

## 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 POTENTIAL OF GREEN HYDROGEN IN ARGENTINA

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In recent years, hydrogen has gained momentum in the international energy arena mainly because, under certain conditions, it may be produced and used without carbon emissions. Also, hydrogen has been found to act not only as an energy source but also as an energy vector: this introduces the possibility to further convert energy coming from renewable sources such as wind or solar into a liquid or gas form that can be stored, transported, and easily used when necessary. In other words, the stored hydrogen can be utilized for various purposes such as heat, transport by means of hydrogen fuel-cells, feedstock or energy. This is why hydrogen may be a total game changer.

Argentina presents excellent conditions for the development of blue and green hydrogen projects. The conditions in the

Patagonia and the North West of the country enable scaling-up at a competitive cost since abundant wind and solar power are available to produce **green hydrogen**. Likewise, the abundant gas resources found in the *Vaca Muerta* formation located in the Neuquén Basin, and in the *Golfo San Jorge* Basin, enable alternative uses of the extracted natural gas such as **blue hydrogen** production with a carbon capture system (CCS) that allows an almost carbon-neutral process. Blue hydrogen is potentially effective as a transition factor since it is produced from natural gas and can use existing facilities without requiring considerable new investments; further, it does not threaten the renewable energy plug to the power grid. In a few words, it provides a window for renewable developments to scale-up and increasingly become the primary hydrogen source. Experts say that complementary

developments are a must when it comes to building up the hydrogen economy.

As far as the regulatory framework, Federal Law No. 26,123 (the “**Law**”), enacted in 2006, created a promotional regime specifically for hydrogen, defining it as both a fuel and an energy vector. This broad definition aims at associating hydrogen with multiple uses and, as such, the Law intends to capture all potential applications thereof. The Law declares research and development (R&D), production and use of hydrogen as the main objectives to be achieved by, *inter alia*, incentivizing public-private interaction, stimulating investigation and development in hydrogen technologies, training human resources, and supporting studies of renewable energy uses in hydrogen developments. Furthermore, the Law grants certain national tax benefits to those who develop the activities governed under the Law and meet the conditions set forth in Article 4 thereof.

Notwithstanding the foregoing, the Law requires the Enforcement Authority to put into motion certain aspects of the program set up under the Law, including drafting the National Hydrogen Plan (“**NHP**”), managing the Hydrogen Stimulus Fund (which is meant to sponsor the NHP), authorizing any hydrogen-related activity for its use as fuel or energy vector, and assisting the Federal Executive in issuing further regulations. As of the date of this publication, the Federal Executive has not yet issued implementing regulations to the Law, including, most importantly, the appointment of an Enforcement Authority. Thus, in practice many of the above-mentioned aspects of the program are still pending. Further, pursuant to its Article 21, the program created by the Law is set to expire in 2022.

Nonetheless, taking into account Argentina’s huge potential and some recent events, in particular, the creation of the “H2AR Consortium”, a bill to amend the Law is currently before Congress (the “**Bill**”). The Bill takes a modern approach with respect to hydrogen, indicating that its generation shall come preferentially from renewable sources, i.e., green hydrogen. It contains an overall improvement of the objectives by establishing incentives in reference to recent discoveries such as the possibility to create a blend with natural gas, storage of hydrogen, uses in the electric power industry, mainly generation, and uses in the transport industry, among others. It also introduces key definitions such as “energy vector”, “fuel-cells” and “massive storage” in

depleted oil and gas reservoirs, but most importantly, it states that no authorization is required to carry out hydrogen-related activities. However, the mechanics of the amended Law under the Bill still require implementation by the Executive Branch, including the appointment of the Enforcement Authority.

If enacted, the Bill would be the first step towards creating a modern and comprehensive regulatory framework. Even so, the Bill does not capture the existing and potential varied uses of hydrogen, their features and requirements which consequently entail the need of having separate regulations. A one-step-at-a-time approach might be the reasonable path towards achieving an adequate framework that identifies the different uses and sets out specific regulations for each of them. Also, the Bill can further enhance those hydrogen projects currently being performed in Argentina, including (i) the H2AR Consortium, made up of over 30 companies interested in hydrogen, (ii) Hychico, a company that has owns a wind farm and hydrogen plant in the Province of Chubut to produce green hydrogen, and (iii) an experimental plan in Pico Truncado where fuel-cell prototypes have been tested and studies related to hydrogen as fuel have been carried out.

Although blue hydrogen is currently the foreseeable transition mean towards the carbon neutral emissions goal, many challenges still need to be overcome, such as transforming traditional industries and transitioning towards hydrogen-based technology, implementing new hydrogen usages, and raising funding for these projects. Still, hydrogen has earned a spot on the international agenda and it is rapidly growing, as many countries and companies are turning to its development.

Many public and private actors in Argentina have stressed the need for an adequate legal framework to capture and develop hydrogen-related activities. Those developments will certainly require a clear and foreseeable legal framework to reach cost-competitive conditions. With abundant natural resources, Argentina has the potential to not only satisfy local demand, but also export hydrogen to countries such as Germany, China, South Korea or Japan, among others, who have already implemented hydrogen plans. The global race towards a cleaner energy future has begun and Argentina may be sitting on one of the most important natural resources to accomplish it: hydrogen.

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## NATURAL GAS TRANSPORTATION AND DISTRIBUTION TARIFF REVIEW. PUBLIC HEARING CALL BY ENARGAS TO SET UP A TRANSITIONAL TARIFF REGIME

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Within the framework of the renegotiation of the current natural gas transmission and distribution tariffs (Decree 1020/20), by means of Resolution No. 47/2021 published in the Official Gazette on February 23, 2021 (the “**Resolution**”), the National Gas Regulator (“**ENARGAS**”) held a public

hearing on March 16, 2021 in order to set up a temporary tariff scheme.

Pursuant to the Resolution, natural gas transportation and distribution licensees and REDENGAS S.A., were required to

submit to ENARGAS their proposed transitional rate scheme as well as supporting information, on or before February 26, 2021.

The public hearing was virtually held on March 16, 2021 at 9:00 AM. The main topics discussed were the following:

#### • **TARIFF SCHEMES PROPOSED BY THE NATURAL GAS TRANSMISSION AND DISTRIBUTION COMPANIES:**

(a) Transportadora de Gas del Sur proposed a 58.6% transitional tariff increase.

(b) Transportadora de Gas del Norte proposed a 44.5% increase for its local transmission tariffs.

(c) Naturgy BAN S.A. proposed a 51% increase in its own margin as a distribution company to cover rising costs registered since April 2019, which would imply a 15% increase in the bill for users compared to the previous values. Besides, the company requested an adjustment that would maintain this increase according to the evolution of the economy, on a six-monthly basis, and promptly initiate the process of Integral Rates Renegotiation, to reach regulatory certainty and the activity back to normal.

(d) MetroGas S.A submitted a new rates schemes with a final tariff for household users with an increase of ARS 122 since April 2021, considering monthly consumption of 800 m3.

(e) Camuzzi Gas proposed an increase of 50% in the distribution rate of "Gas Pampeana" and 75% in "Gas del Sur". The company estimated that the increase in the distribution tariff monthly bill will be between ARS 50 and ARS 150.

• **OMBUDSMAN:** Andrea Manzi, as Ombudsman, stated that every public policy should focus on the end consumer, so any rate scheme increase is affecting not just an economic but also an essential right. Profits, in turn, should be compatible with users' rights, which would allow to spread out the financial costs in accordance with social needs and based on principles of proportionality and reasonableness as established by the Argentine Supreme Court in the "CEPIS" leading case.

• **ENARGAS Interventor:** Federico Bernal stated that "*the government's main goal is to reach rates that have distributive equity and productive sustainability*". Furthermore, it declared that the natural gas public service as is a social right that serves to preserve human rights.

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## SECRETARIAT OF ENERGY APPROVES SUMMER QUARTERLY RESCHEDULING FOR WHOLESALE ELECTRIC MARKET

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By means of Resolution No. 131/2021 (the "**Resolution**"), published on the Official Gazette on February 22, 2021, the Secretariat of Energy (the "**SE**") approved the definitive Summer Quarterly Rescheduling for the Wholesale Electric Market (*Mercado Eléctrico Mayorista*, "MEM"), for the period between February 1, 2020 and April 30, 2021 (the "**Period**"), calculated pursuant to the procedures set forth in Annex I of Resolution No. 61/1992 (as amended).

The Resolution also sets forth:

i. the application, during the Period, of the Power Reference Prices (*Precios de Referencia de Potencia*) and the Stabilized Energy Price (*Precio Estabilizado de la Energía*) set forth in Annex I of the Resolution for the electric energy demand declared by MEM's Distributor Agents and/or Public Distribution Service Providers. These Power Reference Prices and the Stabilized Energy Price shall apply to their corresponding tariff charts as such entities may require pursuant to Resolution SE No. 137/1992;

ii. the continuity of the values corresponding to each Distribution Agent for the Public Service of Electric Energy Transportation in High Voltage and Trunk

Distribution, established by means of Resolution MINEM No. 75/2018;

iii. the continuity of Sections 4 and 5 of Resolution No. 14/2019 of the former Undersecretariat of Renewable Resources and Electric Market, with respect to the declarations made by the MEM's Distributing Agents and Public Distribution Service Providers regarding the energy supplied to residential users, for purposes of their inclusion in the MEM's Economic Transactions (*Transacciones Económicas*); and

iv. as from February 1, 2021, the rate of the tax created by Article No. 30 of Law No. 15,336 (as amended) which proceeds shall go to the National Electric Energy Fund (*Fondo Nacional de Energía Eléctrica*) shall be of Argentine Pesos one hundred and sixty per megawatt hour (ARS 160/MWh).

The Resolution maintains the same price for residential demand and demand below three hundred kilowatts (300kW) but adjusts the price for Large Distribution Users (GUDI) with demands above three hundred kilowatts (300 kW).

## PUBLIC HEARING GAS PLAN 2020-2024: END CONSUMERS SUBSIDY

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By means of Resolution No. 117/2021, published in the Official Gazette on February 19, 2021, the Secretariat of Energy (“SE”) called for a public hearing that took place on March 15, 2021 (the “**Public Hearing**”) within the framework of the Gas Plan 2020-2024 approved by Executive Decree No. 892/2020, in order to determine the price at the gas wellhead (in its Spanish acronym “PIST”) that the Federal Government will assume as a subsidy in favor of end consumers (*i.e.*, the priority demand).

Moreover, on March 3, 2021, the SE published the technical

report which was presented at the Public Hearing (the “**Technical Report**”).

Pursuant to the Technical Report, the Federal Government states it is currently assuming a portion equivalent to 60% of the total cost of natural gas required to meet the priority demand. Considering the 2021 Federal Budget, such subsidy cannot be maintained by the Federal Government as it implies more fiscal cost. Therefore, it concludes the Federal Government shall assume a 35% subsidy.

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## 2020-2024 FEDERAL GAS PLAN GUARANTEE: TAX CREDIT CERTIFICATES

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By means of Resolution No. 125/2021, published in the Official Gazette on February 23, 2021 (the “**Resolution**”), the Secretariat of Energy established the terms and conditions which shall apply to the tax credit certificates (the “**Tax Certificates**”) set forth in Section 89 of the 2021 Federal Budget Law No. 27,591, which instrumented the guarantee required under Section 40 of the Annex of Decree No. 892/20 (the “**Decree**”) to secure compensation payments under the 2020-2024 Federal Gas Plan.

The Decree set forth a compensation mechanism in favor of gas producers in order to cover price shortfalls within the framework of the Federal Gas Plan, and established that compensation payments thereunder would be secured by the Federal Government, by means of a guarantee structure which must include the recognition of tax credits.

By means of the Resolution, the Secretary of Energy instrumented such structure in the form of Tax Certificates which would guarantee the full amount of the preliminary compensation authorized by the Secretariat of Energy.

The Tax Certificate may be drawn upon within 10 days following the due date for the preliminary compensation payment, upon default by the Secretariat of Energy. The same procedure shall apply to adjusted compensation payments, if applicable.

The Federal Tax Authority (AFIP) has issued General Resolution No. 4939 which set forth the operative framework for the enforcement of the Tax Certificates in accordance with the Resolution.

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## GAS PLAN SECOND ROUND AWARD

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By means of Resolution No. 169/2021, published in the Official Gazette on March 10, 2021, the Secretariat of Energy awarded the additional gas volumes to those awarded by Resolution SE No. 391/2020, corresponding to the Neuquén and Austral Basin for the winter season

of 2021-2024, as a result of the public tender carried out within the framework of the Second Round of Gas Plan 2020-2024, approved by Decree No. 892/2020, which was called by Resolution SE No. 129/2021.

## ENRE FORBIDS TO SUSPEND ELECTRIC PUBLIC SERVICE

By means of Resolution No.58/2021, published in the Official Gazette on March 9, 2021, the Argentine Gas Regulator (ENRE) instructed the power distributors EDESUR S.A. and EDENOR S.A. not to suspend the supply of electricity service to users due to debts generated as a result of the COVID-19 pandemic.

Furthermore, the ENRE instructed EDENOR S.A. and

EDESUR S.A. to issue public electric power service settlements only with the amounts corresponding to the consumption of the period settled and, separately, report the debts that have been originated or increased during the validity of the sanitary measures of Social Isolation, Preventive and Obligatory (ASPO) and Social Distancing, Preventive and Obligatory (DISPO) without considering interest.

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