

Adapting international natural gas and LNG agreements in the light of the energy transition

Kim Talus*

ABSTRACT

This article will examine the bidirectional relationship between private energy contracts and the transition towards a net-zero world. It will focus on long-term take-or-pay natural gas and liquefied natural gas sale and purchase agreements (natural gas and LNG SPAs) that are commonly used in the natural gas sector. These agreements often contain highly restrictive clauses that are designed to ensure stability of supply and demand, which makes them suitable for acquiring the project financing necessary for large capital-intensive energy projects. At the same time, these agreements create an important lock-in effect for the contracting parties. This article will examine the details of gas SPAs from the perspective of this lock-in effect. It will show that current contractual formulations do not provide an adequate solution in the context of the energy transition. Because of this lock-in effect, there is an urgent need to adapt existing contract forms for future use, and to modify the continued application of existing executory contracts to accommodate new realities.

1. INTRODUCTION

Most energy transition studies focus on public sector regulation driving the transition towards net-zero. The focus of studies in this area has been on legal and regulatory frameworks driving the sustainable energy transition or the impact of these frameworks on markets and market impact of emission reduction policies and related regulation.¹

Adopting a different approach,² this article will focus on the private law elements of energy transition and the relationship between the commercial efforts to reach net-zero and the existing and future private energy commodity supply and purchase contracts. In particular, it will focus on natural gas supply and purchase agreements, liquefied natural gas sale and purchase agreements (LNG SPAs), but the concepts discussed should apply analogously to other types of energy supply,

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¹ Among many others, Geert Van Calster, Geert Vandenberghe and Leonie Reins (eds), *Research Handbook on Climate Change Mitigation Law* (Edward Elgar 2015); Tade Opiwonsi and others, (eds), *Decarbonisation and the Energy Industry: Law, Policy and Regulation in Low-Carbon Energy Markets* (Hart Publishing 2020); Rorven Fleming, 'Clean or Renewable – Hydrogen and Power-to-gas in EU Energy Law' (2021) 39(1) *Journal of Energy & Natural Resources Law* 43.

² It appears that this private law and private contractual aspect has only been examined in Anatole Boute, 'Environmental Force Majeure: Relief from Fossil Energy Contracts in the Decarbonisation Era' (2021) 33(2) *Journal of Environmental Law* 339.

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