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Legacy Interconnection Contracts: extension for full capacity operation and validity renewal

For the purpose of providing legal certainty as to the extension of deadlines to prove the entry into commercial operation of the full capacity provided in legacy interconnection contracts, as well as to determine their new duration, where appropriate, the Energy Regulatory Commission (CRE) issued Resolution No. A/003/2019 (the “Resolution”), published in the Federal Official Gazette (the “FOG”) on April 10.

• BACKGROUND

1. Thirteenth transitory article of the Electric Industry Law (EIL) which entered into force on August 12, 2014, provides that permit applications for self-supply, cogeneration, independent production, small production, import or export submitted before such date, as well as the corresponding granted permits, shall be governed by the now abolished Electricity Public Services Law (EPSL).
2. Said transitory article also provides that permit holders may enter into a legacy interconnection contract (LIC) with duration of up to 20 years, as long as they were able to prove to the CRE, no later than December 31, 2016, that they had arranged for the total financing of the project and committed the acquisition of the main equipment, as well as having disbursed at least 30% of the total investment required for the acquisition of fixed assets. However, if the investment of the project was considerable as to justify a longer period for compliance, the CRE was entitled to extend such date.
3. On the other hand, the same transitory article provides that contracts signed under these terms, as well as the right to sign them, shall be cancelled when the permit holder fails to demonstrate to the CRE the commercial operation of the full capacity provided in the LIC by December 31, 2019 at the latest, term that the CRE may extend in particular cases, for justified reasons.
4. A LIC is an interconnection contract or commitment contract for the sale and purchase of electricity under the modality of small power producer, signed before the entry into force of the EIL and therefore regulated by the EPSL.
5. Regarding justifiable causes for the extension of deadlines, on December 16, 2016, the CRE published Resolution No. A/052/2016 (the “2016 Resolution”), providing that permit holders must certify fortuitous events or force majeure by delivering the following:

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- a) Full description of the fortuitous event or force majeure situation.
- b) Satisfactory and sufficient evidence of such event or situation.
- c) Estimation of time during which the event or situation is expected to continue hindering the compliance of the Thirteenth transitory article of the EIL.

• CONTENT OF THE RESOLUTION

The Resolution, which came into force on April 11, defines the justifiable causes for extending the deadline of December 31, 2019 in order to prove to the CRE the commercial operation of the full capacity stipulated in the CIL, or the full capacity that permit holders seek to settle in the CIL they are entitled to sign, as well as its duration, in the following terms:

1. Permit holders to whom the CRE has recognized the fortuitous event or force majeure, according to the 2016 Resolution, shall be subject to the following:

a) If the permit holder **has not yet signed the CIL**, once the force majeure has ended the CRE will determine a new deadline so that the permit holder can certify that he has arranged for the total financing of the project and committed the acquisition of the main equipment, as well as having disbursed at least 30% of the total investment required for the acquisition of fixed assets.

The above is mandatory for the permit holder to enter into the CIL, provided that he has complied with the Manual for the Interconnection of Power Plants and Load Centers Connection, as well as the rest of requirements necessary to sign the contract.

This new term will be equivalent to the number of calendar days between the last day of September 2015, when the last permit to generate electricity under the EPSL was granted, and December 31, 2016.

b) Permit holders who **have already signed a CIL** may update the date of entry of the full capacity into commercial operation set forth in such contract for a single occasion and for a period of 6 or 12 months, depending on the type of contract, as follows:

- Commitment contract for the sale and purchase of electricity under the modality of small power producer within the National Interconnected System: 12 months.
- Interconnection contract for power generation plants with renewable energy or efficient cogeneration, as well as the power transmission service agreement for energy source: 6 months.

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- Interconnection contract and agreements of sale and purchase of surplus power and of transmission for the application of minimum or normal charges and its adjustment options: 6 months.

2. Where the CIL clauses provide that it may be extended, either for 6 or 12 months, such provision will be observed and the extension may go beyond December 31, 2019, and therefore will not be cancelled on that date.

Such extension may only be applied once and for the period set out in each CIL, and comply with the following:

a) Permit holders who have signed a CIL

- As of April 11, those who have a current CIL with an entry into normal operation no later than December 31 may modify such entry in terms of their contract.

- The CIL whose normal operating date has been extended only once and for a period no longer than 6 months shall not be cancelled provided that, after such period, the permit holder pays monthly 50% of the charges for transmission services as of the extension of the deadline.

b) Permit holders who have not signed a CIL

- As of April 11, have not signed a CIL and nonetheless have proven the CRE they have arranged for the total financing of the project and committed the acquisition of the main equipment, as well as having disbursed at least 30% of the total investment required for the acquisition of fixed assets, must sign the contract.

- To this end, they must have previously complied with the specific infrastructure requirements for the interconnection of power plants and connection of load centers, or the Manual for the Interconnection of Power Plants and Load Centers Connection, as the case may be, and all additional conditions for signing the contract.

- The entry into normal operation may not be later than December 31, 2019, regardless of the date of entry into operation authorized by the CRE in the permit title. Therefore, the entry into operation may only be updated for a single occasion, for the term set in the CIL itself.

The Resolution provides that, in any of the abovementioned cases, permit holders should request the CRE an authorization to amend the date of entry into commercial operation.

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On the other hand, any CIL not included in the preceding scenarios should be cancelled in terms of the Resolution. However, it is possible to request that such permits be modified into generation permits in order to perform the activities according to the EIL.

**For information regarding this subject, please do not hesitate to contact us at 9178 7000 or through the following e-mail:
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