

BELIZE:

**NATIONAL LIQUEFIED PETROLEUM GAS PROJECT
ACT, 2019**

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SCHEDULE



No. 12 of 2019

I assent,

(SIR COLVILLE N. YOUNG)

Governor-General

4th September, 2019.

AN ACT to comply with and give effect to certain undertakings and obligations of the Government of Belize, under and in connection with a public private partnership agreement for the establishment, operation and transfer of a liquefied petroleum gas terminal and related facilities in Belize for the proper rationalization of cost, supply and pricing and enhanced efficiency of the liquefied petroleum gas sector, to optimize quality control and in the overall interest of the public; to provide for certain exemptions from taxes and duties; and to provide for matters connected therewith or incidental thereto.

(Gazetted 5th September, 2019).

BE IT ENACTED, by and with the advice and consent of the House of Representatives and Senate of Belize and by the authority of the same, as follows:

1. This Act may be cited as the

Short title.

**NATIONAL LIQUEFIED PETROLEUM GAS
PROJECT ACT, 2019.**

Interpretation.

2. In this Act, unless the context otherwise requires–

“Commercial Operations Date” means the date on which the Developer commences commercial operations upon securing written approval from the Government;

“Developer” means National Gas Company (Belize) Ltd., a company incorporated under the laws of Belize and its permitted successors and assigns;

“Government” means the Government of Belize;

“Government’s Shares” means the 5,000 ordinary shares in the capital of the Developer comprising twenty five percent (25%) of the authorized share capital of the Developer issued and allotted to the Government in pursuance of the Definitive Agreement;

“Definitive Agreement” means the agreement dated 10th July, 2018 between the Government of Belize and National Gas Company (Belize) Ltd. including any amendment, modification, replacement or restatement thereof;

“Liquefied Petroleum Gas” or “LPG” means a by-product from the processing of natural gas or petroleum gas or from petroleum refining, consisting of a mixture of low-boiling hydrocarbons that exist in a liquid state at ambient temperature and includes commercial butane, commercial propane, commercial butane-propane mixtures and special duty propane blends and any other blend or constituent thereof;

“Minister” means the Minister responsible for Finance;

“Project” means–

- (a) the design, financing, construction, procurement, commissioning, operations, maintenance of the Project Facility for the term

of the Definitive Agreement including the establishment, operation and maintenance of–

- (i) a landing terminal for receipt, storage, blending, and sale of LPG located at the Port of Big Creek, Stann Creek District, Belize;
 - (ii) a bulk plant for receipt, storage, and sale of LPG located in the vicinity of the City of Belmopan, Cayo District, Belize; and
 - (iii) a bulk plant for the receipt, storage and sale of LPG located in the vicinity of Orange Walk Town, Orange Walk District, Belize; and
- (b) the transfer of ownership of the Project Facility to the Government of Belize after the expiration of the term of the Definitive Agreement;

“Project Facility” means the assets including but not limited to the entirety of the Terminal, bulk substations, the Lease (as defined in the Definitive Agreement) and related assets acquired by the Developer for the purpose of fulfilment of Developer’s obligations under the Definitive Agreement including the entirety of the undertaking of the business connected therewith;

“Terminal” means a landing terminal for receipt, storage, blending, and sale of LPG located at the Port of Big Creek, Stann Creek District, Belize; and

“Termination Date” means the fifteen year anniversary of the Commercial Operations Date or the date on which the Definitive Agreement is terminated as per the provisions of the Definitive Agreement, whichever is earlier.

limited to import duties, excise taxes, environmental taxes and general sales taxes prior to the Commercial Operations Date and shall thereafter be exempt from income and business taxes (and any other taxes in substitution thereof (if any)) from and after the Commercial Operations Date; and

Set-off in the event of default.

- (b) all instruments relating to the transfer of the Government's Shares or any part thereof by the Government to the Developer, the transfer of the Project Facility by the Developer to the Government, the transfer of any property, assets, undertaking or business of the Developer to the Government and otherwise relating to any transactions in pursuance of the Definitive Agreement shall be exempt from stamp duty.

(2) The Developer shall be exempt from all exchange control laws and regulations for the duration of the term of the Definitive Agreement.

(3) The Supplies Control Act shall not apply to the importation and wholesale by the Developer of LPG.

Cap. 293.

8. The exemption from taxes, duties and exchange controls granted by section 7 of this Act shall apply only to such activities of the Developer as relate directly to the Project.

Extent of exemption.

9.-(1) During the term of the Definitive Agreement the Government shall at all times hold a minimum of twenty-five percent (25%) of the issued and outstanding shares of the Developer and the Developer shall in turn hold a one hundred percent (100%) ownership interest in the Project Facility.

Ownership and transfer of project facility.

(2) At the conclusion of the term of the Definitive Agreement, on the Termination Date, the Developer shall transfer, pass, and otherwise vest legal and beneficial title and ownership in the Project Facility to the Government in consideration of the Government fulfilling all its obligations under the Definitive Agreement and the transfer of the Government's Shares to the Developer free from and clear of any and all encumbrances.

(3) On the transfer under sub-section (2), the Project Facility shall be—

(a) free from any encumbrances; and

(b) in a reasonably good operating condition.

(4) The transfer shall be—

(a) without any requirement of petition to, or confirmation or approval by the Court, notwithstanding anything contained in the Companies Act or in any other law; and

(b) at the sole cost and expense of the Government.

LPG Pricing
Methodology.

10. The LPG Pricing Methodology for determining wholesale prices for LPG sold or to be sold by the Developer from time to time during the term of this Agreement shall be as prescribed in the Schedule.

Regulations.

11.-(1) The Minister may make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act, for carrying out the purposes of this Act or any provisions thereof, or for the further, better or more convenient implementation of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made as necessary to implement and otherwise give full effect to the LPG Pricing Methodology set forth in the Schedule for determining the wholesale price for LPG sold by the Developer from time to time during the term of and in accordance with the Definitive Agreement.

SCHEDULE

(section 10)

LPG Pricing Methodology

1. For the purposes of this Schedule–

“BBS” means the Belize Bureau of Standards;

“Buyer” means the entity contracted by the Developer for supply of LPG to the Developer;

“CIF (Buyer) Price” means the price of LPG supplied to the Developer by the Buyer at the Terminal comprised of the following amounts–

- (a) the FOB (Supplier) Price;
- (b) applicable freight and handling charges;
- (c) applicable insurance charges; and
- (d) applicable foreign exchange charges to convert from US currency to Belize currency;

“environmental tax” means the ad valorem tax levied and collected on goods imported into Belize as prescribed by the Environmental Tax Act;

Cap. 64.01

“financing fee” means the fee established to pay lenders, corporate bondholders and equity investors involved in financing the Project in accordance with paragraph 5;

“FOB (Supplier) Price” means the price in US dollars of LPG sourced from the Supplier by the Buyer at the Supplier’s dock stated in the form of (MB) +/- (X) where X is the variant from the quoted MB price on the date of the Supplier’s invoice;

“G&A fee” means the fee established to provide the Developer with funds necessary to carry out their general and administrative functions;

“landed cost” in relation to LPG means the aggregate of the following amounts, namely–

- (a) the CIF (Buyer) Price;
- (b) port dues;
- (c) brokerage fees;
- (d) port throughput fee; and
- (e) any and all applicable duties and taxes;

“Mont Belvieu” or “MB” means the location specified in either spot or future contracts for delivery of propane in Mont Belvieu, Texas, United States of America;

“O&M fee” means the fee established to provide the funds necessary for operating and maintaining the Project Facility;

“port dues” means dues and charges levied by the Belize Port Authority as prescribed by the Belize Port Authority Act and the Belize Port Authority (Tariff) Regulations;

“port throughput fee” means the fee charged by the Port of Big Creek for port services provided, lease of the property on which the Terminal is located, the grant of rights of way for pipelines and cables, and the use of the marine berth for unloading of LPG;

Cap. 233.

“regulatory fee” means the fee established to provide the BBS with funds to assist in regulating the LPG industry in Belize;

“Supplier” means the entity from whom the Buyer sources LPG;

“wholesale” means the sale of LPG relating to the smallest quantity of LPG which is ordinarily sold by the Developer; and

“wholesale price” means the aggregate of the following amounts–

- (a) landed cost;
- (b) financing fee;
- (c) regulatory fee;
- (d) G&A fee; and
- (e) O&M fee.

2. A wholesale price setting exercise will be conducted by the BBS and the Developer on the receipt by the Developer of each bulk delivery of LPG by the Buyer to the Terminal SAVE AND EXCEPT THAT in the case of the Commercial Operations Date, the wholesale price setting exercise shall be conducted not less than four days prior to the Commercial Operations Date.

3. The landed cost of LPG is a pass through cost in the price formulation and as such will vary on each price setting exercise depending on the value of the individual components comprising the landed cost at the time of the price setting exercise.

4. Subject to paragraph (9) below, the port throughput fee is fixed for the duration of the Definitive Agreement for the duration of the Project at BZ\$0.05 per US gallon passing through the port facilities.

5.-(1) The financing fee is derived from and comprised of-

- (a) all financing costs and principal or capital payments/repayments/returns associated with equity and debt financing of the Project including but not limited to principal and interest payment on loans and fees associated therewith;
- (b) coupon interest payment on the corporate bonds;
- (c) sinking fund for principal repayment of the corporate bonds;
- (d) annual dividends to shareholders;
- (e) sinking fund for recovery of the initial equity investment; and
- (f) returns on and of equity investments.

(2) On the Commercial Operations Date, the financing fee shall be calculated by determining the total value of the sum of these components for the remainder of the relevant calendar year and dividing same by that certain pro rata portion of 11,500,000 gallons relative to the

remainder of the calendar year after the Commercial Operations Date.

(3) Immediately prior to the commencement of the first calendar year after the Commercial Operations Date, the financing fee shall be calculated by determining the annual value of the sum of these components for the upcoming calendar year and dividing same by 11,500,000 gallons.

(4) For each year thereafter, the financing fee shall be calculated by determining the annual value of the sum of these components for the upcoming calendar year and dividing same by the prior year's throughput volume in the Developer's LPG sales.

(5) The financing fee is thereupon expressed in units of BZ\$/US gallon for the upcoming relevant period.

6. The regulatory fee is fixed for the duration of the Definitive Agreement at BZ\$ 0.02 per US gallon of LPG passed through the Terminal which fee shall be paid by the Developer to the Government for purposes of testing of imported LPG at the Terminal by or on behalf of the Government.

7. Subject to paragraph (9) below, the G&A Fee is fixed for the duration of the Definitive Agreement at BZ\$ 0.08 per US gallon of LPG passed through the Terminal.

8. Subject to paragraph (9) below, the O&M Fee is fixed for the duration of the Definitive Agreement at BZ\$ 0.27 per US gallon of LPG passed through the Terminal.

9. The Port Throughput Fee, the G&A Fee and the O&M Fee are based on the installed storage capacity

and associated equipment and infrastructure as of the Commercial Operations Date. These fees may need to be adjusted from time to time for any increase in installed capacity, associated equipment, infrastructure and inflation and other material changes in relevant laws, market conditions or other circumstances beyond the reasonable control of the Developer.

10. A wholesale price for each LPG product will be determined in accordance with this LPG Pricing Methodology at each price setting exercise.