

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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APPROVAL OF SPECIFIC OPERATING RULES FOR THE DELIVERY OF ASSETS FOR USE IN CONNECTION WITH SOLID WASTE MANAGEMENT

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By means of Resolution No. 416/2020 (the "**Resolution**"), published in the Official Gazette on November 17th, 2020, the Federal Ministry of Environment and Sustainable Development (the "**Ministry**") approved the "Specific Operating Rules for the Delivery of Assets for use in connection with Urban Solid Waste Management" (*Reglamento Operativo Específico para la Entrega de Bienes aplicables a la Gestión de los Residuos Sólidos Urbanos*) (the "**Rules**").

The purpose of the Rules is to set the terms and conditions under which Municipal Governments shall request financial support from the Ministry for the acquisition of assets and equipment to be used in connection with the management of urban solid waste in their territory (the "**Program**").

The Rules establish, *inter alia*, that:

(i) Municipal Governments must enter into an agreement with the Ministry, committing to fulfill all the requirements established in the Rules within a period of 90 (ninety) days (the "**Agreement**"). If such commitments are not fulfilled, the Agreement shall be automatically terminated.

(ii) Municipal Governments, as "Beneficiaries" of the Program, must describe the assets with respect to which they are requesting financial support, including specifications and features.

(iii) The Agreement must establish how the acquisition will be financed. Municipal Governments shall be responsible for the proper use and maintenance of the assets.

(iv) The assets and equipment acquired by the Local Government under the Rules must be exclusively used to fulfill and optimize its urban solid waste management. The financial support provided pursuant to the Rules shall not be used for other projects.

(v) Participating Municipal Governments shall be accountable to the Ministry for their use of the equipment and compliance with the requirements established in the Rules.

Municipal Governments that intend to participate in the Program must submit to the Ministry certain forms, attached as Annexes to the Resolution.

EXTENSION OF TERMS FOR THE RENOVAR PROGRAMS

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By means of Note No. 2020-37458730-APN-SE#MDP, dated June 10, 2020, from former Secretary of Energy Mr. Sergio Lanziani to CAMMESA, an exemption period between March 12, 2020 and September 12, 2020 was granted to all RenovAR projects (the "**Exemption Period**").

During the Exemption Period the application of penalties and the Power Purchase Agreements with CAMMESA COD expiration terms are suspended.

The Exemption Period was further extended by means of Note No. NO-2020-60366379-APN-SSEE#MEC, dated September 10, which extended the Exemption Period until November 15, 2020.

By means of Note No. NO-2020-88681913-APN-SE#MEC, issued on December 18, 2020 (the "**Additional Extension Note**"), the Secretary of Energy provided an extension until December 30, 2020, of the suspension of the CODs delay penalties provided under the Exemption Period.

Thus, the Exemption Period is in place from March 12, 2020 to December 30, 2020 (the "**Extension Term**").

The **Additional Extension Note** was sent to all generators by CAMMESA, stating that to apply for the Extension Term, interested parties must submit a written notice waiving any administrative and/or court claim against the National State, the Secretary of Energy and CAMMESA in connection with delays in each project and the sanitary emergency invoked by the Secretary of Energy's instructions. The template of such letter was attached in CAMMESA's email (the "**Template**").

The Template requires that (i) the signature of the applicant's representative must be certified by notary public; (ii) the signature of the representative of the existing creditors, if any, be included; and (iii) the applicant must inform an estimated COD of the projects.

Neither the Additional Extension Note nor the Template establish a deadline to submit the Template before CAMMESA.

SECRETARIAT OF ENERGY LAUNCHES GAS PLAN 2020-2024 AND AWARDS CONTRACTS FOR THE SUPPLY OF NATURAL GAS TO CAMMESA AND DSOS

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By means of Decree No. 892/2020, published in the Official Gazette on November 16, 2020, the President of the Republic of Argentina approved the main guidelines of the "Plan for Natural Gas Supply and Demand 2020-2024" (the "**Plan**") and appointed the Secretariat of Energy (the "**SE**") as the enforcement authority.

On November 24, 2020, by means of Resolution No. 317/2020, the SE called for public tenders to implement the Plan and approved the Terms and Conditions of the tender as well as the model contracts to be entered into between gas producers ("**Producers**") and gas distribution system operators and/or sub-distributor companies ("**DSO**") for priority demand –i.e., DSO's end consumers– and CAMMESA (the Wholesale Electricity Market Administrator) for thermal generation units' demand.

The Plan aims to fulfill a total gas volume of 70 million cubic meters per day (70 MMm³/d) for 365 days beginning on January 1, 2021 until January 1, 2025 plus an additional volume for each winter season.

In exchange for the gas supplied, the Federal Government shall refund the awarded Producers the difference between (i) the offered and awarded price of the relevant Producer

and (ii) the price payable to it by DSOs under the awarded gas supply agreement and/or the price payable by CAMMESA to it under the awarded gas supply agreement. The Plan furnishes participating Producers with priority conditions for firm natural gas exports during the summer season for up to a total volume of (11,000,000 m³) per day.

On December 3, 2020, sixteen Producers submitted bids and their offered prices ranged from a minimum of 2.40 U\$/MMBTU to a maximum of 3.66 U\$/MMBTU.

By means of Resolution No. 391/2020, published in the Official Gazette on December 16, 2020, the SE awarded the sixteen Producers that submitted bids for the supply of a total gas volume of 67.4 million cubic meters per day (67.4 MMm³/d), most of which will be produced in the Neuquina Basin.

To the extent that gas imports from Bolivia are reduced and the SE only receives bids for a total volume of 3.60 million cubic meters per day (3.60 MMm³/d) to cover the additional volume of gas for each winter season, it is expected that a new tender proceeding might be called by the SE in the short-term.

BIOFUELS: SUSPENSION OF THE PRICE DETERMINATION PROCEDURE FOR BIOETHANOL AND NEW PRICING SCHEME

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By means of Resolution No. 2/2021 (the "**Resolution**"), published on January 1st, 2021, the Secretariat of Energy (the "**SE**") suspended until May 31, 2021, the Price Determination Procedure for bioethanol manufactured from sugar cane set out by Disposition No. 81/2019 of the Undersecretariat of Hydrocarbon and Fuels.

The Resolution establishes a new price scheme for the purchase of bioethanol produced from sugar cane that is meant for its mandatory blend with fuel (the "**New Price**

Scheme"), in the terms of Federal Law No. 26.093, until May 31, 2021.

The New Price Scheme replaces the one set forth by Resolution SE No. 4/2020, and consists of a monthly fixed price from January to May 2021, in Pesos per liter.

The Resolution also establishes that payments corresponding to bioethanol purchases as set forth therein shall be due no later than 30 calendar days as from the relevant invoice date.

INCORPORATION OF A STABILIZATION AND DEVELOPMENT SOVEREIGN FUND IN NEUQUÉN

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By means of Provincial Law No. 3,269 ("**Law 3,269**"), on December 11th, 2021, the Legislature of Neuquén created a Stabilization and Development Fund (the "**Fund**") in the form of a trust that will enter into force in January 1st, 2022. The Fund is meant to serve two separate purposes, and to that end it is subdivided into two separate Sub-funds:

(a) The **Counter-cyclical Sub-fund** that serves as a back-up for the Province in scenarios where its current revenues drop due to emergency situations. The Provincial Executive will be able to access the Counter-cyclical Sub-Fund if the conditions set forth in Section 7 are met (i.e., 10% drop of the government income listed on the annual budget, emergency declaration by the Legislature, etc.).

(b) The **Development Sub-fund**, which serves to contribute to the diversification of the energy mix and to sustainable development. This Sub-Fund includes strategic investments in logistics, connectivity, science, technology, innovation, creative economy, tourism, renewable energies, primary production and its value chain. Law 3,269 prohibits any Sub-Fund usage that has connection with the hydrocarbons sector or its value chain, operational expenses and/or subsidies.

Within the Fund structure, Fiduciaria Neuquina S.A acts as trustee (the "**Trustee**"), the Province is the beneficiary, the Bank of Neuquén is the Financial Agent, and the Administration Committee is formed by representatives

of the Provincial Executive. The Trustee has several fiduciary duties that include requesting the enrolment and authorization of the Fund, publishing quarterly information about the administration of the Fund, briefing the Legislature once a year, submission to a permanent external audit and verification of the conditions prescribed in Section 7.

The Fund's resources will be made up of:

- 50% of the royalties collected from crude oil exports (with a volume cap established in Law 3,269).
- 50% of the royalties collected from gas exports (with a volume cap established in Law 3,269).
- 20% of the surplus of the difference between the royalties for both oil and gas (for the domestic market) and its average from the last 36 month duly adjusted with the IPC index from Neuquén, if the aforementioned export royalties are not collected.
- The returns generated by the investments made by the Fund. The investments must be made in low to moderate risk financial assets and portfolios, both in local and foreign markets. The equitable interest in national financial assets cannot exceed 30% of the Fund's portfolio.
- Any other resource determined by law or the Provincial Executive.

FROZEN THROUGH THE SUMMER: RENEGOTIATING THE NEW TARIFF SCHEME

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By means of Emergency Decree No. 1,020/2020 (the "**Decree**"), published in the Official Gazette on December 16, 2020, the Federal Executive ordered the renegotiation of the integral tariff scheme currently in force with respect to federal electricity and natural gas distribution and transportation utilities (the "**Renegotiation Process**"), suspending the terms of the tariff agreements currently in force until the Renegotiation Process is over, and stating that such process may last no longer than 2 years.

The Renegotiation Process was ordered pursuant to Section 5 of Law No. 27,541 which initially authorized the Federal Executive to inter alia (i) freeze electricity and natural gas tariffs for 180 days, and (ii) launch an integral tariff review. This period was subsequently extended.

The Renegotiation Process shall be carried out by ENRE (the Federal Electricity Regulator) and ENARGAS (the Federal Gas Regulator), respectively, which were granted special authority in order to carry out this process – including the power to request all necessary information and documentation, and to require temporary assistance from other agencies. The Renegotiation Process shall conclude with the execution of new tariff agreements with utilities, which shall launch a new tariff period.

The Decree also extended (i) the freeze of electricity and natural gas tariffs for an additional 90-days, or until new transitional tariffs are approved, and (ii) the administrative intervention of ENARGAS and ENRE, which began in March 2020, for an additional year, or until the Renegotiation Process is over.

MENDOZA ACTIVA HYDROCARBONS PROGRAM

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By means of Law No.9,279 (the "**Law**"), enacted on November 27, 2020, the Province of Mendoza created a program for the development, reactivation, and increase of hydrocarbon production called "Mendoza Activa Hydrocarbons" (the "**Program**").

The Program consists of a refund of up to 40% of the investment made, net of VAT, for investments in new wells and/or in the reactivation of existing wells without production or that are subject to the abandonment procedure.

The reimbursement consists of a tax credit of up to 20% of

the total investment, which may be applied to the payment of the gross income tax and hydrocarbons royalties, as determined by the regulations. Such tax credits are valid until December 31, 2023.

The Law authorizes the Executive to issue tax certificates for up to an amount equal to approx. USD 9M (ARS 800,000,000, converted to the official Exchange rate of USD 1 = ARS 90).

The Program will be subject to the implementing regulations to be issued by the Executive within 90 days.

PROVINCE OF NEUQUÉN - HYDROCARBONS AND MINING DATA BANK

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By means of Bill of Law No. 13,005 (the "**Bill**"), the Provincial Executive proposes to declare the information related to hydrocarbons, mining and associated activities related to natural deposits in the Province of Neuquen (the "**Province**") as inalienable and intangible patrimony of the Province (the "**Hydrocarbons Information**"), as well as to create a database with such information ("**Neuquino Hydrocarbons and Mining Data Bank**").

In addition, the Bill provides the following:

- **Enforcement Authority:** The Ministry of Energy and Natural Resources is proposed as enforcement authority responsible for collecting, managing, distributing and/or licensing the Hydrocarbons Information;
- **Prior authorization:** The Enforcement Authority must previously authorize any delivery of Hydrocarbons Information to a third party, including strategic partners, which prior authorization may be granted or denied at the Enforcement Authority's discretion.
- **License:** The Hydrocarbons Information will be purchased through licenses (the "**License**"), which licenses shall be valid for up to fifteen (15) years.

All actions by the licensee related to Hydrocarbons Information shall require the prior intervention of the

Enforcement Authority. The licensee must provide a detail of the information to be provided to a third party and justify the third party's relationship to the project.

- **Confidentiality:** The Enforcement Authority will adopt the necessary measures to guarantee the confidentiality and security of all the information provided. Regarding the expiration of said confidentiality, no deadlines are established, the Bill simply states that these deadlines may not be less than those determined in the Resolution No. 319/93 of the National Ministry of Energy (as amended by Resolution No. 2057/05), except prejudice to the interests of the Province.
- **Hydrocarbons Fund:** The Bill also creates a Hydrocarbons and Mining Fund, with funds to be received from specific allocations in the general budget of the Province, the proceeds from the purchase of the Licenses, fines and other contributions. Such fund will pay for the costs in connection with the safekeeping, management, technological improvement, and distribution of the Hydrocarbons Information.
- **Sanctions:** Fines are established for non-compliance with the provisions of the Bill, its implementing regulations, the orders or resolutions issued, or the falsification or omission of any information required thereunder. Fines range from approximately USD 30 to USD 1,150,100 (Jus 1,500 to Jus 40,000, where 1 JUS is equal to ARS 2,361.36, and 1 USD is ARS 90, according to the official exchange rate).

PROGRAM FOR THE RECOVERY OF LOW PRODUCTIVITY AND/OR INACTIVE HYDROCARBONS WELLS - PROVINCE OF RÍO NEGRO

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By means of Law No. 5490 (the "**Bill**"), passed on December 4, 2020 and published in the Official Gazette on December 30, 2020, the Provincial Executive created an incentive program ("**Program**") for increasing production of inactive and low-productivity wells (the "**Wells**").

The Wells are those oil and/or gas or mixed wells, for conventional or unconventional exploitation, which during the last two (2) years, computed from October 31, 2018 to October 31, 2020 (Computable Period) have recorded an average oil production of up to two cubic meters per day (2 m³/day), or in the case of gas, up to two thousand cubic meters per day (2,000 m³/day) (Low Productivity Wells); or which production has ceased for technical or economic reasons, and during the course of this year, they have been informed to the Enforcement Authority (Energy Secretary State) as "under study" or temporarily stopped (Inactive Wells).

The benefits included in the Program are the following: (a) cuts on the royalty rates up to 5%, (b) exemption or cut on the land fee and (c) tax cuts or exemption (up to 100% of gross income tax and/or stamp tax) (collectively, the "**Benefits**").

Companies wishing to access the Program must submit a recovery plan (the "**Recovery Plan**") with the investment plan detailing, inter alia, the following: CAPEX and OPEX, an estimate of recoverable volumes and oil and gas production projections associated with each Well, a cash flow, a detail of the extension of the useful life of the Well, with the incremental recovery factor, the percentage of employment of local labor, suppliers, and service companies, and the requested Benefits under the Program.

The Benefits will be granted totally or partially depending

on the economic viability of the Recovery Plan, and prior intervention and approval of the Tax Authority when necessary. The Benefits may not exceed the maximum term of ten (10) years or the remaining term of the concession (including any extension).

The Recovery Plan may include recovery tasks carried out before application thereto, but after the sanction of the National Decree No. 297/2020.

The Bill also sets forth the creation of a the "**Recovery Agent**", *i.e.*, a third-party contractor to the exploitation concession, who can be in charge of the Recovery Plan and will be held liable by the Enforcement Authority for operational contingencies and risks.

In addition, the subdivision of the block(s) and/or concessions that contain the Wells assigned to the Recovery Agent can be granted, in accordance with the provisions of Article 72 of National Law No. 17,319.

The Recovery Agent must be (i) duly established in the Argentine Republic, (ii) registered in the Provincial Registry of Hydrocarbons Recovery Companies (the creation and implementation of this Registry will be arranged by the Secretary of State for Energy); (iii) in case of a service provider company, it must be registered as a small and/or medium company with the National Ministry of Production, and/or authorized by the Enforcement Authority, and (iv) must have sufficient technical and economic capacity.

Lastly, the Recovery Plan must be submitted before February 28, 2020. The Enforcement Authority will analyze the Recovery Plan, and if approved, it must be ratified by the Provincial Executive.

NEW VALUES FOR THE PAYMENT OF HYDROCARBONS ACTIVITY SERVICE FEES

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By means of Provincial Law No. 3,274 (the "**Tax Law**"), published in the Official Gazette on December 23, 2020, the Province of Neuquén set forth the new rates, amounts, minimum and fixed values for the collection of the taxes established in the provincial Fiscal Code, which will be in force from January 1, 2021, until December 31, 2021.

Section 48 of the Tax Law establishes the new values of the

Hydrocarbons Activity Service Fees (the "**Fees**"). Payment of the Fees is mandatory in order to receive and initiate any procedure or provision of service before the Undersecretary of Energy, Mining and Hydrocarbons of the Province of Neuquén (the "**Undersecretary**").

The new values contain a general **increase of 34.83%**, compared to the previous year (*i.e.*, 2020, under Law No. 3,229).

For payment purposes, all proceedings before the Undersecretary begin with a protocol for submission.

1. Prior to the submission of any filing before the Undersecretary, the applicant must send an e-mail to the following address tasashidrocarburosmeh@neuquen.gov.ar attaching the corresponding documents of the procedure for the Undersecretary to determine the corresponding fee. Information related to the well, block, deposit, type of concession, and others, should be as detailed as possible in order to allow the most efficient determination of the applicable Fee, pursuant to Section 47 of the Tax Law.

BANK	Banco de la Provincia del Neuquén S.A.
TITULARITY	Ministerio de Economía
ACCOUNT NAME	DPR Nuevos Recursos
ACCOUNT TYPE	Current account in pesos
CUIT	30-70751909-2
CBU	0970022211000001050255

5. After the filing, the reception area will send it to the corresponding Service or Technical Unit of the Undersecretary.

It should be noted that:

A. The payment can only be made by bank transfer to the account indicated above.

B. The Undersecretary will not be responsible for the recovery of funds in case that the payment is made to an erroneous

2. The Undersecretary will respond via e-mail the amount of the Fee to be paid by the applicant together with the invoice.

3. The Fee must be paid within 15 days following the date of the invoice. Failure to comply with the deadline will accrue interests settled by the Provincial Tax Authority. Failure to pay will constitute a fiscal debt and the legal regime established in the Provincial Fiscal Code will be applied until effective payment.

4. With the submission of the filing, the applicant must attach evidence of payment of the Fee, with proof of a bank transfer statement to the following account:

bank account, even in those cases in which the bank transfer is made to another office of the Province of Neuquén. In such case, the fee will be considered unpaid.

C. The decision of the amount to be paid and its payment are subject to verification by the pertinent technical areas of the Undersecretary to establish its correct treatment.

D. The payment of the Fee implies that the filling will be analyzed, but it does not guarantee its favorable resolution.

NEW PROCEDURE FOR THE CALCULATION, SETTLEMENT AND COLLECTION OF COMPENSATION AMOUNTS FOR FISCAL EASEMENTS - PROVINCE OF NEUQUEN

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By means of Resolution No. 21/2021 (the "**Resolution**") of the Territorial Development and Environment Secretariat (the "**Secretariat**"), the Province of Neuquén repealed Resolution No. 313/20 and set forth the new procedure for the calculation, settlement, and collection of compensation amounts for fiscal easements, in accordance with the Provincial Law No. 2183, Sections 7, 8 and 9.

The Territorial Development and Environment Secretariat is

designated as the Enforcement Authority and will lead the calculation of the amounts generated as easements for the hydrocarbon activity on the lands owned by the Province, for the constitution of a Fund for the Conservation and Recovery of the Natural Environment, as established by Provincial Law 2183, its Regulatory Provincial Decrees No. 0353/98 and 0138/20.

Annually, permit holders and/or concessionaires must file an

affidavit updating the data that contains all the restrictions / facilities with respect to state-owned properties, and the determination of easement payments according to Annex I, and the values set for by Decree 861/20 (and its associated regulations). The deadline for this submission is until March 1st of each year.

Failure to file the referred affidavit will lead to the ex officio determination by the Enforcement Authority. The hydrocarbons blocks on which payments will be carried out,

will be those specified and determined by provincial decree.

The Resolution also sets out that, on a monthly basis, the permit holders and / or concessionaires will certify compliance with the payments made for easements, by submitting the corresponding vouchers, which will include the precise identification of the properties and the concepts for which the payment was made. In case of non-compliance, interest will accrue at the active rate of Banco Nación (National Decree No. 861/96, Section 38).

**“CHAÑARES ENERGÍA S.A.U. C/ MENDOZA,
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By means of Decree No. 1,101/19 (the “**Decree**”), on May 21, 2019, the Province of Mendoza terminated the extension granted to the hydrocarbons exploitation concession over the “*Chañares Herrados*” block (the “**Block**”), stating that there was a breach of the investment commitments of the concessionaire, Chañares Herrados SAU (“**CH**”).

CH filed an action before the Supreme Court of Argentina (the “**Supreme Court**”), requesting the unconstitutionality of the Decree coupled with an injunction against the Province of Mendoza.

CH alleged the abusive and illegitimate exercise by the Province of Mendoza of the power provided for in the Federal Hydrocarbon Law 17,319 (the “**Hydrocarbons Law**”), in open contradiction with Sections 31, 32, 80 and 83 of the Hydrocarbons Law, on grounds that (i) CH was only required to make those investments that were reasonable and efficient, in accordance with the features and magnitudes of the proven reserves, to ensure maximum production of hydrocarbons compatible with the adequate and economic

exploitation; and (ii) the termination was ordered without prior notice.

On September 19, 2019, through provincial Decree No. 2,043/2019, the Province of Mendoza called a tender to grant a new exploitation concession for the Block, and CH extended its legal action to cover such Decree No. 2,043/2019, due to its connection with the already challenged Decree.

The Supreme Court did not admit its direct jurisdiction, because the action did not contain a predominant Federal matter according to the Supreme Court’s precedents, since it required analyzing administrative acts and other local public law matters.

The Supreme Court concluded that the federal issues invoked by CH only constitute indirect aspects lacking the substance that would justify the Supreme Court’s original jurisdiction and that, if appropriate, CH might get protection by means of Section 14 of Law No. 48.

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