

MEMORANDUM

*Privileged and confidential.*

FROM: BECCAR VARELA  
DATE: BUENOS AIRES, NOVEMBER 29 2017  
RE.: ELECTRIC MARKET REGULATORY FRAMEWORK REPORT

1). INTRODUCTION.

The purpose of this report is to briefly describe the electricity regulatory framework in Argentina, focusing on the latest developments which have taken place in the industry, in particular those made in connection with the revamp of the renewable energy sector.

This report is for general information purposes only, and it does not purport to be comprehensive. Neither should it be regarded as a legal opinion. For advice about legal issues, the reader should consult legal counsel.

2). REGULATORY FRAMEWORK AND ITS CURRENT SITUATION.

In 1992 Act No. 24,065 was passed in Argentina, which provided guidelines and principles to regulate the electricity industry. In summary, Act No. 24,065 set forth that:

- Generation, transmission and distribution are divided into three independent sectors, which are subject to specific rules. While distribution and transmission activities are considered a public service, power generation is deemed of general interest.
- Electricity generators, distributors, transmission companies, large users and brokers will act as “agents” of the Wholesale Electricity Market (“WEM”). WEM was regulated to allow these agents to trade electricity in spot transactions and on a long-term power purchase agreements (“PPA”) basis. Originally prices were determined by the interplay of supply and demand, and a private company, Compañía Administradora del Mercado Mayorista Eléctrico S.A. (“CAMMESA”) was appointed to administrate the WEM.
- National Electricity Regulatory Agency (“Ente Nacional Regulador de la Electricidad”) (the “ENRE”) is responsible for supervising and controlling concessions related to the national power grid (the “Sistema Argentino de Interconexión” or “SADI”).

On the other hand, Federal and State governments granted long-term concessions to distributors, transmission companies and hydroelectric power plants.

In 2002, Argentina faced a serious social, economic and political crisis, which led the Federal Government to take several measures to attend an unprecedented situation. In this respect, WEM operations were substantially altered by different measures (e.g., capped prices for transmission companies and distributors). By intervening prices, Argentine government created a market distortion

which led to a structural deficit. As a direct consequence and facing uncertainty, generators, transmission companies and distributors deferred investments.

Federal Government tried to stabilize the already distorted market by taking further direct action, such as fixed prices. However, these actions were not successful. Accordingly, Argentina's growing energy demand has not been met since then, and this is a critical factor for the country to develop as an emerging market.

Nonetheless, in the past years, the country has shown concrete signs of radical change to bring balance into the WEM.

To begin with, Argentina has incorporated into its agenda the generation of electricity from renewable sources in 2006. Afterwards, President Macri's Administration, which took office in December, 2015, empowered the former Secretariat of Energy by upgrading it to a ministry, so it became the Ministry of Energy and Mining. The Secretariat of Electrical Energy (the "EE Secretariat"), under such ministry, is currently the office in charge of the national energy policy.

Below please find a description of these measures and others taken by the Federal Government.

### 3). RENEWABLE ENERGY PROMOTION.

Through the enactment of Act No. 26,190 in December 2006, the Federal Congress declared of national interest the generation of electric power from renewable energy sources, to supply electricity public service and to conduct researches and manufacture equipment for the development of technology. This scheme was known as "*Legal Regulations on National Promotion for the Use of Sources of Renewable Energy to Generate Electric Power*" (the "Renewable Energy Promotion Scheme"). This act fostered a clear objective: to reach a contribution of renewable energy sources equal to eight percent (8 %) of the total national consumption of electric power within 10 years. However, the task was not accomplished.

To remedy this situation, all political parties worked together, and having reached to a consensus a new bill was unanimously drafted. Then, Federal Congress enacted on September 23, 2015, Act No. 27,191 amending the 2006 Renewable Energy Act. In turn, after taken office, President Macri issued Regulatory Decree No. 531/16 to regulate said Act. The amendment sought to establish a legal framework to boost investments in renewable energy and promote the diversification of the energy matrix.

To accomplish the intended purpose, among other things, new Act:

- Set forth a long-term and mandatory objective: generation of electricity from renewable sources shall progressively increase and reach a 20% share of the energy matrix by December 31, 2025.
- Modified and extended tax benefits.
- Created the "*Trust Fund for the Development of Renewable Energies*" ("*Fondo Fiduciario para el Desarrollo de Energías Renovables*" or "FODER") whereby the Federal Government would act as trustor and residual beneficiary; the Bank of Investment and Foreign Trade ("*Banco de Inversion y Comercio Exterior*" or "BICE") would act as trustee and owners of investment projects would be the beneficiaries.
- Established obligations for large users and large demands.

In relation to tax benefits, the referred Act provides:

- (i). Early Value Added Tax (“VAT”);
- (ii). Reimbursement and accelerated amortization in the Income Tax;
- (iii). Tax losses arising from promoted operations can be carried forward for 10 years;
- (iv). Assets linked to the activity are not subject to Presumptive Minimum Income Tax for eight fiscal years;
- (v). Beneficiaries that can prove a 60% composition of national parts in their electric installations (or a lower composition, provided that it exceeds 30%), may claim a tax credit certificate that can rise to 20% of the value of such national parts; and
- (vi). Imported capital goods linked with the promoted activities are exempted from import duties.

Please note that complementing the above-mentioned benefits, Federal Government allocated the amount of US\$ 1,700,000,000 to tax and import duty benefits to be distributed under the Renovar Program.

#### 4). THE FODER.

Certainly, the incorporation of a master trust like the FODER constituted a key element to attract national and foreign investors. Under this trust, the Federal Government represented by the Ministry of Energy and Mining, acts as trustor and residual beneficiary; BICE acts as trustee, and project companies will be the beneficiaries by entering into project-specific joinder agreements.

FODER aims at both (i) the allocation of funds for financial purposes and (ii) grant guarantees.

Funding to such trust may come from the Argentine National Treasury, special charges to be created, the recovery and produced of loans granted and/or trust assets and issuance of trust securities. Contribution for 2016 from the Federal Government, by means of the National Treasury, for guarantee purposes was AR\$ 12,000,000,000 (approximately US\$ 700 million).

The funding from the National Treasury shall be determined annually, and it shall not amount for less than 50% of fossil fuels savings resulting from the incorporation of renewable energy projects.

In view of providing legal certainty, FODER funds guarantee both payments of energy sold to CAMMESA as off-taker of any PPA, and payment arising out of any PPA early termination related to the exercise of a put or call option.

Additionally, in accordance with Decree No. 882/16, the Ministry of Finance issued Treasury Bills (“*Letras del Tesoro*”) in favor of FODER for an amount of US\$ 3,000,000,000 to cover FODER’s default of payment of put option’s compensation. These bills can be liquidated if Ministry of Energy and Mining fails to provide FODER with the necessary funds to pay for the project assets.

#### 5). THE “RENOVAR PROGRAM”

In July, 2016, acting pursuant to the Renewable Energy Promotion Scheme, Ministry of Energy and Mining issued Resolution No. 136-E/16, for the submission of bids for the purpose of executing PPAs under the program “*Renovar Program Round 1*”. The bidding process was carried out by

CAMMESA with the supervision of the Undersecretariat of Renewable Energy. Bidding terms included templates of the applicable PPA and joinder FODER agreement, and said contracts were to be executed by the awardees.

The main and substantial terms and conditions of the PPA model are the following:

- Off-taker: CAMMESA on behalf of distributors and large users.
- Term: 20 years.
- Payment: remuneration is denominated in US\$, but payment will be done in Argentine Pesos in an amount necessary to acquire the owed US\$, applying conversion mechanism. Price is annually adjusted by a price adjustment factor and by an incentive factor, to promote a faster construction of the projects.
- Construction schedule: to be proposed by bidders.
- Review of PPA conditions: only allowed in case of extraordinary and unexpected change of economic or legal conditions not attributable to the Parties, which results in a hardship situation.
- Events of termination by the sellers: (i) lack of payment of 4 consecutive monthly payments or 6 monthly payments in any 12-month period; or (ii) non-compliance of any arbitral award by CAMMESA.
- Assignment of rights: shareholder that contributed with the financial background to qualify in the tender (i.e., 250,000 US\$/MW), should keep at least 25% of the SPV shares until the Commercial Operation Date, unless CAMMESA approves its replacement.
- Applicable law: Argentina.
- Dispute resolution: UNCITRAL arbitration; the seat is to be defined by the arbitration tribunal.
- World Bank Guarantee: Investors may choose to purchase a World Bank guarantee for an amount up to 500,000 US\$/MW, which will further backstop the payment by the FODER of the project sale price upon the exercise of the put option.

The following chart demonstrates the overwhelming results of Renovar Round 1:

<b>RENOVAR ROUND 1 OFFERS</b>			
<b>TECHNOLOGY</b>	<b>NUMBER OF PROJECTS</b>	<b>OFFERED CAPACITY [MW]</b>	<b>REQUIRED CAPACITY [MW]</b>
WIND	49	3468.7	600
SOLAR PV	58	2813.1	300
BIOMASS	5	44.5	65
BIOGAS	6	8.6	15
HYDRO	5	11.4	20
<b>TOTAL</b>	<b>123</b>	<b>6346.3</b>	<b>1000</b>

<b>RENOVAR ROUND 1 AWARDED OFFERS</b>			
<b>TECHNOLOGY</b>	<b>NUMBER OF PROJECTS</b>	<b>AWARDED CAPACITY [MW]</b>	<b>AVERAGE PRICE [US\$/MWH]</b>
WIND	12	708	59
SOLAR PV	4	400	60
BIOGAS	6	9	154
BIOMASS	2	15	110
HYDRO	5	11	105
<b>TOTAL</b>	<b>27</b>	<b>1143</b>	<b>63</b>

Since the Renovar Program Round 1 showed an unprecedented success, in October, 2016, the Ministry of Energy and Mining issued Resolution No. 252-E/16 and called for an additional tender under the same substantial terms of its predecessor. This tender, known as “Renovar Program Round 1.5”, was exclusive to projects which were not awarded in Round 1.

Again, the results were outstanding, as the next chart shows:

<b>RENOVAR ROUND 1.5</b>			
<b>TECHNOLOGY</b>	<b>NUMBER OF PROJECTS</b>	<b>OFFERED CAPACITY [MW]</b>	<b>REQUIRED CAPACITY [MW]</b>
WIND	19	1561.3	400
SOLAR PV	28	925.1	200
<b>TOTAL</b>	<b>47</b>	<b>2486.4</b>	<b>600</b>

<b>RENOVAR ROUND 1 AWARDED OFFERS</b>			
<b>TECHNOLOGY</b>	<b>NUMBER OF PROJECTS</b>	<b>AWARDED CAPACITY [MW]</b>	<b>AVERAGE PRICE [US\$/MWH]</b>
WIND	10	765.4	53
SOLAR PV	20	516.2	55
<b>TOTAL</b>	<b>30</b>	<b>1281.6</b>	<b>54</b>

In August 2017, the Ministry of Energy and Mining issued Resolution No. 275-E/17 and called for another tender. On October 19, 2017, the offers were submitted and the results once again outstanding:

<b>RENOVAR ROUND 2 OFFERS</b>			
<b>TECHNOLOGY</b>	<b>NUMBER OF PROJECTS</b>	<b>OFFERED CAPACITY [MW]</b>	<b>REQUIRED CAPACITY [MW]</b>
WIND	58	3817	550
SOLAR PV	99	5291	450
BIOMASS	20	187	100
BIOGAS	32	60	35
LANDFILL BIOGAS	4	15	15
HYDRO	15	32	50
<b>TOTAL</b>	<b>228</b>	<b>9401</b>	<b>1200</b>

Recently, on November 29, 2017, the Ministry of Energy and Mining awarded 66 projects for a total amount of 1,408 MW, that is, over 200 MW of additional power, which are categorized by technology as follows:

<b>RENOVAR ROUND 2 AWARDED OFFERS</b>		
<b>TECHNOLOGY</b>	<b>AWARDED CAPACITY [MW]</b>	<b>REQUIRED CAPACITY [MW]</b>
WIND	665.8	550
SOLAR PV	556.8	450
BIOMASS	117,2	100
BIOGAS	35	35
LANDFILL BIOGAS	13.1	15
HYDRO	20.8	50
<b>TOTAL</b>	<b>1,408.7</b>	<b>1200</b>

Since the results of the RenovAr Program Round 2 exceeded once again the expectations of the Ministry of Energy and Mining, an additional tender called “Fase 2” (Phase 2) –to be held exclusively for the projects that have not been previously awarded– will be shortly scheduled to award 600 MW.

Execution of PPAs and Joinder FODER Agreements should occur on or before May 15, 2018.

#### 6). ADJUSTMENT OF PREVIOUS PROJECTS, EXECUTION OF NEW PPAS

There were a few number of incomplete renewable energy projects, which had been awarded under the scheme of resolutions issued by the former Secretariat of Energy No. 220/07, 712/09 and 108/11. However, said projects had not been built for many reasons, including the lack of funding and legal certainty. The executed contracts related to those projects were in status of termination, and both

parties, Energía Argentina S.A. (“ENARSA”) (a state-owned company who acted as off-taker) and the electricity generators were in position of claiming damages to each other.

Federal Government considered this situation when issuing Regulatory Decree No. 531/16, in order to accomplish the aim set by Act No. 27,191. As a result, referred Decree, fostered the possibility of said projects to benefit from the Renewable Energy Promotion Scheme if: (i) the project had not yet started construction works, (ii) it is selected by the enforcement authority, and (iii) all executed contracts between ENARSA and the project company are terminated. If the construction works had already started, the Renewable Energy Promotion Scheme would be applicable to said projects on case-by-case basis.

By means of Resolution No. 202–E/16, issued by Ministry of Energy and Mining, the Federal Government regulated this matter. Among other measures, this resolution (i) repealed former Secretariat of Energy resolutions No. 712/09 and 108/2011; and (ii) set forth that any electricity generator who executed a PPA under said resolutions would maintain its contractual rights if the project had already reached commercial operations date.

Consequently, the Ministry of Energy and Mining issued Resolution No. 168/17 on May 31, 2017, and authorized seven wind farm projects to execute new PPAs subject to the Renovar Program for a total contracted capacity of 445 MW.

This is another sign which shows Argentina has definitively embraced the renewable energy power, and it is fully supporting the development of this industry.

Notwithstanding the foregoing, the country is also promoting the development of much needed power using conventional resources, as it is explained in the following section of this report.

#### 7). SECTORAL AGREEMENT FOR THE RENEWABLE SECTOR.

With the intention to fully support renewable energy in Argentina, on October 27, 2017, President Macri executed a “*Sectoral Agreement on Renewable Energies*” with the main players of the renewable energy industry. The agreement was signed by several unions, industrial chambers, the Ministry of Labor, the Ministry of Energy and Mining, and the Customs General Director.

The purpose is to provide investments with legal certainty and the general consent of every party involved in the industry. Even more, Federal Government is committed to guaranteeing a constant demand rate (10,000 MW will be awarded by 2025) through tenders to comply with the Renewable Energy Act. In addition, Mr. Macri Administration committed itself to improve the financing resources, to boosting training programs for human resources, and to support tax incentives for the use of national products in order to promote the national industry.

In relation to Provincial Governments, the agreement aims at specific request: to seek the fiscal stability of the sector in the provincial territory.

Federal Government expects a gross investment of US\$ 15,000 million which will call for the creation of more than 9,000 qualified jobs in the industry.

#### 8). CURRENT TRENDS IN COGENERATION, COMBINED CYCLE AND THERMAL GENERATION.

To promote development of power generation, on November 16, 2016, EE Secretariat issued Resolution No. 420/16 to call for interested parties to submit preliminary projects which would



contribute to the WEM's cost reduction and SADI's reliability. The purpose of such resolution was to analyze the market status and, subsequently, call for a tender in connection with those preliminary projects.

Following this process, the EE Secretariat launched an open tender for interested parties in developing both cogeneration and combined cycle projects. These projects would supply power to the WEM from the installation of new generation capacity, and the awardees would eventually execute a wholesale demand agreement with CAMMESA.

On September 25, 2017, the EE Secretariat issued Resolution No. 820/17 to award 3 cogeneration projects for 220 MW, and it further encouraged all remaining bidders to adjust and improve their bids in relation to cost and technical aspects. After that, on October 10, 2017, same EE Secretariat issued Resolution No. 926/17 and awarded 8 combined cycle projects and 1 additional cogeneration project for a total of 1,304 MW.

Regarding thermal generation, on March 21, 2016 the EE Secretariat issued resolution No. 21/16 and called for interested parties to submit bids of new thermal generation capacity and associated energy production to be supplied during seasonal variation periods. This tender was carried out by CAMMESA with the supervision of the EE Secretariat. By means of Resolution 155/16, on June 15, 2016, EE Secretariat awarded 20 projects for a total capacity of 1,915 MW.

Furthermore, to achieve security supply throughout said seasonal variation periods, the EE Secretariat took supplementary actions to secure additional power and awarded 9 projects for a total capacity of 1,093 MW.

#### 9). TRANSMISSION CAPACITY EXTENSION: THE TENDER IS ALMOST HERE.

Energy and Mining Ministry plans to call for a submission of bids in relation to the construction of 11 transmission lines during the first semester of 2018.

These transmission lines projects are divided into two categories: first and second priority. The first-priority projects are 8 lines which will add up to 1760 km (1,093 miles) and will require an investment of US\$ 2,000 million. The second-priority projects are 3 transmission lines which will amount to 1,065 km (662 miles) and will call for a US\$ 1,000 million investment.

The construction of these transmission lines will mitigate any curtailment risk for both renewable and thermal generators, and it will secure the power dispatch to meet Argentina's demand.

It is believed that the Federal Government envisions a public-private partnership for this tender and that the transmission lines will likely be tendered individually rather than in bulk. Also, the financial resources possibly follow the line drawn in the Renovar Program, allowing interested parties to opt for international guarantees (i.e World Bank). Nonetheless, we should wait for the final tender documents to further assess all these matters.

Please do not hesitate to contact our team to discuss any questions you may have on this report. We will be delighted to assist you.

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