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Regulatory framework for the sale of electric energy between private individuals

Through agreement no. A/039/2018 (“Agreement”), published in the Federal Official Gazette on December 17, 2018, the Energy Regulatory Commission (“ERC”) issued the criterion for interpretation of article 46, section I, of the Electric Industry Law (“EIL”), thus laying the guidelines for end users to sell electrical energy to third parties.

Among other aspects, the Agreement defines those involved in this type of operations, as well as the parameters to carry them out, as follows:

I. End user

Individuals or entities that acquire, for their own consumption or for their facilities’ consumption, electricity supply under the following schemes:

- a) As a market participant.
- b) Through a supplier, in which case a power supply contract must be subscribed.

II. Third party

Individuals or entities to which the end user sells electricity power and who:

- a) Are in possession of real estate or electric equipment located within the end user’s premises.
- b) Do not have electric power inside such facilities nor are they market participants and,
- c) Do not own the end user’s facilities.

III. Premises

Real estate over which the end user has property rights.

IV. Real estate

Any property likely to incorporate electrical consumption facilities, such as:

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- a) Electric vehicle charging stations located within the end user's facilities.
- b) Offices or apartments for lease, located within premises over which the end user owns property rights.
- c) Commercial space for rent, located inside shopping centers over which the end user owns property rights.
- d) Industrial space for lease, located within industrial estate over which the end user has property rights.
- e) Any property similar to the above-mentioned.

V. Electrical equipment

Power-consuming goods that can be connected to the load center through which the power is supplied to the end user, including:

- a) Electric vehicles.
- b) Cell phones and other mobile devices.
- c) Mobile units for service delivery.
- d) Any other similar goods.

VI. Electricity supply

Goods and services required to meet the end user's power consumption and demand.

VII. Notice to the ERC

The EIL provides that the sale of electrical energy from an end user to a third party is not considered commercializing and therefore does not require permission from the ERC.

In this sense, the Agreement compels end users to notify the ERC within 6 months from the date they start selling electric power to third parties. Such notice must be delivered through the portal implemented by the ERC, and meet the requirements provided in the same Agreement.

VIII. Option for the third party

No third party is obliged to acquire electrical energy from the end user, and may directly request the basic or qualified supply, as appropriate.

IX. Exceeding demand

Where electrical energy transactions exceed the load center's fixed demand, the end user shall comply with power coverage requirements provided for qualified suppliers.

X. Cases in which third parties are disqualified as such

Third parties will lose such capacity when they:

- a) Directly acquire their power supply.
- b) Become market participants.
- c) Become owners of the facilities.

As an exception, in the event of joint ownership of the premises with the end user, third parties shall retain such character as long as they do not hold the rights to the supply contract nor become market participants.

The Agreement, which entered into force on December 18, 2018, opens the door to new investments in the electrical, automotive, technological and real estate sectors, among others.