

Newsletter on the energy market in Chile, Colombia and Peru

January 2024

We provide the main legal and market developments for the energy sector in Chile, Colombia and Peru. Dedicated Energy teams in these countries 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 market trends.

Regulatory bids

Peru

1. Amendment to the Regulation for environmental protection in electrical activities is published

On December 27, 2023, Ministerial Resolution No. 520-2023-MINEM/DM was published approving a draft amendment to Article 46° of the Regulation for environmental protection in electrical activities (Supreme Decree No. 014-2019-EM), which consists of expanding the scope of the referred article with the inclusion of literal "d". This new provision establishes that holders of medium and/or low voltage electricity distribution activities may submit a Detailed Environmental Plan (PAD) when they require to request or expand a concession that is located in an area with infrastructure previously built by a municipality or a regional government, to the extent that these facilities do not have an environmental certification or an approved complementary environmental management instrument.

The purpose of this amendment is to guarantee the sustainable development of electrical activities, thus ensuring adequate protection of the environment. This project seeks to reduce unauthorized electrical infrastructures implemented by municipalities and/or regional governments. It will also allow these facilities to be transferred and operated by private companies.

It should be noted that the period for receiving comments on this regulatory proposal expired on January 12, 2024.

2. Bill introduced in Congress to extend exemptions for energy generated with renewable energy resources

On January 3, 2024, the Executive Branch submitted to the Congress of the Republic Bill No. 6747/2023-PE through which it is proposed to extend until December 31, 2035 the tax benefit established in Legislative Decree No. 1058, which consists of granting the owners of renewable power generation plants an accelerated depreciation regime for Income Tax purposes. This benefit is currently in force only until December 31, 2025.

It should be taken into consideration that the accelerated depreciation is applicable to machinery, equipment and civil works necessary for the installation and operation of such plants.

For these purposes, the annual depreciation rate should not exceed 20% as a global annual rate. This means that the sum of the depreciation rates of all assets may not exceed the aforementioned limit, except in those cases allowed by the Income Tax Law.

3. Amendment to Procedure No. 20 of the COES regarding the Entry, Modification and Withdrawal of Electrical Installations in SEIN is approved

On January 20, 2024, the Board of Directors Resolution No. 001-2024- OS/CD was published, which approves a draft modification of COES Technical Procedure No. 20 (PR-20), which regulates the entry, modification and withdrawal of facilities in the National Interconnected Electric System (SEIN), as reported [here](#).

The aforementioned regulatory project has proposed a series of relevant changes, among which we can highlight: (i) the extension of the validity of the documents where the COES defines the scope of the Pre-Operational Study (EPO) and the Operational Study (EO); (ii) the extension of the grounds for expiration of the validity of the EPO Conformity Certificates; (iii) the extension of the validity of the EPO prepared by the COES and the possibility of extending such validity for up to two (2) additional years; (iv) the establishment of a single cause for the conclusion of the commercial operation of a plant by the COES, consisting of the unit or plant not being available for operation in the SEIN for more than three (3) consecutive months; or (v) the integral modification of Annex 1 of the PR-20, which regulates the minimum design criteria for electrical installations, among others.

It is worth mentioning that a term of 30 calendar days (i.e., until February 17, 2024) has been established for interested parties to submit their opinions and/or suggestions on this draft regulation.

Chile

1. New steps of the Tariff Stabilization Bill

The Chilean government presented the bill that aims to mitigate the effects of tariff increases that should be applied to regulated customers, as [we mentioned here](#).

According to the bill, the tariff of regulated users will be increased by the addition of a charge of 22 pesos per KWh, subject to readjustment by the CPI and that will be maintained until the second semester of 2035, i.e. 11 years. This charge may be reduced or increased in order to ensure full payment of the debt owed by regulated customers to suppliers.

In order to have an order of magnitude of the effects of this new charge, it is relevant to highlight that it represents more than 20% of the average market price of energy, [calculated by the CNE in the last process](#).

The purpose of this charge is to collect 5.5 billion dollars, corresponding to the debt that has been generated by regulated customers with generating companies due to the following three factors: (i) the debt of the first tariff stabilization process, which was close to 2.3 billion dollars; (ii) the second tariff stabilization law; and (iii) the delay in the publication of the last tariff decrees, which accumulates more than a year.

In addition, the bill proposes a subsidy focused on lower income customers. This benefit would be aimed at 850 thousand households and its maximum cost would be US\$ 120 million (US\$ 100 million from the Stabilization Fund). The subsidy would be applied in 2024, 2025 and 2026.

2. Sectoral Authorization Framework Bill introduced to reduce project development timeframes

This month, a bill was presented to rationalize and unify the processing of sectoral permits, in order to reduce the time required for the development of projects in Chile, and thus encourage and facilitate investment in them.

This bill contemplates, among other elements, the following: (i) the implementation of a single digital platform in charge of the State, for the request and follow-up of these permits by their holders; (ii) the application of administrative silence in case of lack of response from the authority within the legal term. The effects of the silence will be stimulatory or dismissive depending on a series of factors, to be regulated in the sectorial regulations, or in subsidy, by the Framework Law; (iii) the implementation of a special governance, which includes the creation of the Sectorial Regulation and Evaluation Service, which will be in charge of ensuring the efficiency of the processing of sectorial permits and ensure compliance with the processing rules under the Framework Law.

Through these mechanisms, the average processing time is projected to be reduced by 24% of the total processing time: for electricity transmission line projects, which currently take approximately 4 years and 11 months, it is estimated to be reduced to 3 years and 8 months (25%), for photovoltaic generation projects a similar reduction of 20%, and for mining projects, it would be reduced by 35%, from 9 years and 2 months to 5 years and 11 months.

3. Bill that strengthens the environmental oversight powers of government agencies

The bill, whose processing can be followed [in the following link](#), introduces the following modifications to the current environmental regulations:

- a) **It establishes new regulations regarding noise nuisance complaints.** The bill maintains the control of annoying noises in the SMA in the case that there is an environmental qualification resolution on the emitting source, but transfers to the municipalities the control of annoying noises coming from other types of fixed sources.
- b) **It establishes mechanisms that seek to decongest the sanctioning activity of the Superintendence of the Environment (SMA).** The bill establishes a series of mechanisms to decongest the administrative sanctioning procedure in environmental matters, including the following:
 - (i) It creates a simplified sanctioning procedure for minor environmental infractions.
 - (ii) It introduces alternative ways of compliance, to be imposed by the SMA, in those cases in which there is no effect on the environment or people's health, nor a significant risk of affecting them. These are referred to as "early correction mechanisms" and may be warning letters, correction plans or others.
- c) **Reinforces compliance incentive instruments.** It allows an environmental damage remediation plan to be presented in advance, in administrative proceedings, from the time of the charges until after the application of the sanction, accompanied by incentives to promote its presentation.

It is also proposed that the remediation plan be mandatory in cases where environmental damage has been generated. Likewise, the project incorporates a

sanction directed to those who, being obliged, do not present it, do not comply with it or whose remediation plan proposal is rejected by the SMA.

- d) **It expands the precautionary power of the SMA.** It grants a series of powers to the SMA, such as (i) the possibility of temporarily suspending the operating authorization of different environmental instruments, and adopting urgent and transitory measures if there is an imminent risk or damage to the environment or people's health, whether this arises from the breach of obligations contained in such instruments, environmental impacts not foreseen in the environmental assessment or due to circumvention of the SEIA; (ii) the possibility of adopting urgent and transitory measures with respect to any industrial activity that generates a serious and imminent risk to the environment or to people's health; (iii) the power to order the adoption of urgent measures to be executed by the supervised parties. They are also allowed, with the prior authorization of the court, to seize all kinds of objects.
- e) **It grants presumption of truth** to the facts ascertained by the officials of the services involved in the inspection process. The bill grants the quality of inspectors also to those officials of the services whose sectorial organic law does not confer them today. As a consequence, there is a legal presumption of the facts established by these officials in the respective inspection report.
- f) The bill modifies **the infringement catalog and increases the ceiling of the fines.** The changes proposed by the bill are as follows:
 - It doubles the maximum fine for serious and very serious infractions, and by 5 times for minor infractions. Thus, the sanction for very serious infringements increases its ceiling from 10,000 to 20,000 UTA (approx. USD8-17 million); the sanction for serious infringements changes from 5,000 to 10,000 UTA (approx. USD8-17 million); the sanction for serious infringements changes from 5,000 to 10,000 UTA (approx. USD8-17 million). 10,000 UTAs (approx. USD4-8 million); and the sanction for 1,000 UTAs is increased to 5,000 UTAs (approx. USD5-8 million). 5,000 UTA (approx. USD1-4 million).
 - It is established that infractions with environmental damage, circumvention of the SEIA and non-compliance within State protected wild areas without authorization will always be very serious infractions.
 - The element of malice required for infractions of impeding or opposing inspection is eliminated, and the same for concealment.

4. A bill is presented to strengthen environmental institutions

The bill presented this month proposes a series of modifications, among them:

- a) **Redesign of the Strategic Environmental Assessment**, in order to promote its voluntary application and the Ministry of the Environment is included as part the assessment process.
- b) **Modification to the rules of entry to the Environmental Assessment System**, extending its application to new activities, including the elimination of the 3 MW threshold for power generation plants; the incorporation of a new typology relating to industrial hydrogen production and storage projects; the incorporation of a new typology related to industrial desalination projects; and the intensive extraction of seawater.
- c) **Modification of the matters to be contained in the environmental impact**

statements, so that such statements indicate the relevant environmental variables to be included, when applicable, in the respective monitoring plan.

- d) Expansion of the cases that allow the expeditious processing of projects destined to meet unpostponable public needs.
- e) **It proposes the creation of a single complaint procedure**, thus eliminating the current use of the invalidation recourse. This single administrative appeal will be heard by the Executive Directorate of the SEA, regardless of the way in which the project or activity was submitted to the SEIA. A rule of negative silence will be included that will allow the claimant to go directly to the competent Environmental Court if it is not resolved within the deadline.
- f) **Eliminates the Committee of Ministers.**
- g) **Proposes a series of modifications related to environmental liability**, among which are: to grant active legitimacy to the State Defense Council in all events related to environmental damage claims; to modify the burden of proof in environmental liability lawsuits, allowing the environmental courts to establish which party will have to prove the substantial, pertinent and controversial facts of the case.

Colombia

It is published the proposal to modify the energy price formation on the exchange market

At the end of 2023, the Energy and Gas Regulatory Commission (GREG), issued the draft Resolution No. 701 028 in which it is proposed to establish caps on energy prices in the spot market. The above, according to what is indicated in the draft resolution, with the purpose of avoiding the inefficient formation of energy prices during the El Niño phenomenon and as a mechanism in the face of the decrease in supply due to the delay in the entry into operation of some generation projects.

Therefore, the validity of the resolution is foreseen until April 30, 2024, without prejudice to possible extensions that may be made to this regulation by the CREG. The adjustments that would be made to the offer prices will be applied in the terms mentioned in Article 4 of the draft Resolution, to thermal plants and variable plants (hydraulic, wind and solar).

Approved norms

Peru

The Regulation for the Installation and Operation of Electric Mobility Charging Infrastructure is approved

On December 31, 2023, Supreme Decree No. 036-2023-EM was approved, approving the Regulation for the Installation and Operation of Electric Mobility Charging Infrastructure. Said regulation was issued with the purpose of facilitating the introduction of more efficient electric mobility charging technologies and prioritizing the reduction of polluting hydrocarbon consumption and safeguarding the safety and health of people and the environment.

The regulation mainly regulates: (i) permitted load standards and connection types; (ii) technical requirements for the grounding system, conductors, protections, among others; and (iii) the classification of electrical installations either by type of installation or by type of building.

It should be noted that for a period of one year from the entry into force of the Supreme Decree (until January 1, 2025), manufacturers, importers, distributors and marketers must submit to the Supervisory Body of Investment in Energy and Mining (OSINERGMIN) the certificate of conformity issued by a Product Certification Body that demonstrates compliance with the technical requirements or a test report. For the latter, they can make use of testing laboratories to perform the necessary evaluations in order to report the required information.

Colombia

Issuance of regulations applicable to energy communities

In December 2023, Decree 2236 was issued, which regulates the activity of energy communities in Colombia, in development of Article 235 of the National Development Plan. Article 2.2.2.9.1.2. of said decree clarifies the legal nature of energy communities, which consists of: "organized communities that arise by virtue of an agreement between natural and/or legal persons of public or private law that cooperate with each other through a contract or associative agreement to develop the following activities: generation, commercialization and efficient use of energy through the use of Non-Conventional Renewable Energy Sources".

Among some of the activities that can be carried out by these communities is the collective self-generation of energy through an autonomous and regulated activity, in addition to the commercialization of this. Likewise, energy community projects may be financed with public resources for the investment, operation and maintenance of infrastructure. Likewise, Decree 2236 of 2023 also states that the infrastructure developed with public resources may be transferred to the communities or be the object of contracts to which they are a party. Finally, the Decree orders the Energy and Gas Regulatory Commission (CREG) to issue a series of resolutions that allow the integration of energy communities in the national interconnected system, in non-interconnected areas and in local distribution systems.

Relevant News

Peru

ProInversion presents a package of power projects to be awarded in the first half of 2024

On December 7, 2023, the Peruvian Private Investment Promotion Agency (ProInversion) presented a package of eight transmission line and substation projects in different regions of the country. The projects in this package correspond to the 2023-2032 Transmission Plan 2023-2032 and will be awarded under a Public-Private Partnership (PPP) concession during the first half of 2024.

The package of projects is divided into two groups, which are detailed below:

Group 1:

- New Poroma "Hub" Substation (First Stage) and 500 kV "Hub" Poroma - Collector, extensions and associated substations.
- New San José "Hub" Substation - First Stage and 220 kV "Hub" San José - Repartición (Arequipa), expansions and associated substations.
- New Marcona II substation and 138 kV Marcona II - San Isidro (Bella Unión) - Pampa (Chala) link, expansions and associated substations.

Group 2:

- 500 kV Chilca CTM-Carabayllo Transmission Line - Third Circuit (Component 1.1 of the 500 kV Chilca, CTM Carabayllo Linking Project, Transformer Expansion and Air Core Reactor SE Chilca CTM).
- New Bicentenario 500/220 kV substation, extensions and associated substations.
- Reconfiguration of the 220 kV Chavarría - Santa Rosa - Carapongo link, lines, extensions and associated substations (ITC Project).
- New 220 kV Muyurina Substation, New Ayacucho Substation, 220 kV Muyurina - Ayacucho TL, extensions and associated substations.
- Supply Capacity Expansion of the Ica Electric System (ITC Project). Línea de Transmisión 500 kV Chilca CTM-Carabayllo – Tercer Circuito (Componente 1.1 del Proyecto Vinculante Enlace 500 kV Chilca, CTM Carabayllo, Ampliación de Transformación y Reactor Núcleo de aire SE Chilca CTM).

Chile

The National Energy Commission issues its opinion on the suspension of supply by the awarded generating companies

In a letter of response submitted by the National Energy Commission to the National Electric Coordinator, dated January 9, 2024 (Ord.20/2024), the authority stated the criteria and regulations applicable to a query from the Coordinator.

The consultation was made in the context that two companies awarded contracts for the supply of energy and power for the public distribution service (i.e., supply to regulated customers), are in breach of their obligation to deliver certain guarantees. These same companies, on December 22, 2023, requested the early termination of their supply contracts.

In this regard, the Commission stated that, in this situation, the Coordinator must assign the supply blocks that will not be supplied by these companies to the remaining supply contracts it has, or through the transfer of surpluses.

The foregoing is without prejudice to possible infractions in which the suppliers may incur, and the eventual future billings, indemnifications or reinstatements derived from the application of the regulations in force.

Colombia

El Niño phenomenon drives up energy prices

As [mentioned in this newsletter](#), after the official declaration of the El Niño phenomenon in Colombia by the Institute of Hydrology, Meteorology and Studies, in the last weeks its effects have increased, which has had as main consequence for the electric energy market the decrease in the level of reservoirs, going from 75% at the end of 2023 to 60% on January 24, 2024. To this extent, taking into account the high market participation of hydroelectric generators, the price of energy in the stock market has rebounded in the last few days.

The schedule for the Reliability Charge Auction is maintained

The Energy and Gas Commission (CREG) confirmed on January 17, 2024 that it will maintain the current schedule for the development of the reliability charge auction for the allocation of firm energy obligations for the period 2027 - 2028. The auction is scheduled to take place on February 15, 2024. To that extent, after several postponements of the auction, the market has positively received the CREG's decision to maintain the aforementioned date, taking into account the relevance of the reliability charge in the support of the energy matrix in view of the growing energy demand.

New call from the Mining and Energy Planning Unit (Unidad de Planeación Minero Energética)

On January 12, 2024, the Mining and Energy Planning Unit (UPME) published the documents for the selection of an investor and an auditor for the design, procurement of supplies, construction, testing, commissioning, operation and maintenance of a 500 kV transformation bay for a 450 MVA 500/115 kV transformer at the Nueva Esperanza substation, located in the municipality of Soacha, in the municipality of Soacha, Colombia, located in the municipality of Soacha in the Department of Cundinamarca, which is defined in the "*Plan de Expansión de Referencia Generación - Transmisión 2020 - 2034*", adopted by Resolution of the Ministry of Mines and Energy 40279 of August 26, 2021.

Contact our professionals

Chile

**Diego Perales Roehrs**

Of counsel · Public Law - Energy

diego.perales@garrigues.com[Visit the complete profile](#)**Cristóbal Fainé Henríquez**

Partner · Corporate

crisobal.faine@garrigues.com[Visit the complete profile](#)**Carla Martini Bozzo**

Senior associate · Public Law - Energy

carla.martini@garrigues.com[Visit the complete profile](#)

Colombia

**Adriana Espinosa**

Partner · Public Law - Energy

adriana.espinosa@garrigues.com[Visit the complete profile](#)**Julián Esteban Lozano**

Senior associate · Public Law - Energy

julian.esteban.lozano@garrigues.com[Visit the complete profile](#)

Peru

**Diego Harman**

Partner · Corporate

diego.harman@garrigues.com[Visit the complete profile](#)**Víctor Baca**

Of counsel · Public Law - Energy

victor.baca@garrigues.com[Visit the complete profile](#)**Giancarlo Vignolo**

Senior associate · Public Law - Energy

giancarlo.vignolo@garrigues.com[Visit the complete profile](#)

GARRIGUES

Isidora Goyenechea, 3477, Piso 12
Las Condes – Santiago de Chile (Chile)
T +56 2 29419000
santiagodechile@garrigues.com

Avenida Calle 92 No. 11-51 Piso 4
Bogotá D.C. (Colombia)
T +57 601 326 69 99
F +57 601 326 69 70
bogota@garrigues.com

Av. Víctor Andrés Belaúnde, 332 (Oficina 701)
San Isidro – Lima (Peru)
T +51 1 399 2600
F +51 1 399 2699
lima@garrigues.com

Follow us:



© 2024 J&A Garrigues, S.L.P. | This publication contains general information and does not constitute a professional opinion, or legal advice.

garrigues.com