

Dear Friends and Clients,

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 HIGH COURT OF JUSTICE OF THE PROVINCE OF NEUQUÉN RULES ABOUT THE DISTRIBUTION OF JURISDICTION ON ENVIRONMENTAL MATTERS BETWEEN THE PROVINCE AND THE MUNICIPALITIES.

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On April 23, 2018, the High Court of Justice of the Province of Neuquén ruled against YPF and in favor of the Municipality of Rincón de los Sauces, after considering that the latter had constitutional authority to regulate environmental matters and hydrocarbons' activities, stating that, in those matters, the Province of Neuquén and municipal governments have concurrent jurisdiction. This means that, by virtue of a specific provincial constitutional mandate, municipal governments can establish a system of infringements and penalties,

independently of the ones created by the Province. YPF filed an unconstitutionality action against Ordinance No. 1084 - Infractions & Misdemeanors Code (superseded by Ordinance No. 1300) stating that it violated the constitutional principle of competence as it established a system of infringements and penalties in hydrocarbons activities, which was different than the one established by the provincial government by virtue of Provincial Law No. 1875.

In addition, YPF argued that Ordinance No. 1084 was contrary to Provincial Law No. 2600 and Ordinance No. 1159 issued by the Municipality. Through the former, the Province of Neuquén compelled oil companies acting in the Province to obtain an environmental certificate to be granted by the Municipality and the Province. The Municipality of Rincón de los Sauces adhered to said law, limiting its policy power only to the control, supervision and inspection of hydrocarbons activities, but prohibiting its sanctioning powers.

The Municipality of Rincón de los Sauces filed the answer to the complaint arguing that YPF's claim was too broad and generic as it was directed against all the terms of Ordinance No. 1084, and not only against those relevant articles. Moreover, the Municipality claimed that if the Court declared the unconstitutionality of Ordinance No. 1084, the Municipality would have no power to tackle the environmental problems that affects the local community due to hydrocarbons activities held within its boundaries.

After limiting the scope of the action of unconstitutionality, the High Court considered that the distribution of competence between the Province and the municipalities could be assimilated to the distribution of competences between the federal and provincial governments. However, whereas the first part of Article 92 of Neuquén's Provincial Constitution establishes that, the Province is limited – in respect to environmental regulation- to the minimum conditions established by the Federal Government, and so,

it can only issue complementary environmental regulations; municipalities are not limited in the same way to the Province's environmental policy. This means, even though both provincial and municipal governments are limited to the federal environmental regulation; the Province and the municipal governments have the same power to regulate environmental matters, and in a substantive way, within their territorial limits. Therefore, by virtue of a provincial constitutional mandate, the Municipality of Rincón de los Sauces is not limited to the Province of Neuquén's environmental regulation, and it can establish an entire system of infringements and sanctions, and applied it within its territorial limits.

Consequently, the Court stated that, as both levels of government have the same power to regulate environmental matters, and in order to avoid the overlapping of two different regulations; it is essential the coordination of both levels of government, through the coordination of public policies, legislative convergence and joint enforcement actions.

Finally, the tribunal considered that the ordinances challenged by YPF could not be consider unconstitutional as they were not contrary to the Province of Neuquén's Constitution, and this, because Provincial Law No. 2600's scope was limited to the control and supervision -by the Municipality- of hydrocarbon activities for the granting of the environmental certificate. However, said law did not limit all other environmental powers that the provincial constitution granted the Municipality.

THE ENARGAS REGULATES CASES OF SUPPLY EMERGENCY IN THE GAS INDUSTRY

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By means of Resolution No. 59/2018 (the "Resolution"), published in the Official Gazette on May 18, 2018, the Natural Gas Regulatory Authority ("ENARGAS") approved the temporary procedure for clearance administration in cases of emergency of the executive committee.

The Resolution establishes that the pre-state of emergency can be declared by both the supplier (when it may not fulfill the demand in the service area), and the transporter (when their system entry into an emergency scenario that risks the fulfilment of the demand). Under those circumstances, they must electronically communicate the circumstances to (i) ENARGAS, (ii) relevant agents of the gas industry, and (iii) those agents directly involved in the state of emergency.

THE PROCEDURE SET FORTH FOR THE PRE-STATE OF EMERGENCY DEPENDS ON THE AGENT REQUESTING IT:

- In case the pre-state of emergency is declared by the supplier, it must (i) supply the natural gas shortage volume (Mercado Electrónico de Gas S.A. will be the first option for supply), (ii) apply the assistance mechanism between the shippers, (iii) give notice to the transporter, so he can identify and quantify the transport contracts that may be

affected. Exceptionally, the effective transport restriction can be determined by the Emergency Executive Committee ("CEE").

- In case that the pre-state of emergency is declared by the transporter, it must give notice to the supplier, so it can also identify the contracts that may be affected. If the effective interruption were to become necessary, it will be declared by the CEE.

On the other hand, the Resolution establishes that the emergency state may also be declared both by the supplier and the transporter. It will be applicable when, despite adopting responsible measures and the procedure described above, they consider that the demand supply may be in risk, either by the lack of natural gas or the lack of the service of transport. In the case of non-compliance with the actions described above, the companies may be sanctioned by the CEE.

Once the state of emergency is declared, a CEE will be formed. The CEE will be formed in accordance to each particular situation, but it shall be comprised at least by: (i) one representative of the supplier, (ii) one representative of the transporter, and (iii) one representative of each shipper.

ENARGAS MODIFIES THE INTERNAL REGULATION OF THE DISPATCH CENTERS

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On June 26, 2018, by means of Resolution No. 124/2018 (the "Resolution") the Natural Gas Regulatory Authority ("ENARGAS") modified the Internal Regulations of Dispatch Centers (Reglamento Interno de los Centros de Despacho) approved by Resolution No. 716/98 (the "Regulations").

The Resolution sets forth a new purpose: "to avoid recurring crises that affect transportation and distribution and try to preserve clients with non-interruptible services, with a more efficient management".

The most important changes introduced by the Resolution are the following:

- It modifies certain definitions, such as the concept of "Priority Demand". The Resolution focuses on establishing

dispatch guidelines preserving the consumption of the Priority Demand.

- It creates a new mechanism to carry out natural gas requests. In this regard, it establishes that distributors shall request the natural gas needed to supply the Priority Demand.

- It creates a new consumption, deviation and imbalance control system within the distributors (the "System"). The System provides that audits shall be carried out in order to verify the relationship between: (i) the volumes invoiced to the Priority Demand, (ii) the amount paid by the distributors to the gas producers; and (iii) the consumption estimate of the Priority Demand.

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