

## *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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## FEDERAL GAS AGENCY ESTABLISHES THE THIRD ADVANCE PAYMENT OF THE CONTROL AND INSPECTION FEE

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By means of Resolution No. 158/2020 (the "**Resolution**"), published on July 3, 2020 in the Official Gazette, the Argentine Gas Regulator ("**ENARGAS**") established the third advance payment of the Control and Inspection Fee (the "**Fee**") for the year 2020 in the amount of six hundred million pesos (USD 7,790,000) and fixed July 15, 2020 as its due date.

According to the Resolution, the ENARGAS Management (the "**Administration**") outlined a project for the collection of the Fee during the current fiscal year and stated that the advance payment shall be deducted from the definite Fee for the year 2020 once it is determined. To determine the calculation basis for the third advance payment, the

Administration evaluated the gross income arising from the last accounting statements of the gas distributors and carriers.

The Resolution exempts sub-distributors and trading companies authorized by the ENARGAS, which shall pay the Fee in two installments (the second advance payment and the final payment).

The first and second advance payment were established earlier this year by means of Resolutions No. 29/2020 and No. 11/2020. The first one totaled ARS 304,027,951 and the second ARS 500,000,000.

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## THE VALIDITY OF DECREE NO. 1053/2018

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On July 14, 2020, the Permanent Bicameral Commission of the Senate (the "**Commission**"), chaired by Marcos Cleri (representative of the *Frente de Todos* party), analyzed the validity of several decrees issued by former president Mauricio Macri, including Emergency Decree No. 1053/2018 (the "**Decree**"), despite the opposition expressed by Pablo Tonelli (representative of the *PRO* party) as the Decree has already been debated in the Lower house of Congress.

By means of the Decree, which amended the General Budget of the National Administration for the year 2018, the Federal Executive undertook to pay, as an exception and to the extent provided for under the Decree, the monthly accumulated daily differences ("**ADD**") between the value of the gas purchased by gas distributors from producers and the value of the natural gas included in the tariff tables in force between April 1st, 2018, and March 31st, 2019, generated exclusively by the fluctuation in the exchange rate and corresponding to the natural gas volumes delivered in such period.

After extensive debate, the Commission declared the Decree null based on the alleged absence of two substantial constitutional requirements: (i) the inability to follow the ordinary procedures for the enactment of laws; and (ii) the existence of reasons of necessity and urgency.

The Decree was also discussed by the Hydrocarbons Exploration and Production Chamber (the "**CEPH**") in its note dated July 13, 2020 (the "**Note**") addressed to the Minister of Productive Development of the Nation, Matías Kulfas (the "**Minister**").

The Note requested the Minister's intervention in order to urgently regularize payment of the monthly and consecutive installments corresponding to the ADD within the framework of Resolutions No. 466/19 and No. 624/19 of the Argentine Gas Regulator (the "**ENARGAS**") and Article 7 of the Decree. The Note states that up to July 13, 2020, only one payment had been made under Art. 7 of the Decree, thus denoting a clear failure by the National Government to comply with the approved payment schedule, stating further that such delay constitutes a deeply negative signal for investments. The Note further states that the aforementioned regulations are in force and, consequently, legally enforceable by the members of CEPH, who have acted in accordance with applicable law.

On July 23, 2020, after extensive debate, the Senate annulled the Decree, arguing that there were no reasons of necessity and urgency to justify it. Nonetheless, on July 30, 2020, the CEPH issued an additional note to the Minister insisting on its original request and urging once again for the immediate adjustment of the pending payments. In regard to the annulment of the Decree by the Senate, the CEPH observed that the Decree remains fully effective and in force until both Houses of Congress annul it, and even if this were to occur, the vested rights acquired by CEPH members cannot be infringed by Congress. In this sense, the CEPH stressed that even if the Decree were rejected by both Houses, the members of CEPH would maintain their right to receive the payment of the pending installments.

## EXTENSION OF RESOLUTION ENARGAS NO. 35/2020

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By means of Resolution No. 145/2020, published on July 1, 2020 in the Official Gazette (the "**Resolution**"), the Argentine Gas Regulator ("**ENARGAS**") extended the term established by Article 1° of Resolution ENARGAS No. 35/2020 (the "**Resolution 35**") for sixty (60) calendar days.

Resolution 35 set forth extraordinary measures considering the pandemic context in relation with the invoicing made by gas distributors to users that (i) pursuant to section 14(h)

of the Distribution Services Rules are subject to estimated invoicing; or (ii) are reached by Resolution ENARGAS No. 25/2020 and did not make use of the mechanics set forth in the mentioned resolution (the "**Users**").

Pursuant to Resolution 35, gas distributors shall consider for the invoicing the lowest consumption registered by the Users for the same period as the one estimated during the last three (3) years.

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## THE SECRETARIAT OF ENERGY EXTENDS THE 50% REDUCTION OF THE SURCHARGES CONTEMPLATED UNDER CHAPTER 5.5 OF THE PROCEDURES

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By means of Resolution No. 148/2020, the Secretariat of Energy extended, up to December 31, 2020, the 50% reduction of the surcharges that large users are obliged to pay in case they fail to meet their payment obligations with the Wholesale Electricity Market ("**WEM**"), in accordance with Chapter 5.5 of The Procedures, as complemented by Resolution No. 29/2019.

The 50% reduction of the surcharges was originally established by means of Note NO-2018-26558746-APN-

SSEE#MEM, dated June 4, 2018 issued by the former Secretariat of Electric Energy and was then extended by means of Resolution 29/2019 issued by the former Secretariat of Renewable Resources and Electricity Market, up to April 2020 (please refer to MHR's September 2019 Newsletter).

The extension responds to the critical economic situation caused by, *inter alia*, the COVID-19 outbreak and the government measures adopted to mitigate its effects.

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## RECEIPT OF PROPOSALS FOR A BIOGAS REGULATORY FRAMEWORK

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On July 23, 2020, the Ministry of Environment and Sustainable Development opened a "Request for Proposals No. 1/20" for purposes of "*Design and Filings of proposals to foster the regulatory framework of biogas in Argentina*" (the "**Request**"), receiving the technical and financial proposals from the following companies:

1. Cleanenergy Renovables S.A. – Centro de Estudios de Políticas Ambientales;
2. Latinoconsult S.A;

3. Conexig LLC – Plan A Engineering & Solutions S.A.S – Euskal Ingeniería y Ambiente S.A.;
4. Estudios y Servicios Ambientales (EYSA) S.R.L.;
5. IFES S.R.L.; and
6. Fundación SOLIS.

The request was issued under the sustainable business models project to produce biogas from organic urban solid waste funded by the Global Environment Facility (Proyecto GEF ARG/16/G23).

## THE CEPH RAISES CONCERNS REGARDING THE BILL FOR THE CREATION OF TIERRA DEL FUEGO OIL AND GAS COMPANY: TERRA IGNIS OIL & GAS SAU

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On July 17, 2020 the Hydrocarbons Exploration and Production Chamber (the “**CEPH**” for its Spanish acronym), issued a note (the “**Note**”) addressed to the Governor of the Province of Tierra del Fuego, Antarctica and South Atlantic Islands (the “**Province**”), Gustavo Melella, objecting to certain aspects of a bill of law establishing the establishment of a provincial oil and gas company (the “**Bill**”), calling it unreasonable and incompatible with federal regulations and requesting the Governor’s immediate intervention in connection therewith.

The Bill seeks to (i) declare of public interest and a primary goal of the Province the exploration, exploitation, industrialization, transportation and commercialization of hydrocarbons, and (ii) create the company Terra Ignis Oil & Gas S.A.U., which must have a state participation that “*can never be less than 51%*” (the “**Company**”).

The CEPH highlighted that several articles of the Bill contradict the Federal Hydrocarbons Law No. 17,319 as amended (“**Federal Hydrocarbons Law**”), violating the jurisdictional distribution of matters between the national and provincial governments.

The first point raised refers to the fact that the Bill grants the Provincial government the authority to develop the

energy policy, contradicting the Federal Hydrocarbons Law that names the National Executive as responsible for its development at a federal level (Law No. 26,197 and Law No. 26,741, which amended the referred Federal Hydrocarbons Law).

Also, the Note questions the “preferential right” that the Bill grants to the Company in relation to third parties with respect to hydrocarbons exploration permits or concessions for blocks within the Province’s jurisdiction. The Note clarifies that this right conflicts with the principle established in Law No. 27,007 and the Federal Hydrocarbons Law, which prohibit both the provincial and national government from establishing new blocks in favor of public entities or companies, or those with state participation. The “preferential right”, according to the Note, would violate the principles of transparency and efficiency in the allocation of resources protected under federal law, and would violate the constitutional principle of equality before the law.

The Note also points out that several of the provisions of the Bill would make sense as long as the Company’s capital is owned entirely by the Province, but these principles would become unfair, discriminatory and generate unjustified competitive advantages in case the Company opens its capital to other shareholders.

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## NEUQUÉN HYDROCARBONS EASEMENT REGULATION: THE UNCONSTITUTIONALITY OF RESOLUTION NO. 313/2020 OF THE SECRETARIAT OF TERRITORIAL DEVELOPMENT AND ENVIRONMENT OF THE PROVINCE OF NEUQUÉN

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On July 22, 2020 the Hydrocarbons Exploration and Production Chamber (the “**CEPH**” for its Spanish acronym), issued a note (the “**Note**”) addressed to the Secretary of Territorial Development and Environment of the Province of Neuquén, Jorge Antonio Lara, regarding Resolution No. 313/2020 (the “**Resolution**”).

The Resolution establishes a compulsory administrative procedure for the calculation, liquidation and collection of the compensation amounts and/or easements established in Articles 7, 8 and 9 of Provincial Law 2,183 and Provincial

Decree No. 138/20.

The Note states that the Resolution is unconstitutional and unjustifiably increases the costs of the hydrocarbons activity, thus deepening the current crisis in this industry and in the economy as a whole. The Note urges for the immediate intervention of the Secretary to (i) suspend the application of the Resolution and (ii) bring certainty and predictability to the concessionaires and permit holders in accordance with the legislation in force.

## GUIDELINES TO PROMOTE THE MINING INDUSTRY

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By means of Resolution No. 47/2020 published in the Official Gazette on August 5, 2020, the Ministry of Development approved the Strategic Guidelines for the Development of the Argentine Mining Industry (the “**Guidelines**”) issued by the Secretary of Mining.

The Guidelines set forth seven main goals to be accomplished in the next thirty years together with eighteen programs to achieve those goals.

The Goals are:

- i. Encourage the mining industry together with the investment in exploration and exploitation;
- ii. To ensure there is a balance between the fiscal expense in promoting the mining industry and the actual development

of such industry;

- iii. To ensure that the booming in the mining industry benefits not only corporations but the communities that are located near the mines.
- iv. Communication among the communities. Explanation of the benefits of developing the mining industry and how may impact in their daily lives;
- v. Open access to the information related to the mining industry to ensure transparency;
- vi. Contribute to the sustainable development of the industry and ensure compliance with Environmental Law; and
- vii. Create programs among the provinces and other countries.

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## CAMMESA RELEASES ITS ANNUAL REPORT

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The Wholesale Electricity Market (“**CAMMESA**”) released its annual report corresponding to the year 2019 (the “**Report**”). The Report analyzes the demand and supply of the different types of energy generation (i.e. renewable, hydroelectric, fuel and thermal). We highlight below the main provisions of the Report.

- The behavior of residential demand is linked to temperature. According to the Report, the year 2019 was a relatively mild year, with no extreme conditions that had a significant impact on average consumption levels, beyond occasional days of high demand due to extreme temperatures.

- On June 16, 2019, an exceptional event was recorded that originated in a failure in the transmission network and certain automatisms that led to the collapse of the SADI. Full recovery was achieved in less than twelve hours.

- Incoming generation during the year was over 1600 MW, including the entry of new power of just over 1100 MW of renewable energy. The increase in renewable and nuclear generation reduced the total thermal generation requirement and associated fuel consumption.

- Renewable Energies represent 6.5% of the installed generating capacity while thermal energy represents 61.8%

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## BILL FOR THE PREVENTION AND CONTROL OF METHANE EMISSIONS IN THE HYDROCARBONS INDUSTRY

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On July 7, 2020, a new bill was introduced for consideration by the Federal Legislature (Bill No. 1141/2020, the “**Bill**”), in order to regulate methane (CH<sub>4</sub>) emissions in the hydrocarbons industry, through a system of incentives and penalties on oil companies. The overall objective of the Bill is to moderate the impact of greenhouse gas emissions on global warming and air quality.

If enacted, the Bill would be mandatory for all companies engaged in any of the following activities: (i) exploration and production of hydrocarbons; (ii) treatment, refining and

storage of hydrocarbons and their by-products; and (iii) processing, compression, liquefaction, decompression and regasification, as well as transportation by pipeline, storage and distribution of natural gas.

The Bill introduces mandatory rules for the assessment, prevention, and overall control of methane emissions, including a program for detecting and repairing leaks. Furthermore, oil companies are required to implement specific actions in order to achieve reduction goals, which shall be reported annually to the Undersecretariat of

Hydrocarbons, which shall serve as Enforcement Authority. Actions required for the prevention and control of emissions are listed in the Bill and consist primarily in requiring oil companies to gradually incorporate leakage recovery and

methane emission control mechanisms in their facilities. Such mechanisms must be included in the design of new facilities from day one, and the same may not increase their emissions beyond their initial measurements.

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## NEUQUÉN APPROVES AN ONLINE TOOL FOR CITIZEN PARTICIPATION IN ENVIRONMENTAL IMPACT STUDIES

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By means of Disposition No. 210/20 (the “**Disposition**”), published on May 29, 2020 in the Official Gazette of the Province of Neuquén, the Undersecretariat of the Environment (the “**Undersecretariat**”) established that citizen participation in connection with the Environmental Impact Assessment of projects whose Environmental License is processed before the Undersecretariat shall be carried out online through the Undersecretariat’s Official Website.

The Disposition aims to guarantee citizen participation as provided for in Decree No. 2656/99 (Annex II, Section 13), which regulates Law No. 1875, in the current exceptional context of the measures adopted due to the COVID-19

pandemic.

To this end, the Undersecretariat shall publish the documents related to the Environmental Impact Studies on its website for 30 business days, during which time the public shall be able to access it. In addition, the publication shall contain, inter alia, identification of the Project, the Proponent, and the place where it will be carried out, an executive summary of the Project, an e-mail address where interested parties may send their questions and observations, and the deadline to do so. The questions and observations received shall be answered by persons appointed by the Proponent and, lastly, they shall be printed and attached to the Administrative File.

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## THE FEDERAL GAS AGENCY GRANTS GAS DISTRIBUTORES A 90-DAY PERIOD TO VERIFY WHETHER DETECTED DEFECTS HAVE BEEN CORRECTED

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By means of Resolution No. 232/2020 (the “**Resolution**”), published in the Official Gazette on August 27, 2020, the Federal Gas Agency (“**ENARGAS**”) granted the Public Service Providers of Gas Distribution by networks a period of ninety (90) days, as from the date of termination of the

Preventive and Mandatory Social Isolation (“ASPO”) or the Mandatory Social Distancing, in order to verify whether the secondary defects they have detected through the safety inspections carried out in the gas facilities of all educational, official and private establishments, have been corrected.

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## FOUNDATIONS OF GAS PLAN 2020-2024

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On August 6, 2020, the Ministry of Productive Development presented to the hydrocarbons sector the main guidelines of the “Foundations of Natural Gas Supply and Demand 2020-2024” (the “**Plan**”). **The Plan is expected to be released on October 15, 2020.**

The Plan consists of a system of direct contracts to be entered into by gas producers (“**Producers**”) with gas distributors and/or sub-distributors (“**Distributors**”) on the one hand (for the satisfaction of the priority demand – i.e., Distributor’s end consumers, which are required to purchase natural gas from

them as per the applicable regulations), and with CAMMESA (the Wholesale Electricity Market Administrator) on the other hand (for the satisfaction of the demand from power thermal generation units).

Producers shall compete for the award of a total gas volume of 70 million cubic meters per day (70 MMm<sup>3</sup>/d) for 365 days until 2024 (the “**Term**”) and an additional volume for each winter season (i.e., the period between May 1 and September 30 of each year) of those four years, which volume has not been yet defined.

The Plan is expected to end on August 31, 2024 and may be extended by successive tenders of one-year periods. Production from offshore blocks will have an additional term of four (4) years (*i.e.*, until August 31, 2028).

The Plan's underlying logic is that during the Term, the Federal Government shall pay to Producers that adhere to it a U.S. Dollar-denominated subsidy equal to the difference between (i) the prices awarded to the relevant Producer in the tender, and (ii) the price payable to it by the Distributors and/or the price payable by CAMMESA to it, under the relevant gas supply agreement awarded to such Producer.

The Plan's main advantage is that, if successful, it will allow

for long-term contractualization of the priority and thermal generation demand, thus mitigating the risk of curtailments based on the dispatch priority that these have in the Argentine natural gas wholesale market. This will enable local Producers to market their remaining production under deregulated, competitive terms through long-term natural gas sales contracts.

The Plan also purports to remove long term currency risk from both the priority demand and the Producers, allocating on the Federal Government, principal responsible party of the existence of substantial currency devaluations, such long-term currency risk inherent to the relation of end users tariffs vis a vis the long term gas supply agreements associated to such demand.

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## THE SECRETARIAT OF ENERGY EXTENDS THE TERM FOR THE EXECUTION OF POWER PURCHASE AGREEMENTS AND FODER INCORPORATION AGREEMENTS UNDER RENOVAR PROGRAM MINIREN ROUND 3

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By means of Resolution No. 227/2020 (the "**Resolution**"), published on the Official Gazette on August 3rd, 2020, the Secretariat of Energy extended, from July 1st, 2020 to December 31st, 2020 (the "**Extension Period**"), the term established in the Bidding Terms of *RenovAr Program - MiniRen/Round 3* (approved by means of Resolution No. 100/2018, as amended by Resolution No. 64/2020) for the awardees to execute power purchase agreements ("**PPAs**") with CAMMESA and the corresponding Incorporation Agreements to the Fund for the Development of Renewable Energies ("**FODER Incorporation Agreement**") and, jointly with the PPAs, the "**Agreements**"). The

Resolution also provides that, for those power purchase agreements executed during the Extension Period, the term for achieving the Commercial Operation Date will commence on January 24, 2020.

Finally, the Resolution establishes that if the Agreements are not executed during the Extension Period, the awards approved by means of Disposition No. 91/2019 will automatically lose effect and the Offer Maintenance Guarantees given under RenovAr Round 3 will be executed in accordance with the provisions of Article 21.3 of the Bidding Terms.

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## SUMMER SEASONAL RESCHEDULING APPROVAL

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By means of Resolution No. 295/2020 ("**Resolution**"), on August 13, 2020, the Secretariat of Energy approved a summer seasonal rescheduling regarding the Wholesale Electrical Market ("**WEM**"), for the period between February 1 and April 30, 2020.

The Resolution implemented (i) the reference prices for power output; (ii) the stabilized price for energy in the WEM; and (iii) the stabilized price for electrical energy transportation.

The Resolution ensures the continuity of the values settled

by Disposition No. 75 of July 31, 2018, corresponding to each WEM distribution agent under the Public Service of High Voltage Electricity Transportation and by the Backbone Distribution.

Finally, the obligation of the Distribution Agents and Providers of the Public Electric Energy Distribution Service of the WEM (established by Articles 4 and 5 of Resolution No. 14/19) remains in force (*i.e.* the obligation to inform the energy supplied to the residential users included by the Resolution, for the purposes of its incorporation into the Economic Transactions of the WEM).

## AMENDMENTS TO THE REGULATORY FRAMEWORK GOVERNING UNCONVENTIONAL HYDROCARBONS EXPLOITATION CONCESSIONS IN THE PROVINCE OF NEUQUÉN

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By means of Provincial Resolution No. 53/2020, issued on July 1, 2020 ("Resolution 53"), the Ministry of Energy of the Province of Neuquén established significant amendments to the regulatory framework applicable to unconventional hydrocarbons exploitation concessions ("UEC") governed by the Federal Hydrocarbons Law N° 17,319 (as amended, the "FHL"). Resolution 53 is intended to apply to UECs requested either by an exploration permit holder or a hydrocarbons conventional exploitation concession holder.

The main provisions of Resolution 53 are the following:

(i) It establishes new rules applicable to pilot projects which must be submitted upon requesting the UEC ("Pilot Project"), as well as to the measurement of the relevant area covered by the UEC (Section 1, Annex I). The Pilot Project basically constitutes the investment commitments undertaken by the concessionaire during the initial five years of the UEC. Resolution 53 establishes inter alia certain technical guidelines in order to delineate the area covered by the Pilot Project (the "Pilot Area") and sets forth that the right to request an UEC pursuant to the FHL effectively

only covers such Pilot Area.

(ii) It establishes an "Extended Area Bonus" (the "Bonus"), which must be paid to the Province of Neuquén as a condition for obtaining a UEC, payable over the permit area that exceeds the Pilot Area (the "Extended Area") (Section 2, Annex II). The Bonus is valued according to estimated future hydrocarbons production to be obtained from the Extended Area. Resolution 53 does not contain a precise formula for calculating the Bonus, and only sets out certain parameters that shall be considered for calculating the Bonus in its Annex II.

(iii) It establishes the obligation to submit a development and investment commitment plan for the initial three years of the full development phase of the block, that must be renewed annually, and which must comply with certain standards set forth therein (Sections 4, 5, 6 and Annex III). Resolution 53 also sets out the minimum information required in any request for an UEC.

**Resolution 53 is still subject to final approval of the Governor of Neuquén, thus is not effective yet.**

## NEW EXPLORATION AND EXPLOITATION SURFACE FEES

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By means of Decree No. 771/2020, published in the Official Gazette on September 25, 2020, the President of the Republic of Argentina updated the values of the hydrocarbons surface fees for exploration and exploitation activities.

The new fees, set out in the table below, are now tied

to the price of the domestic crude oil barrel and shall be paid annually and in advance to the National or Provincial Government for each square kilometer or fraction of the area.

The exchange rate to be used to calculate the fee will be the Argentine National Bank's USD seller exchange rate in force on the business day prior to the payment.

Exploration Fee	Exploitation Fee
<b>BASIC PERIOD</b> First Period: ARS equivalent to 0,46 barrels of crude oil per square kilometer.  Second Period: ARS equivalent to 1,84 barrels of crude oil per square kilometer.	ARS equivalent to 8,28 barrels of crude oil per square kilometer.
<b>EXTENSION PERIOD</b> ARS equivalent to 32,22 barrels of crude oil per square kilometer.	

## SECRETARY OF ENERGY IS TRANSFERRED TO THE MINISTRY OF ECONOMY

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By means of Decree No. 732/2020, published in the Official Gazette on September 7, 2020, the President of the Republic of Argentina transferred the Secretary of Energy (previously under the Ministry of Productive Development) to the Ministry of Economy.

This measure was taken pursuant to Decree No. 706/2020, which set out that the responsibility for drafting, proposing and implementing national energy policy was reassigned from the Ministry of Production Development to the Ministry of Economy.

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