

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,

José A. Martínez de Hoz (Jr.)
Head Energy Practice Group

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COMPENSATIONS TO OIL PRODUCERS AND BIOFUEL COMPANIES

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By means of Resolution No. 552/2019, issued on September 16, 2019, the Secretariat of Energy established the following measures in order to mitigate the impact of Decrees No. 566/2019 and No. 601/2019 on oil producers and biofuel companies:

i. compensation to crude oil producers of Argentine Pesos one hundred sixteen and ten cents (AR\$ 116.10) per crude oil barrel delivered to the local market during the month of September 2019. The compensation will be paid 88% to the producers and 12% to the relevant provinces where the concession is located (in respect of "royalties"); and

ii. compensation to biofuel companies included in the promotional regime established by Laws 26,093 and 26,334 of an amount equal to 6% of the price determined by the Secretariat of Energy corresponding to the month of August 2019, applicable to the production delivered to the local market during the month of September 2019.

Compensation requests by crude oil producers and provinces must be accompanied by a waiver of any claim against the National State in connection with Decrees 566/2019 and 601/2019 and an indemnity in respect of any domestic or international legal and arbitral claims that may be brought against the National State by the controlling parents or affiliates of the producer seeking this compensation.

Likewise, compensation requests by biofuel companies must be accompanied by a waiver of any claim against the National State in connection with the regulations establishing the price methodology for biofuels and those that define their respective prices within the framework of the promotional regime pursuant to Law 26,093, as well as an indemnity in respect of any domestic or international legal and arbitral claims that may be brought against the National State by the controlling parents or affiliates of the biofuel company seeking this compensation.

On October 7, the Government published Disposition N° 254 (the "**Disposition**") of the Under-Secretariat of Hydrocarbons and Fuels ("**USHF**"). The Disposition establishes the procedure by which the Government will pay to oil companies, biofuel companies and oil producing provinces the subsidy created by Resolution N° 552 (i.e.,

AR\$116,10 per crude oil barrel delivered at the domestic market from September 1 to September 30).

The main guidelines are the following:

i. Since October 8 until October 31, 2019, each company must submit an affidavit indicating crude oil volumes delivered at the domestic market during September, the invoice number and the relevant price per barrel (the "**Affidavit**".)

- The National Direction of Refining and Marketing (reporting to the USHF) shall issue within 4 business days a report validating such volumes and prices.

- Then, the National Direction of Hydrocarbons Economy (reporting to the USHF) shall issue within 3 business days a report calculating the preliminary amount ("Pago Provisorio") to be paid to oil companies and oil provinces.

- Then, the Secretariat of Government of Energy shall issue the payment orders (no deadline expressed in the Disposition) which shall be cancelled within 5 business days as from their issuance.

ii. For actual payment, oil companies and oil provinces must file a waiver to challenge Decrees 566/2019 and 601/2019.

iii. Since October 15 until November 5, 2019, each company must submit an affidavit with any updates in respect of the previously submitted Affidavit.

- The National Direction of Refining and Marketing (reporting to the USHF) shall issue within 5 business days a report validating such volumes and prices.

- Then, the National Direction of Hydrocarbons Economy (reporting to the USHF) shall issue within 5 business days a report calculating the adjusted amount ("Ajuste de Pago") to be paid to oil companies and oil provinces.

- Then, the Secretariat of Government of Energy shall issue the adjustment payment orders (no deadline expressed in the Disposition) which shall be cancelled within 15 business days as from their issuance.

CALL FOR BIDS IN CONNECTION WITH THE DESIGN, CONSTRUCTION AND OPERATION OF POWER PLANTS

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By means of Disposition No. 103/19, issued on September 2, 2019 (the "**Disposition**"), the Under-secretariat of Renewable Energy and Energy Efficiency (the "**Undersecretariat**") launched Bidding Round No. 4/2019 (the "**Bidding Round**") for the design, construction and initial operation of five (5) solar and wind power plants (including storage facilities) within a mini-grid (the "**Projects**"), for an estimated total amount of USD 7,000,000. The Disposition includes the bidding terms and conditions for the Bidding Round (the "**Bidding Terms**").

The Bidding Round was launched in the context of a government initiative aimed at providing rural areas with renewable energy (*Proyecto de Energías Renovables en Zonas Rurales* or "**PERMER**"), which is financed in

part with funds from the loan granted by the International Reconstruction and Development Bank (*Banco Internacional de Reconstrucción y Fomento* or "**BIRF**").

The Undersecretariat shall act as off-taker, and payments shall be made with funds available from "**BIRF** Loan 8484-AR – PERMER", on behalf of the Provinces of Jujuy, Catamarca and Río Negro.

The Projects shall be developed in Catua, El Toro and San Juan de Quillaques (Province of Jujuy), El Peñón (Province of Catamarca), and Naupa Huen (Province of Río Negro). According to the Bidding Terms, requests for clarifications regarding the Bidding Round can be submitted November 12, 2019.

NEW VALUES FOR BIODIESEL

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By means of Disposition No. 199/2019, issued on September 12, 2019, the Undersecretariat of Hydrocarbons determined the minimum price for the acquisition of biodiesel to be mixed with diesel oil within the framework of Law No. 26,093 for the Promotion Regime for the Sustainable Production and Use of Biofuels, in

order to reflect production costs within Argentina's current macroeconomic context.

The new price of Argentine Pesos thirty-three thousand six hundred and eighteen (\$33,618) per ton is applicable as of September 1, 2019.

THE ENERGY SECRETARIAT FREEZES NATURAL GAS DISTRIBUTION AND TRANSPORTATION TARIFFS.

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By means of Resolution No. 521/2019 (the "**Resolution**"), issued on September 4, 2019, the Secretariat of Energy froze the bi-annual adjustment of natural gas distribution and transportation tariffs, by deferring to January 1, 2020 the adjustment of the transportation and distribution margins and the price of natural gas at the "point of entry into the transportation system" (the so-called "**PIST**") caused by variations on the exchange rate; both originally scheduled for October 1, 2019.

As compensation for the deferred adjustment of transportation and distribution margins, the Resolution established the review and adequation of the investment obligations assumed by distributors and carriers under the distribution and transportation license agreements,

respectively, in accordance with the exact losses caused by the deferral.

Regarding the deferral of the natural gas price adjustment, the Resolution is not clear on whether natural gas suppliers shall be compensated for the deferral. The Resolution seems to establish that suppliers shall be compensated through the accumulated daily differences mechanism; according to the terms of Resolution No. 72/2019, issued by the Argentine Gas Regulator ("**ENARGAS**") on February 2019 by means of which it approved the mechanism applicable to the calculation of such daily differences. However, payment of such would no longer include differences caused by variations on the exchange rate. Therefore, there is some uncertainty on the amount of compensation, if any, that suppliers will receive.

ENERGY INTENSIVE USERS. EXTENSION OF THE DISCOUNT REGIME APPLICABLE TO SEASONAL REFERENCE PRICES. ACQUISITION OF ENERGY FOR USERS OF SELF-GENERATION EQUIPMENT DURING SCHEDULED MAINTENANCE.

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By means of Resolution 3/2019, issued on September 11, 2019, the Secretariat of Energy and the Ministry of Production and Labor, established:

- the extension until December 31, 2020 of the discount regime applicable to the Seasonal Reference Prices approved by Joint Resolution 1/2017, provided that the beneficiaries are in due compliance with the provisions set forth thereunder; and
- that the Ultra-energyintensive users beneficiaries of the regime provided for in Joint Resolution 1/2017, in the period in which a scheduled and agreed maintenance of their self-generation equipment is carried out, may acquire

the electrical energy they consume above the volume established (which shall not be higher than the one that would be produced by the equipment in maintenance) by means of the mechanisms defined in the aforementioned resolution, at the marginal hourly cost defined from the dispatch that is carried out for the fixing of the Market Price of the Wholesale Electricity Market ("WEM"), in accordance with Resolution 240 of 14 August 2003 of the former Ministry of Energy under the former Ministry of Federal Planning, Public Investment and Services. The charges corresponding to the incremental power will be assigned according to the current methodology.

ENARGAS CALLS FOR PROPOSALS TO AMEND DISTRIBUTION RULES

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By means of Resolution No. 541/2019 (the "**Resolution**") the ENARGAS summoned all active participants in the Argentine gas industry which activities are regulated under Law No. 24.076 – i.e. carriers, distributors, marketers, storage agents and consumers – and other interested parties to participate in the procedure for amending the Distribution

System Rules set forth by Resolution No. I-4313/17 and amended by Resolution ENARGAS No. I-4325/17.

Interested parties may submit observations to the text proposed by ENARGAS (included as Annex I to the Resolution) within thirty (30) days following September 12, 2019.

THE SECRETARIAT FOR RENEWABLE RESOURCES AND ELECTRICITY MARKETESTABLISHES NEW PENALTIES FOR NON-COMPLIANT AGENTS

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By means of Resolution No. 29/2019, issued on September 6, 2019 (the "**Resolution**"), the Secretariat for Renewable Resources and Electricity Market (the "**Secretariat**") establishes more flexible sanctions on agents who fail to meet their payment obligations with the WEM.

Before the Resolution, Chapter 5 of the "Operation, Dispatch of Charges and Pricing Programming Procedures" included in Annex I of Resolution No. 61/1992 of the former Secretariat of Electric Energy (the "**Procedures**") regulated the invoicing, collection and settlement corresponding to the operation of the WEM. Section 5.5 of the Procedures established that failure to timely pay to WEM the amount invoiced would expose non-compliant agents to a surcharge of three percent (3%) for the first five days of default;

seven percent (7%) from the sixth day to the tenth day of default and ten percent (10%) from the eleventh day to the fifteenth day of default. This led to a significant impact on the finances of large users who paid the corresponding bill in arrears.

In order to promote the regularization of non-compliant agents, the Resolution implements a more flexible system in cases of payment default, establishing that debtors will have to pay a surcharge of one percent (1%) for each day of delay, having as a limit the surcharges set out in Section 5.5 of the Procedures.

The Resolution also establishes that agents who paid last three payments on time shall not be subject to the punitive

surcharges mentioned in the foregoing paragraph. Instead, they will only be charged with a compensatory interest equivalent to the interest charged by the *Banco Nación de la Argentina* for the discount of commercial paper at thirty (30) days. In order to access that benefit, payment must be made within fifteen (15) days past due (otherwise, interest

surcharges shall be the ones imposed in point 5.5).

Finally, with regard to large users, the Resolution establishes that when there is a delay of up to five (5) days in the payment, they may compensate it by anticipating the payment of the next invoice two (2) days for each day of delay.

AMENDMENT TO HAZARDOUS WASTE IMPORT REGIME

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By means of Decree No. 591/2019, issued on August 27, 2019 (the “**Decree**”), the President of the Republic of Argentina amended Decrees No. 181/1992 and No. 831/1993, regarding the transportation and import of hazardous wastes, produced in other countries.

The Decree sets forth the followings main changes:

The elimination of Annex I of Decree No. 181/1992 which provided a list of what was considered hazardous waste due to the existence of specific regulation in this regard;

The necessity of obtaining a sanitary and environment harmlessness certificate pursuant to Article 2 of Decree

No. 181/1992 and article 3 of Decree No. 831/1993 is no longer required;

Only the waste that fulfill the requirements and import procedure set by the Secretariat of Environment jointly with the Ministry of Finance and Labor will be able to be imported;

The enforcement authority of Decree No. 181/2019 is the Secretariat of Environment and the Ministry of Finance and Labor, each in their corresponding area of practice;

The Decree will enter into force within thirty (30) days of its publication (i.e. September 27, 2019).

NEW ECOD FOR PPAS UNDER RESOLUTION NO. 287/17

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By means of Resolution No. 25/2019 (the “Resolution”), the Secretariat of Renewable Energy and Electric Market (the “Secretariat”) established the option for generators to amend the expected commercial operation date (the “ECOD”) of the power purchase agreements entered into with CAMMESA (the “Generators”), awarded under Resolution No. 287/17 (the “Resolution 287”).

In this sense, the Resolution calls on Generators to establish a new ECOD. Generators that choose to amend the original ECOD shall have a 30-day term following publication of the Resolution to declare the new ECOD with respect to their projects. This date, which must not exceed 180 days from the original ECOD, shall be considered as the New ECOD (the “New ECOD”) under the PPAs.

The Resolution establishes that if the ECOD in fact exceeds 180 days with respect to the New ECOD, the following cumulative penalties shall be applicable to the corresponding PPA:

- ECOD between day 181 to 360 with respect to the New ECOD: 2 days reduction of the term of the PPA for each day of additional delay with respect to the New ECOD, plus 180 days.

- ECOD between day 361 and 540 with respect to the New ECOD: 3 days of reduction of the term of the PPA for each day of additional delay with respect to the New ECOD, plus 360 days, plus the reduction provided for in the preceding sub-paragraph (a).

- ECOD between day 541 and 720 with respect to the New ECOD: 4 days of reduction of the term of the PPA for each day of additional delay with respect to the New ECOD, 540 days, plus the reduction provided for in the preceding sub-paragraph (b).

Additionally, in the event that the Commercial Operation Date (the “COD”) is later than the ECOD, the aforementioned cumulative reduction regime shall be applicable, doubling

the established reductions for each delay day between the COD and the ECOD.

Furthermore, the Resolution establishes that the amounts of penalties imposed by CAMMESA for non-compliance with the New ECOD set forth in the PPAs of the projects awarded under Resolution 287 shall be deducted from the amounts

to be received by the sanctioned Generator as of the COD, in twelve (12) monthly, equal and consecutive installments. Notwithstanding the foregoing, the sanctioned Generator may opt for the discount of the sanctions to be up to forty-eight (48) monthly, equal and consecutive installments, with an Annual Effective Rate equivalent to 1.7 % denominated in USD.

TECHNICAL REQUIREMENTS ON FUELS MARKETED IN ARGENTINA

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By means of Resolution No. 558/2019 (the "Resolution"), the Secretariat of Energy (the "Secretariat") substitutes Annex I of Resolution No. 5/2016 (the "Annex").

The Annex establishes the technical requirements to be met by fuels marketed for consumption in Argentina. The Resolution takes into account that due to the characteristics of non-conventional crude oil, it is necessary to accelerate investments in the current refining system that allows the process to be more ecofriendly.

In this regard, the Annex establishes the technical requirements to be met by fuels marketed for consumption

in Argentina, such as

- the non-admission of octane elevators based on heavy metals,
 - stipulates a maximum sulphur content in decreasing form up to the limit of 50 mg/kg for the year 2024 for "Gasoline Grade 2";
 - a maximum sulphur content of 350 mg/kg for "Diesel Oil Grade 2" which is unique for the whole country from the year 2024 onwards as a result of eliminating the difference between High- and Low-Density Zones
 - an oxidation stability value equivalent to 2.5 mg/kg which must be ensured at the dispatch terminal with respect to "Diesel Oil Grade 3"
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NEW TECHNICAL RULES FOR HYDROCARBONS TRANSPORTATION AND STORAGE

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By means of Resolution No. 571/2019, issued on September 25, 2019 (the "Resolution"), the Secretariat of Energy approved the technical conditions for liquid hydrocarbons transportation by pipelines and through maritime and fluvial terminals in order to substitute the regime established by Annex I of Decree No. 44/1991.

In addition, the Resolution created the Liquid Hydrocarbons

Transport and Storage Capacities Registry for the reception and update of information regarding the current capacities used and available for liquid hydrocarbons transport and the storage of crude oil and its derivatives. Such information shall be first delivered by transportation concessionaries within twenty (20) days as of the entry into force of this measure (i.e. September 25, 2019) and annually submitted before March 31.

NEW REGULATIONS REGARDING DISPATCH PRIORITY IN THE RENEWABLE ENERGY TERM MARKET

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By means of Disposition No. 111/2019, issued on September 27, 2019 (the "**Disposition**"), the Under-secretariat of Renewable Energy and Energy Efficiency established certain modifications with respect to projects that have obtained dispatch priority in the Renewable Energy Term Market ("**MATER**").

The Disposition amends an earlier regulation (i.e., Disposition 1-E/2018) establishing that projects that have been granted dispatch priority under Section 10 of Resolution No. 281/2017 may withdraw (*desistir*) therefrom, if the

total amount of tax benefits granted is 10% (or more) less than the total amount requested, in which case the surety bond will be returned.

The Disposition requires that in such cases the withdrawing party provide, along with its surety bond return request, a waiver of any claim by the project holder in connection with the grant of less tax benefits than requested, against the National State and an indemnity in respect of any domestic or international legal and arbitral claims that may be brought by its controlling parents or affiliates.

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