MHR MARTINEZ DE HOZ & RUEDA

Ladies and Gentlemen,

With our newsletter we would like to inform you of recent and significant legal developments in the field of energy law in Argentina.

Best regards,

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THE LIGHT AT THE END OF THE TUNNEL: RESOLUTION ENARGAS 244/2018 AND THE END OF GAS RE-ROUTINGS?

The Macri Administration took office two years ago. The gas industry was undergoing through (i) a subsidy crisis (end users paying only a minor portion of the actual cost of producing gas), (ii) a gas shortage situation with increasing LNG imports (at a price higher than the domestic price), and (iii) an absence of "gas sales agreements" (GSAs) between producers and their clients.

During these two years (2016 and 2017), the Government

actively addressed the first two symptoms by increasing gas tariffs paid by residential users and establishing certain subsidies to unconventional gas projects.
In relation to the "contractualisation" issue, the Government fostered GSAs between producers and distribution companies, as well as with power generators (see Resolution SEE 287/2017) by acknowledging such users to pass-through the gas cost to their relevant clients. Now it is taking an important step to guarantee firm supply commitments under GSAs: ending re-routing of gas volumes.
Since 2004, through Decree 180/04 and complementary regulations (including Resolution ENARGAS 1410/2010), the Government intervened the gas dispatch system, interfered GSAs and re-routed contract volumes to certain categories of users (mainly, residential users) with no contracts.
Through Resolution ENARGAS 244, published in the Official Gazette on January 24, 2018, the ENARGAS (the Argentine Natural Gas Regulatory Agency) stated in its Recitals that "the re-routing rules" established in Resolutions SE 599/07, Resolution MINEM 89/16 and Resolution ENARGAS 1410/10 "are no longer in effect". That is the good news. The bad news is that those resolutions were not expressly abrogated yet. We expect to see this in the very near future.

ARGENTINE GOVERNMENT SETS FORTH A FEDERAL PROMOTIONAL REGIME FOR POWER GENERATION FROM RENEWABLE ENERGY SOURCES BY DISTRIBUTION GRID USERS

By means of Law No. 27,424 (the "Law"), passed on November 30, 2017 and published in the Official Gazette on December 27, 2017, the Argentine Government set forth the policies and applicable contractual terms and conditions for the power generation from renewable energy sources by distribution grid users (the "Users"), either for self-consumption as well as for prospective supply of generation surplus to the grid (the "Regime").

The Law also declares this kind of generation to be of federal interest and obliges power distribution companies ("Distributors") to ease such supply to the grid and to secure the Users' open access to the distribution grid.

According to the Regime, all Users are entitled to install power generation equipment ("Equipment") up to a power capacity equivalent to the one contracted with the Distributor. Users willing to install higher power capacity may apply for a special authorization.

Before the installment of the Equipment, Users must have been granted an authorization from the Distributor. In order to comply with such requirement, the Distributor shall perform a complete assessment, including both technical and security aspects. If the User passes the assessment, the User and the Distributor shall enter into a power purchase agreement, and the Distributor shall install measuring equipment. The costs of the installation of the equipment as well as the necessary works shall be borne by the User, unless otherwise provided.

A special tariff shall be applicable to the Users for the electricity supplied to the grid. The Distributor shall bill the User the difference between the power consumed by the User and the power supplied to the grid. If there was a surplus favorable to the User, it shall be deemed as a credit in favor of the User for future billings that might be reimbursed to the User if it persisted for a long-term period.
The Law also creates a trust known as "Renewable Energy Distributed Generation Fund" ("FODIS"), that shall grant loans, incentives, warranties, capital contributions and other financial contributions aimed at fostering the Regime. The Federal Government shall be the trustor; a public financial entity, the trustee; and the Users, the beneficiaries of the FODIS.

Throughout the specific regulation, the Federal Government is also expected to set forth promotional benefits aimed at fostering the Regime that shall be implemented through the FODIS. Such benefits shall include the reduction of costs in the purchase of Equipment.

The Law also provides for a promotional regime for the local production of renewable energy distributed generation systems, equipment and manufactures, known as FANSIGED. This regime embraces the investigation, design, development, production and installation of systems, equipment and manufactures related to renewable energy distributed generation carried out by micro, small and medium-sized companies.

FANSIGED includes promotional benefits such as (i) issuance of a fiscal certificate, (ii) accelerated depreciation for income tax purposes, (iii) advanced V.A.T refund, and (iv) deduction of financial costs for financial indebtedness.

NEW FORMS FOR MANUFACTURING COMPANIES

On January 4, 2018, by means of Resolution SRH No. 1-E/2018 (the "Resolution"), the Secretariat of Hydrocarbons Resources (the "Secretariat") set forth the obligation for hydrocarbons producers to file an electronic form containing complete information on the injected volumes of natural gas allocated to the domestic and international market.

Pursuant the Resolution, hydrocarbons producers must keep such forms updated with regards to changes on previously disclosed information.
Annex I of the Resolution includes a template of the electronic form, which producers must file with the Secretariat.

With regards to the prices of the natural gas, Annex II sets forth certain guidelines for producers to be followed:

- Prices must match those received by producers for the sale of 9.300 Kcal/m3 of natural gas, either from conventional or unconventional sources, excluding transportation, distribution and taxes.
- If sales are stipulated in Argentine pesos, producers must convert such prices into US dollars.

On the twentieth day of every month, all data provided by the producers shall be considered to establish an average price for every segment. Sales made by ENARSA and sales allocated to the international market will not be considered for such calculation.

TIME IS COMING FOR OFFSHORE EXPLORATION IN ARGENTINA

On December 13, 2017, Minister of Energy and Mining, Juan J. Aranguren, announced that on July 2018 Argentina will be launching the first call for bids to award offshore exploration permits.
In the context of a conference held at the Argentine Institute of Oil & Gas (IAPG), Minister Aranguren explained that Argentina has one of the largest –yet one of the least explored– offshore areas worldwide. Moreover, he highlighted that the focus will be initially placed on the southern offshore areas, specifically in "Plataforma Austral Norte" (5,000 km2), "Cuenca Malvinas Oeste" (90,000 km2), and Cuenca Argentina Norte (130,000 km2).
With the purpose of promoting the development of offshore exploration, he announced that on next July, the first round of a call for bids will be officially launched. He also anticipated that further rounds (including new offshore areas of exploration) are expected for 2019.

URE SETS FORTH REGISTRATION BEFORE RENPER, REFERENCE VALUES FOR INVESTMENTS, TAX BENEFIT CAPS AND PROCEDURE FOR DISPATCH PRIORITY ASSIGNMENT IN RELATION TO POWER GENERATION PROJECTS FROM RENEWABLE ENERGIES

On January 9, 2018, the Undersecretariat of Renewable Energies (the "URE"), dependent of the Ministry of Energy and Mining (the "MINEM"), issued Disposition No. 1/2018 (the "Disposition"), by means of which it established: (i) the procedure for the registration before the Federal Registry of Power Generation Projects from Renewable Energies ("RENPER"); (ii) the reference values for investments and the tax benefit caps to be granted to each technology; and (iii) the procedure for dispatch priority assignment.

- Projects willing to register before the RENPER shall obtain a Certificate of Inclusion to the Renewable Energies Regime (the "Certificate"). A website will be available soon for the online registration of such projects. Until then, the request for the registration shall be filed through a note addressed to the URE with the corresponding attached documentation (the "Filing"). The National Direction of Renewable Energy (the "Direction") shall evaluate the Filing and, if necessary, shall request further information or documentation. Once the Filing is verified, the Direction shall send the application to the URE that shall issue the Certificate in signal of approval of the Filing. The Filing shall by updated by communicating any modification to the Direction.
- The reference values for investments and tax benefit caps to be granted to each technology are the following:

Reference Values for Investments

Technology	Reference Values for Investments (US$/MW)
Wind Energy	1,250,000
Photovoltaic Solar Energy	850,000
Biomass Energy	5,500,000
Biogas Energy	5,500,000
Biogas Sanitary Landfill	2,500,000
PAH	3,000,000

Tax benefit Caps[1]

Technology	Tax Benefit Caps (US$/MW) [2]
Wind Energy	625,000
Photovoltaic Solar Energy	425,000
Biomass Energy	1,500,000
Biogas Energy	2,750,000
Biogas Sanitary Landfill	1,250,000
PAH	1,5000,000

- With regard to the procedure of dispatch priority assignment, the Disposition establishes that the Agency in Charge of the Dispatch will assign the dispatch priority to those registered projects before the RENPER that have previously requested it, in accordance with the procedure established by Resolution No. 281/2017. Finally, the Disposition provides the possibility to request the dispatch priority assignment on non-existent transport capacity and to request priority assignment for extensions at the expense of the interested party.

[1] For each project it will be considered that the sum of all the fiscal benefits requested does not exceed the maximum quota of fiscal benefits per megawatt for the corresponding technology.

[2] The amounts will be periodically updated by the URE.

NEW PROCEDURE FOR THE GRANTING OF EXEMPTION FROM IMPORT DUTIES FOR WIND POWER GENERATION PROJECTS

By means of Joint Resolution N° 4-E/2017 (the "Joint Resolution"), the Ministry of Energy and Mining (the "MEM") and the Ministry of Production approved the procedure aimed at obtaining the declaration of a project as "Critical Project" in order to access to the exemption from import duties established in Section 34 of Law N° 26,422 (the "Procedure").

Pursuant to Section 1 of Annex I of the Joint Resolution, the Procedure shall apply to the owners of wind power generation projects that entered into Power Purchase Agreements ("PPA") with CAMMESA in the context of (i) the "RenovAr Program" Rounds 1 and 1.5; and (ii) Resolutions No. 202/2016 and 168/2017 of the MEM.

The scope of the Procedure encompasses the import of wind turbines with a power generation capacity exceeding 700 kW included in the tariff position No. 8502.31.00 of the MERCOSUR Tariff Code, covering their total generation capacity and the amounts specified in the project's Certificate of Inclusion in the Promotional Regime for the use of Renewable Sources of Energy granted in accordance with Section 8 of Annex I of Decree No. 531/2016 (the "Certificate of Inclusion"). If the wind turbines specified above were not included in the project's Certificate of Inclusion, interested parties may request their inclusion to their Certificates of Inclusion for the purposes of the Procedure. The imported wind turbines shall be exclusively destined to the wind power generation projects and shall be deemed an essential part thereof.

The interested parties may request the declaration of their projects as "Critical Projects" and the granting of the exemption from import duties until January 31, 2018, inclusive. The import of the equipment shall occur before December 31, 2019.

Pursuant to the Joint Resolution, the request must include, inter alia, (i) a form identifying the requesting legal entity; (ii) the identification of the project, stating the identification number assigned to the project (NIPRO, for its acronym in Spanish) and its Certificate of Inclusion; (iii) a sworn affidavit stating that the entity does not fall into any of the situations described in subsections a) through d) of Section 12 of Law No. 26,360; (iv) the inclusion of the wind turbines in the Certificate of Inclusion, when applicable; and (v) a sworn affidavit stating that the requesting legal entity will not import any of the substances mentioned in Law No. 24,051 of Hazardous Wastes and Law No. 24,040 of Chemical Compounds.

For the purposes of the declaration of the project as "Critical Project", the enforcement authority along with CAMMESA will assess the request and the compliance of the requirements established in Joint Resolution No. 195/2009 of the former Ministry of Economy and Public Finance, Resolution No. 375/2009 of the Ministry of Production and Resolution No. 1772/2009 of the former Ministry of Federal Planning, Public Investment and Services, as complemented by Decision No. 224/2010, for the granting of the tax benefit. The National Directorate of Renewable Energies of the Undersecretariat of Renewable Energies shall take intervention in the analysis of the request and draft a report stating its conclusions.

If the project is finally declared a "Critical Project" and the exemption from import duties is granted, the owner of the project must obtain the corresponding licenses in the Integrated Imports Monitoring System (SIMI, for its acronym in Spanish) in the terms of Resolution No. 523/2017 of the Ministry of Commerce of the Ministry of Production and General Resolution No. 3,823/ 2017 of the Federal Tax Authority.

The destination of the imported equipment will be subject to verification by the National Institute of Industrial Technology (INTI).

In accordance with Section 11 of Annex I of the Joint Resolution, once the National Directorate of Renewable Energies approves the declarations of "Critical Project", the Federal Tax Authority, through the corresponding customs, shall authorize the Customs Clearance of the imported goods. Finally, once each import is concluded, the project owner must submit to the National Directorate of Renewable Energy a copy of the custom documents within sixty calendar days of the date of production.

NEUQUEN´S SUPREME COURT RULES IN FAVOR OF FRACKING TECHNICS

On December 22, 2017 the Supreme Court of the Province of Neuquén (the "SCN") sentenced the merits of 'Attorney General of the Province of Neuquén v. the Township of Vista Alegre' (the "Case") and decided for the unconstitutionality of the Municipal Ordinance No. 783/16 (the "Ordinance").

The Ordinance was issued by the Township of Vista Alegre ("Respondent") and it prohibited the exploration and production activities of shale oil and gas through fracking techniques within the jurisdiction of the City of Vista Alegre.

On February 25, 2017, the SCN dictated a provisional decision to grant interim relief suspending the Ordinance´s effects.

On April 7, 2017, the Prosecutor Officer of the Province of Neuquén (the "Prosecutor Officer") submitted opinion concerning the SCN jurisdiction to understand in the Case. The Prosecutor Officer held that the Respondent issued an Ordinance that surpasses the realms of its township jurisdiction and therefore stayed in favor of the Attorney General's requirement in relation to the issuance of an injunction suspending the effects of the Ordinance, until a final decision was taken on the merits.

On May 12, 2017, the Supreme SCN of the Province of Neuquén issued injunction and declared the procedural admissibility of the Case.

The grounds on which the SCN decided the unconstitutionality of the Ordinance can be summarized as follows:

- Municipalities do not have jurisdiction to legislate on hydrocarbons matters. The Ordinance interferes with the Province´s exclusive competence in relation to the domain, jurisdiction and regulation of conventional and non-conventional hydrocarbons established in the Argentine Constitution, the Provincial Constitution and Provincial Law 26,197, among others.
- Townships of the Province of Neuquén do not have the faculty to legislate on natural resources. In fact, townships' jurisdiction is limited in accordance with Section 92 of the Provincial Constitution that states: "The Province is responsible for the environmental regulations enforcement, which are complementary to the federal regulations, and for the environmental protection applicable to all its territory, and municipalities may issue pertinent rules only in accordance to their jurisdiction."
- The policies carried out by the Province and the Municipalities cannot be contradictory. By contrast, they must pursue the same objectives and therefore the legislative decisions should be complementary. An Ordinance that purely and simply prohibits fracking techniques for the exploitation of unconventional hydrocarbons is clearly contrary to the efforts made by the Province to allow the activity within a regulated and controlled legal framework.

RED TAPE REDUCTION AND SIMPLIFICATION

By means of Decree No. 27/2018 (the "Decree") issued on January 11, 2018, the Argentine Government set forth the guidelines to have a more efficient and dynamic management of the public sector and to promote investments, employment, productivity and social integration.

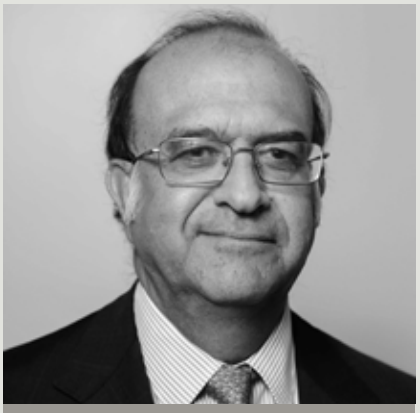
For such purposes, the Decree includes a section focused on the energy regulatory framework and introduces specific amendments to the Hydrocarbons Law ("HL") and the Gas Law ("GL") (the "Amendments").

The main Amendments introduced by the Decree could be summarized as follows:

- Enforcement Authority of the HL: it changes from the Secretariat of Energy and Mining to the Ministry of Energy and Mining (the "MINEM").
- Delegation of faculties within the framework of the HL: it establishes the possibility for the Federal Executive Branch to delegate the exercise of its faculties (e.g, award of permits and concessions) to the corresponding enforcement authority.
- Appeal of the decisions taken by the ENARGAS (the enforcement authority of the GL): jurisdictional decisions taken by the ENARGAS could be challenged before the Administrative Court of Appeals of the City of Buenos Aires or before the Federal Court of Appeals of the corresponding jurisdiction in which the public service is provided, as decided by the interested party.

CONTACTS

For your further inquiries the following contact persons are available:



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