c* a public company dedicated to the distribution of electricity, resulting from the merger of the distribution assets of ENE EP, EDEL EP and the municipalities, resulting in the incorporation of ENDE (which was, however, incorporated without the assets of the aforementioned municipal distribution networks).

This restructuring model accommodates the creation of a national holding company, owning the aforementioned three companies.

The government estimates that the execution of the restructuring programme for the electricity industry in Angola will require an investment of US\$13 billion by 2025. Consequently, the electricity sector will gradually open up to competition, and private investors will be welcomed.

ii Transmission/transportation and distribution access

Oil and gas

Under the Law for the Transport and Storage of Oil and Natural Gas,²⁰ operators of oil and gas pipelines have an exclusive right to explore these infrastructures.

The operators are prohibited from adopting discriminatory behaviour, unless such discrimination is justified due to technical conditions.

Electricity

Concession agreements and the licences attribute to the concessionaires or the licensees the exclusive right to explore and operate the transmission and distribution networks.

Under the Networks Access Regulation, the NTN concessionaire and the tied distribution operators of HV and MV networks are obliged to provide equal access conditions to third parties.

The Networks Access Regulation acknowledges the network access rights of:

- a* entities that are tied to the PES and hold concession agreements or licence authorisation to generate electric power under the terms of the Electric Power Generation Regulation;
- b* entities who are not tied to the PES and hold a concession agreement or a licence to generate electric power;
- c* tied customers under the terms of the Electric Power Supply Regulation;
- d* non-tied customers recognised as such under the Commercial Relations Regulation; and
- e* self-producers or producers for private supply who intend to exercise their right of providing electric power through access to PES networks, as well as the entities that are supplied by these.

20 Enacted by Law No. 26/12 of 22 August.

The commercial relations regarding networks access are governed by written agreements, valid for a period of one year, and its general terms are approved by the IRSE.

According to the Commercial Relations Regulation, the NTN concessionaire is responsible for operating and maintaining the NTN, managing the national electric system and acting as a commercial agent.²¹ Also, the commercial relations between non-tied agents and the PES are centralised in the NTN concessionaire.

For the purpose of avoiding discriminatory behaviours and ensuring transparency, the NTN concessionaire must separate, in terms of organisation and accounting, the three aforementioned activities.

iii Terminalling, processing and treatment

Angola has great potential for natural gas production, with proven reserves of 270,000 million cubic metres (with some estimates indicating resources of over 1.2 billion cubic metres), and intends to develop this industry aiming for the exportation markets.

Investment, however, has been limited (the main investment in the industry is the Angola LNG project),²² mainly due to great legal and regulatory uncertainty.²³ To address these uncertainties, Presidential Decree No. 256/11 of 29 September sets the development of such legal and regulatory framework of these activities as a primary goal for the strategic orientation of the oil and natural gas industries.

Recent developments have been made with the publication in 2012 of the Law for the Transport and Storage of Oil and Natural Gas. It is a first step, but the natural gas industry is in great need of regulatory progress that attributes certainty and clarity to the development of activities such as terminalling, processing and treatment of natural gas, as well as access conditions by third parties to LNG facilities.

iv Rates

Rates for transmission and distribution of electricity are established in accordance with the Tariffs Regulation,²⁴ put into force by the IRSE. Rates are uniform for the entire country, the application of different tariffs being prohibited for customers in the same tariff category. The IRSE sets the maximum tariffs and hence the maximum prices for the provision of transmission or distribution services.

Tariffs are based upon the provider's costs plus a reasonable rate of return, resulting in the allowed revenues of the network operators. The rate of return of the transmission and distribution companies is calculated using the weighted average capital cost/capital asset pricing model (WACC/CAPM) methodology.

21 The commercial agent is the part of the NTN concessionaire that ensures supply and the optimisation of the PES, managing the PPAs with tied producers and distributors, among other duties.

22 More information available at www.angolalng.com.

23 An example is the fact that there is as yet no concession model specific to natural gas exploration and production.

24 Presidential Decree No. 4/11 of 6 January.

The calculation of the allowed revenues of NTN transmission concessionaires includes:

- a* efficient investment costs;
- b* efficient operation and maintenance costs;
- c* other costs necessary to efficiently develop the transmission activity; and
- d* a fair rate of return over the investments.

Investments made on network expansion projects are remunerated in accordance with the aforementioned methodology.

For distribution services, remuneration is set through a distinction between the rate of return of the distributor's activity, via the HV, MV and LV networks, and the rate of return of the investment costs and the costs for the connection of consumers' facilities to the grid. The first is called the aggregated value of standard distribution (AVSD), while the second is called the connection fee.

The AVSD is set for a certain number of standard distribution areas, distinguished by several variables such as consumption per unit area, consumption per capita, number of consumers per unit area or the facilities' age, which justify differences on the efficient costs of the distribution activity.

The AVSD is composed of operational costs, calculated in respect of a reference company for each standard distribution area, and a fair rate of return on efficient investments. Operational costs should consider, *inter alia*, commercial, distribution, administrative, financial and management activities.

The unitary cost of investment in the distribution network is calculated from the annuity of the capital cost corresponding to the new value of replacement of the existing network. The annuity is calculated considering a useful lifetime of the distribution facilities of 30 years.

v Security and technology restrictions

The NTN concessionaire, in its capacity as system operator and manager, is responsible for ensuring the continuous and safe operation of the NES. As such, it is responsible for constantly evaluating the security level of the grid and declaring, in extreme situations, a 'situation of absolute shortage of power'. The NTN concessionaire is also tasked with the responsibility of elaborating a security plan, establishing the necessary preventive measures to avoid incidents that may disrupt the provision of electric power to customers.

Under Article 6 of the Electricity General Law, concessionaires or licensees of generation, transmission or distribution activities must ensure, at their own expense, that their facilities are protected against sabotage or acts of war.

In a state of emergency, the state assumes the responsibility for the supply of electricity to the PES. In addition, in these situations the state may tie independent producers to the PES, without prejudice to the right of compensation of the affected entities.

Retail suppliers of oil-derived products are obliged to maintain safety reserves in accordance with the law.

IV ENERGY MARKETS

i Contracts for sale of energy

As previously mentioned, only non-tied agents use a market-based approach. Accordingly, the Commercial Relations Regulation allows the establishment of physical bilateral agreements for the sale and purchase of electric power, with their terms and conditions freely defined by the parties.

These agreements may be for long or short-term periods, short-term meaning less than one year.

ii Energy market rules and regulation

Only the entity in charge of overseeing the oil-derived products market (Sonangol Logística) is entitled to import oil-derived products to the Angolan market. Said entity shall preferentially buy its oil-derived products from Refinaria de Luanda (a refinery operating under a special regime). In addition, the entity in charge of overseeing the oil-derived products market is committed with the role of last resort supplier of oil-derived products, thus having the obligation to provide oil-derived products to the retail suppliers at the price administratively set by the IRDP.

The retail suppliers of oil-derived products must ensure their supply by entering into bilateral agreements either with the oil refineries' operators under the market regime, or with the entity in charge of overseeing the oil-derived products market.

V RENEWABLE ENERGY AND CONSERVATION

i Development of renewable energy

The Angolan government considers renewable energies to be a key element in the development of the country's electric system, particularly in rural areas. The country has high potential in terms of renewable resources, mainly in terms of hydro and solar power. Solar power will play an important role in providing electricity to rural areas, while large hydropower projects are intended to be connected to the NTN supplying the PES. The country is also undertaking a wind power study to ascertain the potential of this energy source.

The electric power industry in Angola is urgently in need of major financial investment in the area of power generation. As a result, Angola is now seeking to create attractive conditions for private investors to participate in the development of the electric power industry.

In order to ensure attractive remuneration to private investors (without compromising the cost-efficiency for the government and customers) the government is taking into account the utilisation of PPAs as a privileged instrument to capture investment into new large-scale generation units (over 10MW), and as a mechanism that guarantees an adequate return on the investment made and ensures its long-term amortisation.

In addition, Angola is ever-more inclined towards establishing public-private partnerships (PPPs) with interested investors, allowing public companies to improve their

skills and expertise, and favouring the creation of long-lasting commercial relationships with such investors.

For smaller projects, the use of feed-in tariffs will be the main mechanism of remuneration for generation capacity in isolated systems (under 10MW).

Presidential Decree No. 88/13 of 14 June recently established the Strategic Plan for New Environmental Technologies, which is divided into two perspectives, a transversal and a sectorial perspective. The governmental body in charge of implementing such project is the General Directorate for Environmental Technologies.

The transversal perspective aims essentially to promote, disseminate, foster and raise the population awareness towards the use of environmental technologies in Angola, mainly by (1) developing information campaigns using the existent social media, (2) implementing information campaigns in schools and local communities, (3) creating a platform to share information between entities related with the environmental technologies industries, and (4) promoting the country's adherence to an international sustainability index.

The sectorial perspective focuses on promoting and implementing tailored measures and actions by economic sector, including specific programmes for the following sectors: (1) real estate and construction, (2) agriculture and forestry, (3) industry, (4) energy and water, (5) oil and (6) transportation.

The government has allocated around 224 million kwanzas to complete the Strategic Plan for New Environmental Technologies.

ii Technological developments

During 2013, the government was committed to successfully complete a pilot project for solar power villages – the Aldeia Solar de Cabiri. This project is being financed by Sonangol, which invested around US\$30 million, and aims to test a solar village concept that could be implemented throughout the country, especially in rural areas. The project was inaugurated in 2014.

By the end of 2013, the Angolan authorities had foreseen that the construction of the first wind farm in Angola would begin in the near future, after the wind studies were completed. Located in the municipality of Tômbwa, the wind farm will be developed under a PPP regime and will add 100MW to the country's installed capacity.

The government approved a series of agreements regarding the construction and development of generation, transportation and distribution of electric power, namely a generation project in the city of Malanje²⁵ and the construction of transportation grids between Cambambe-Catete and Cambambe-Gabela.²⁶

ZTE Corporation, a Chinese company, will provide smart meter solutions to EDEL EP (currently ENDE), the distribution network operator in Luanda, including equipment, construction, personnel training, and operations and maintenance

25 Approved by Presidential Order No. 57/13 of 26 June.

26 Approved by Presidential Order No. 49/13 of 15 May.

This project is intended to solve difficulties such as bill arrears, inefficient manual meter reading and electricity theft, and to improve ENDE's management efficiency, while reducing its operation and maintenance costs.

VI THE YEAR IN REVIEW

2013 marked a decade of peace in Angola, which has transformed the country in terms of modernisation. Its infrastructure is developing steadily, living conditions are improving and the economy continues to grow. In fact, by 2013 the country had already achieved its 2015 Millennium Development Goals.

In September, Sonangol announced a new round of bids for the oil exploration and production rights on the onshore areas of the Lower Congo and Kwanza basins.

The first LNG cargo was shipped from the Angola LNG Project to Brazil, where it safely harboured, thus completing the first LNG cargo shipping operated by such facilities.

By the end of 2013, Cobalt International Energy announced another promising oil discovery, a major deep-water well – Lontra well – that is estimated to contain from 700 million to 1.1 billion barrels of oil equivalent. It is the company's third recent pre-salt discovery in the Kwanza pre-salt basin.

2014 witnessed a major reorganisation of the institutional framework of the electricity sector, by virtue of the extinction of ENE and EDEL and the incorporation of new companies to manage Angolan public electricity assets (as detailed above).

In late 2014, oil prices dropped to levels unseen since the height of the financial crisis, spurring various analysts and policy makers to declare that low prices would become the new normal.^{27,28} As the second largest producer in sub-Saharan Africa (behind Nigeria), Angola is heavily dependent on oil revenue as approximately 97 per cent of its exports in 2012 came from oil and earned 24 billion US dollars in net oil export revenue in 2014 alone.²⁹ Consequently a permanent lowering of prices is likely to do significant damage to the nation's exports, foreign exchange reserves and the overall economy.

VII CONCLUSIONS AND OUTLOOK

Angola is struggling to rebuild its infrastructure, and rise from the wreckage of its civil war. Since 2002, it has managed to increase generation capacity, improve operational capability and progressively rehabilitate and maintain the country's electric power grids. Nonetheless, productive ability is still unable to sustain existing demand and the service

27 <http://www.telegraph.co.uk/finance/oilprices/11443080/Oil-prices-at-60-is-norw-normalsays-Colombian-finance-minister.html>.

28 <http://www.theaustralian.com.au/business/mining-energy/low-oil-prices-are-the-norw-normalsay-analysts/story-e6frg9df-1227172455203?nk=db0f7e7599d812ed63a1025be21b50a5>.

29 <http://www.eia.gov/countries/analysisbriefs/Angola/angola.pdf>.

is generally unreliable. Poor access and unpredictable power is also a consequence of the fragmented nature of Angola's power system. The three main Angolan grids – the north, south and central systems – are not interconnected (which would free up excess power from the north to the central and south systems).

The electricity tariffs structure also needs revising. The current tariffs structure does not allow public companies to cover their costs and finance the necessary investments, but subsidies need to start being cut from supply prices.

The problem is exacerbated by the high level of commercial losses due to the inefficiency of the transmission and distribution networks, unbilled consumption or fraudulent connections, which lead to serious financial constraints from these companies.

In this context, Angola has committed to reforming the legal framework for energy-related activities and restructuring of the companies in these industries, welcoming new private players that may provide valuable expertise, along with a new financial stimulus.

The country has all the conditions to create a sustainable and prosperous energy industry. Its economy is steadily growing and the country is rich in natural resources. Now, it needs to create attractive conditions for new investors, and a business environment that inspires trust and security in its players.

Appendix 1

ABOUT THE AUTHORS

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Catarina Levy Osório is a partner with ALC Advogados. She previously worked at another law firm as a consultant in the tax department and as a senior tax consultant of a major international consulting firm.

Ms Osório is a consultant of Morais Leitão, Galvão Teles, Soares da Silva in all matters pertaining to Angola. She is a member of the Angolan and Portuguese Bar Associations and has relevant experience in Angolan law, having advised clients on private investment, tax and labour law in that jurisdiction.

HELENA PRATA

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Helena Prata is a partner with ALC Advogados, with expertise ranging from advisory to complex corporate and asset financing and restructuring transactions, incorporation of SPV and structured security arrangements and labour law. She is highly experienced in corporate law, environment, oil and gas and has accompanied national and international clients in these areas.

She is the author of several articles published in specialised Angolan magazines and also teaches business law at the Law Faculty of the Agostinho Neto University. Ms Prata was recently elected a member of Luanda's Provincial Council from the Angolan Bar Association.

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