

Newsletter on the energy market in Chile and Peru

September 2023

Find here the main legal and market developments for the energy sector in Chile and Peru. Dedicated Energy teams in Chile and Peru address topics of interest to sponsors, developers, financiers and other stakeholders in the sector, such as draft legislation, summaries of new regulations, relevant case law and trends in the project finance market.

I. Draft laws

Peru

Two bills have been presented to Congress to allow micro and small businesses to negotiate electricity prices

In July 2022, two bills (N° 2691/2021-CR and N° 2543/2021-CR) were presented to the Peruvian Congress with the aim of strengthening the competitiveness of micro and small enterprises (MSEs) by giving them the possibility to negotiate the prices of the energy and power they consume. The proposal aims to allow MSEs to decide whether they wish to remain in the regulated market or whether they prefer to migrate to the free market.

To materialize the proposal, the bills propose reducing the minimum annual demand required for the electricity user to be able to request a change from the regulated market to the free market. To date, the minimum consumption required to make the changeover is an annual consumption of 200 kW. The proposal seeks to reduce this minimum to 55kW and, with this, make the free market accessible to a series of users, among which MYPES stand out.

Another of the proposed changes is related to the time that the user must remain in the new market chosen. This time, according to the current law (Law N° 28832), is three years. The project proposes reducing it to one year, as it considers that the current period would not be adequate for the reality of MSEs.

Both bills are currently in the process of evaluation within the Energy and Mining Commission of the Peruvian Congress. The draft laws are available [at this link](#).

A Draft Legislative Resolution on the promotion of infrastructure for the export of surplus electricity to the Federative Republic of Brazil is being processed

On 16 September 2021, the Executive Branch submitted to the Peruvian Congress a draft legislative resolution proposing to enter into an Agreement between the Peruvian State and the State of Brazil to allow the export of surplus electricity to that country.

This agreement was proposed within the framework of the Energy Integration Agreement signed with the Brazilian government in 2008 and seeks to establish a regulatory framework to promote the development of the necessary infrastructure to make the interconnection between the electricity systems of both countries viable.

The project foresees, among other provisions, that the maximum accumulated capacity of generation plants at the national level, which can be exported to Brazil, should amount to 6,000 MW. It is also proposed that the agreement should have a duration of fifty years.

It should be noted that the project was not approved by the Foreign Relations Commission of the Peruvian Congress. The draft legislation is available a [this link](#).

Congress evaluates bill to prioritise wave energy investment projects

On 19 June 2023, Bill No. 05397/2022-C was submitted to the Peruvian Congress, which seeks to establish a legal framework to prioritize public or private investment projects in wave energy, the energy collected from the sea that comes from the speed of the wind and the movement of waves.

The objective of this project is to expand and diversify the scope of renewable energies in Peru within the national electricity generation. It is also foreseen that the projects to be implemented will be located within 10 nautical miles of the Peruvian coast.

This draft law is currently in the process of being evaluated by the Energy and Mining Commission of the Peruvian Congress. The draft legislation is available at [this link](#).

Chile

Developments with regard to the Energy Transition Bill

At the last session of the Energy and Mining Commission, held on 13 September, the Minister of Energy made a presentation announcing changes to the Energy Transition Bill regarding the tendering of energy storage infrastructure. While the minister has not submitted the amendments to the bill, he did describe what the process for awarding the infrastructure would look like. Under the proposed new scheme, the financing of the new storage infrastructure would be through a charge paid by the end customer, plus a share paid by the generating companies. The Ministry of Energy's presentation is available [at this link](#).

On the same occasion, a presentation was heard from other stakeholders who, while agreeing with the idea of legislation, proposed a number of changes to the bill currently in the pipeline.

In addition, at that session, the senators expressed their concern about the higher costs that customers would face as a result of the bill. According to various press reports, it is possible that a new bill will be introduced to extend the tariff stabilization mechanisms established by the MPC mechanism contained in Law 21.472 of 2022.

II. Relevant approved rules

Peru

Ministry of Energy and Mines approves roadmap on smart grids

On 12 July, the Ministry of Energy and Mines of the Republic of Peru approved the "Roadmap for Smart Grids in Distribution 2023-2030", whose main objective is to transform and modernize electricity distribution networks for the benefit of society by safeguarding the security of electricity supply at competitive prices, contributing to the decarbonization of the country.

In this regard, the transition to smart grids seeks to guarantee a competitive, reliable and sustainable service through the active participation of consumers.

The roadmap proposes the following strategic objectives:

- Improving service quality and customer satisfaction, which involves providing the customer with more information on the quality of supply, product, commercial service and street lighting.
- Develop tariffs and new business models for electricity distribution, which will allow greater flexibility in energy supply and demand to improve service quality.
- Develop distributed energy resources and complementary services in electricity distribution, which means planning complementary services in the wholesale market and generating spaces for auxiliary services in electricity distribution.
- Modernize and digitalize electricity distribution networks by incorporating tools such as Smart Metering Systems, interoperability between systems and cybersecurity in electricity distribution.
- Develop human talent and knowledge management to enable smart grids, so that they become a source of knowledge and job opportunities, by supporting the actors involved and establishing a body to promote them.
- Develop supply and demand balance management in distribution, optimizing the assets and resources related to the system.

It is worth mentioning that it has been proposed to adapt the current electricity regulation to promote the vision, strategy and business plans of smart grids, which adds to energy development and will allow it to be established as a core competence in Peru. In addition, the need to carry out a testing phase to evaluate the impact and improvements in the service is highlighted.

Supplementary provisions to the Detailed Environmental Plan (PAD) on electricity are introduced

On 21 August 2023, Supreme Decree N° 014-2023-EM was published, establishing complementary provisions for the Detailed Environmental Plan (PAD) in the framework of electricity projects.

The main objective of this regulation is to promote the adaptation or regularization of electricity projects in progress -without an approved environmental instrument- to the environmental obligations and regulations in force for those who have not processed the corresponding Environmental Management Instrument (IGA) at the time.

The aforementioned Supreme Decree provides a period of three months from its issuance (i.e. until 21 November 2023) for the owners of electricity projects without IGA to submit to the General Directorate of Environmental Affairs of Electricity of the Ministry of Energy and Mines of the Republic of Peru, the Single Form of Acceptance to the PAD.

The project owner that submits its compliance form on time has a period of three years from the entry into force of the Supreme Decree (i.e. until 21 August 2026) to submit its PAD to the Ministry of Energy and Mines.

Chile

The National Energy Commission issues a price report for regulated customers that considers a relevant increase in the consumption of customers over 500 KWh (monthly average)

On 25 August 2023, the National Energy Commission (CNE) published a new report for the prices that regulated customers should pay to their suppliers for the period January to July 2023.

With the information of these reports the Ministry of Energy issuance the decrees that set the price of the energy component for regulated customers. The decrees should be issued every six months by the Ministry of Energy, but there is a significant delay in this process.

[This new report can be found on the CNE website](#) .

As of today, two laws have been published that stabilize prices to regulated customers. Law No. 21.185 of 2019, known as the PEC law, and Law No. 21.472 of 2022, known as the MPC law.

In the new report, the CNE informs that during the years 2023 and 2024 the "Customer Protection Mechanism" of the MPC Law would reach the limit of 1.8 billion dollars of debt that can be accumulated.

The following four factors have caused the 1.8-billion-dollar fund mentioned by the CNE to be very tight and, in addition, customers above 500 kWh are not paying the prices indicated in the supply contracts that supply them, but a much lower one:

1. The first tariff stabilization law, the PEC law, did include these customers among the beneficiaries of stabilized prices. Therefore, as long as that law was in force, prices to these customers were stabilized. When the first stabilization fund ran out, Congress had agreed to a law that meant that the prices for these customers would reflect the energy contracts in force, but that has not happened and that difference has gone to the second fund, the one created by the MPC law.
2. The transitional rule of the MPC law, which limited the price increase for these customers to a maximum of 15% per semester in 2022, with a gradual stabilization process. The difference that customers did not pay went to the stabilization fund.
3. The delay in the publication by the Ministry of Energy of the new prices. The delays mean that generators stop receiving the revenues from the new prices, and that difference, plus interest, goes to the fund created by law, depleting it.
4. In the current tariff setting the Ministry included a "negative charge" on customers over 500 kWh, i.e. a charge whose effect was to lower the price to final customers, but at the cost of increasing the stabilization fund.

The report, if it converted into a decree, would imply that customers under 500 kWh (monthly average) could see their prices increase by 8%.

With respect to customers with consumption over 500 kWh customers would increase by more than 50% in the final bill.

According to the CNE regulated customers with a monthly average of more than 500 kWh represent around 8% of the total number of customers and the remaining 92% correspond to customers with a monthly average consumption of less than 500 kWh.

Draft technical standard on quality of service for electricity distribution is published

On 17 August, the National Energy Commission published the draft of the new technical standard on quality of service for distribution systems. The proposal contemplates changes associated with the quality of service that distribution companies must provide to their customers. This standard regulates in detail the conditions under which companies must provide the distribution service, such as the duration and frequency of service failures that these companies must provide.

Details of this procedure can be found on the [Commission's website](#).

A new process for the revision of the technical safety regulations for the operation of wind and photovoltaic power plants of the National Electricity System is initiated

The National Energy Commission published on 21 September the public consultation on the draft modification of the Technical Standard on Quality and Safety of Service (NTSyCS), associated with the modification of articles 3-8 and 4-29.

The modification of article 3-8 of the NTSyCS refers to requirements established for the operation of wind and photovoltaic plants of the National Electricity System. The modification associated with article 4-29 of the regulation in question, involves new transitional provisions that allow coordinators to carry out an adequate replacement plan and/or adjustments to their measurement systems, when these do not comply with the requirements established in article 4-29.

The details of this procedure, as well as the format for comments will be available on the website of [the National Energy Commission](#).

Interested parties have 17 administrative working days from the publication of the notice in the Official Journal to submit comments on the draft amendment to the Technical Standard.

III. Relevant administrative or judicial case law

Chile

The Supreme Court orders to continue the investigation against the National Energy Commission regarding the infringement of free competition law regarding the dispatch of plants operating with regasified LNG

On 9 September, the Supreme Court ordered the Tribunal de Defensa de la Libre Competencia (TDLC) to restart the lawsuit against the National Energy Commission in which the regulator is accused of undermining free competition by regulating the way in which power plants with inflexible gas should be treated. Inflexible gas refers to gas that is not possible to store, given the limited capacity that exists in the Chilean system, which is also associated with take or pay supply contracts.

The case refers to Rol N° 435-2021 of "Tribunal de Libre Competencia", named "Eléctrica Puntilla S.A. e Hidromaule S.A. against Comisión Nacional de Energía (CNE)". In the opinion of the appellants the CNE infringed the free competition law in the regulation issued by the CNE. This regulation refers to the [Technical Norm for the programming and coordination of the operation of units using regasified liquefied natural gas](#), issued in October 2021.

The decision of the highest court leaves without effects the decision of the TDLC that put an end to that procedure, issued in April 2022. In that decision, the TDLC, along with ending the contentious

procedure, ordered the initiation of a non-contentious procedure to review the appropriateness of a regulatory change regarding the operation with inflexible gas. This court decision was appealed to the Supreme Court by the plaintiff companies.

The beginning of this controversy dates back to September 2020, when the Eléctrica Puntilla and Hidromaule companies submitted a consultation to the TDLC with the objective of ruling on the compatibility or incompatibility of the "Inflexibility Condition" contained in the Technical Norm, with the rules of defense of free competition.

IV. Recent news and market trends

Peru

New financing structures for renewable projects

Since 2009, renewable energy projects in Peru have typically been financed through traditional project finance structures, whereby (i) the lender provided financing to a special purpose vehicle that would use the proceeds only for construction and development of the project, and (ii) in turn, the financing was secured by a comprehensive security package, covering all assets and rights of the project.

However, the common feature among these financings was that the projects typically had government-backed power purchase agreements (or PPA) called Supply Concession Contracts, awarded by OSINERGMIN, the Peruvian energy regulator, through RER Auctions.

The success of projects awarded PPAs through a RER Auction varied, but undoubtedly triggered a boom of renewable energy project finance deals in Peru. These transactions involved both local and international lenders, as well as development finance institutions.

Only four RER Auctions have taken place in Peru since 2009, the last one in 2016. Since that year, OSINERGMIN has not awarded a government-backed PPA of similar characteristics to the private sector. Therefore, in recent years, financings of renewable energy projects using project finance structures has been infrequent, as in Peru it has been difficult to accommodate this type of financing to energy projects with private offtakers, which since 2016 has been the generality of cases.

Notwithstanding the above, in general financings of renewable energy projects continued. For this, different types of structures have been used and well received in the market, such as, for example, the US\$300 million financing for the [Punta Lomitas wind farm](#) owned by ENGIE, supported by IDB Invest, FMO and BNP Paribas.

In the same vein, in recent months there has been increased interest from banks in financing renewable energy projects again using project finance structures, despite the lack of new RER auctions and therefore of government-backed PPAs derived from them.

This time, PPAs negotiated with private offtakers, such as mining, industrial and/or distribution companies, with sufficient credit quality to support a project finance deal, have generated a renewed interest in using this financing structure, which is a welcome trend in the Peruvian market.

A possible increase in energy costs for regulated users is foreseen

According to the Peruvian Ministry of Energy and Mines (MINEM), energy production from hydroelectric plants is expected to fall by 8%, while thermal generation with gas, diesel, coal and

oil has increased by 27%, as a result of various climatic factors that have been affecting the country since the end of 2022. Droughts throughout the national territory are also expected to continue for the remainder of 2023 and could increase due to the El Niño phenomenon that has been diagnosed for 2024.

The latter has caused marginal generation costs to rise considerably in the last period, reflecting these prices in the short-term energy market, also known as the "spot market" (the market in which generators and free customers participate). It is important to mention that, for the time being, the increase in these prices has not affected regulated users, since the fixed energy costs for this type of users are determined by long-term contracts that are still in force.

However, as foreseen by the Energy and Mining Investment Supervision Agency (OSINERGMIN), it is possible that the energy costs of regulated users will increase, since some of the contracts described above are close to expiring and it is possible that the prices offered in 2024 will exceed the current costs. As a proposed solution to the problem described above, MINEM has declared that it is preparing a regulatory project in which, in order to mitigate the increase in the price of generation, it seeks to prioritize gas-fired generation in cases of dry hydrology. To date, MINEM has stated that the draft regulations are still under preparation and internal evaluation by the executive branch.

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