

Newsletter of the Department of Natural Resources, Energy and Environment

December 2011 - January 2012

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1. ELECTRIC ENERGY

Legislative updates

Decree N°324/2011. National Executive Branch (PEN). Treasury's contributions to electricity sector companies.

By the referred decree, published in the Official Gazette on January 2, 2012, the President of Argentina increased the General Budget of the National Administration for the year 2011. Among the entities that will profit from the budget allocation increase there are several companies from the energy sector: (i) Compañía Administradora del Mercado Eléctrico S.A. (CAMMESA), by

approximately \$500 million for the import of electricity and combustibles for energy generation, transfers affected by high-voltage power net broadening and current transfers for gas purchase-sale; (ii) Yacypetá, by approximately \$70 million; (iii) Nucleoeléctrica Argentina S.A., by approximately \$200 million; and (iv) Energía Argentina S.A. (ENARSA), by \$100 million.

Resolution N°13/2012. Regulatory Entity for Electricity (ENRE). Generators. Measuring and recording procedure of emissions to atmosphere.

By the referred resolution, dated December 25, 2011 and published in the Official Gazette on February 2, 2012, the National Regulatory Entity of Electricity adopted the "Measuring and recording procedures of emissions to atmosphere". Furthermore, it adopted the evaluation of the limit value fulfillment established by Resolution SEyM

N°108/2001, for generation power plants that have to perform specific controls and for constant releases of gas emissions. These provisions are applicable to generating, self-generating and/or co-generating members of the Wholesale Electric Market.

Joint provision N°229/2011 of the Control and Management Undersecretariat (S.C.G.) and N°810/2011 of the Budget Undersecretariat (S.S.P.). Public utilities. Subsidies elimination.

By the stated joint provision, published in the Official Gazette on December 12, 2011, subsidies are eliminated for electricity, natural gas, drinking water and sewage treatment services. The elimination of state subsidies is provided not only for residential

users included in the geographical zones established in Annex I of the mentioned joint provision, but also for those living in a tower building (provided they have a MPR, swimming pool, gymnasium and recreation areas), as of January 1st, 2012.

Joint provision N°216/2011 of the Control and Management Undersecretariat (S.C.G.) and N°733/2011 of the Budget Undersecretariat (S.S.P.). Public Utilities Tariffs. Voluntary resignation to subsidies.

Through the referred joint provision, published in the Official Gazette on December 12, 2011, the voluntary resignation to state subsidies forms and affidavit regarding the need for subsidies

are approved, being established that the "Voluntary Resignation to Subsidies Register" shall operate within the scope of the General Administration Bureau.

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Law N°10097. Entre Ríos Province. Financial trust establishment to fund infrastructure works at the provincial electric system.

The referred law, published in the Official Gazette on January 24, 2012, authorized the Provincial Executive Branch to enter into public credit operations amounting to \$180,000,000 maximum, to fund infrastructure works at the provincial electric system.

Said investment will be structured through the issuance of securities and/or debt certificates of a financial trust, for a maximum ten-year term. For this purpose, the Executive Branch may assign and transfer the fiduciary ownership to the Trust of the following goods: a) the necessary monetary amounts to cancel the commencement expenses of the trust establishment; b) up to 75% of the funds collected for the tariff charge established for

the Energy Development Fund of Entre Ríos province; c) the amounts of money that the Executive Branch decides to allocate, being suggested by the Secretary of Energy of the provincial administration, arising from said Energy Development Fund, among others. Due to this fact, all those public utilities that have been awarded the electric power distribution service and collect the tariff charge for the Energy Development Fund shall directly deposit the percentage determined by the Executive Branch in favour of trustee. Furthermore, the amounts transferred by the Trust for the execution of works will be considered as capital contribution of the Provincial Administration in favour of concessionary companies.

2. HYDROCARBONS.

Legislative updates

National Law N° 26732. Hydrocarbons. Export. Extension.

Through the referred law, enacted on December 27, 2011 and published in the Official Gazette on December 28, 2011, the hydrocarbon export right created by the second paragraph of section 6º, Law N°25561 (Public Emergency and Foreign Exchange System Reform Law), was extended for 5 years, as of its maturity, as

well as the powers granted to the National Executive Branch to fix the corresponding rates, powers that may be delegated to the Ministry of Economy and Finance. In addition, the Law explains that such rights are applicable to exports done from the Special Custom Area created by National Law N°19640 (Free Trade Zone Law).

Joint Resolutions N°114/2011 and 115/2011 of the Secretary of Energy (SE) and N°31/2011 and 32/2011 of the Secretary of Agriculture, Livestock, Fisheries and Food (S.A.G.P.).
Hydrocarbon Easement. Compensations.

Through the referred resolutions, dated December 27, 2011 and published in the Official Gazette on February 2, 2012, the compensatory amounts corresponding to Decree N°861/1996 were increased, for hydrocarbon easements, consequential damages, loss of profit, control and vigilance expenses inherent in hydrocarbon

activities developed in the provinces of Chubut, Santa Cruz, Tierra del Fuego, Antarctica and South Atlantic Islands, and in the denominated Cuyana and Neuquina Basins. In accordance with the referred resolutions, the increases shall be applicable as of April 1st, 2011.

Resolution N°112/2011. Secretary of Energy (SE). Liquefied petroleum gas. Price Stability Agreement. Extension.

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By the referred resolution, published in the Official Gazette on January 5, 2012, the Secretary of Energy authorized the extension of the bottled Liquefied Petroleum Gas (LPG) Price Stability Agreement, considering -among other reasons- the results achieved as of its implementation. Accordingly, the parties

agreed to extend the agreement until December 31, 2011, through the execution of the Second Addendum to the Liquefied Petroleum Gas (LPG) Price Stability Agreement -butane and/or mix-, bottled in cylinders of ten (10), twelve (12) and fifteen (15) kilogram capacity, dated December 29, 2010.

Resolution N°172/2011. Secretary of Energy (SE). Natural Gas. Agreement with Producers.

By the referred resolution, dated December 29, 2011 and published in the Official Gazette on January 5, 2012, the allocation rules and other criteria, established by Resolution N°599/2011 of the Secretary of

Energy, were temporarily extended, in connection with the Agreement with natural gas producers 2007-2011, aimed at meeting the local demand.

Resolution N°113/2011. Secretary of Energy (SE). Natural Gas. Subsidies of consumptions.

The resolution approves the transfer to the Fiduciary Fund for residential consumption subsidies of approximately \$80 million Argentine pesos to pay the compensations

corresponding to the second and third quarter (avoided tariff compensations) and accrued until December (current compensations) of 2011.

General Resolution N°3242. Tax Agency (AFIP). Gas. Taxable value.

By the referred resolution, published in the Official Gazette on December 29, 2011, the prices for natural gas that the federal tax Authority –AFIP- will consider as value base of export destinations for

consumption, validated between September 24th and November 5th, 2011, within the framework of the Total Energy Program, which are attached to the mentioned resolution, are fixed.

Communication “A” 5262. Central Bank of Argentina. Currency settlement due to hydrocarbon and mineral product export.

By the referred communication, issued by the CBA on December 30, 2011, the situation of the collections before the entering into force of the obligation to settle currencies for hydrocarbon exports was clarified. In this regard the communication established that: a) In the case of the operations informed as fulfilled until and including 10.25.2011 the entrance and settlement of the collections done from and including 10.26.2011 will correspond, even if the shipping license were reported as conformed in the follow up provided under

the previous communication; b) In the case of the operations outstanding at the close of 10.25.2011, the entity may grant conformance under the previous regime, up to the collected amounts until and including 10.25.2011, provided the collection date is proved, and the received funds correspond to the shipping license. For the outstanding balance to that date, the entrance and settlement of the funds shall have to be proved in the applicable terms, in order to grant shipping conformance.

3. MINING

Legislative updates

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National Law N° 26737. Regime for protection of national domain over property, possession and holding of rural lands.

The goal of the referred law, published in the Official Gazette on December 28, 2011, is to regulate the limits to the ownership and possession of rural lands, whatever their use or end, by foreigners –whether individuals or legal entities–, without affecting acquired rights.

For the purpose of this law, a foreign person is interpreted as:

(i) foreign individuals, holding or not actual domicile within Argentina, provided the exceptions stated in the law are not applicable.

(ii) legal entities when more than 51% of the capital stock or a portion thereof enough to prevail in corporate decisions, regardless of the stock percentage, is held by foreign individuals or legal entities. Furthermore, the following persons are included: a) legal entities controlled by any foreign corporate entity through a percentage over 25% or the votes required to determine the corporate will; b) foreign individuals or legal entities who are not registered stockholders but act as such; c) companies which issued negotiable obligations or debentures, thus allowing their lawful foreign holders to increase their holding or convert them into shares in a percentage superior to 25%, or creating majority decision making power regardless of the percentage shareholding, when foreign individuals or entities are involved; d) when property is transferred under a trust whose beneficiaries are foreign individuals or legal entities in a percentage over 25%; and e) unincorporated companies, business cooperation organizations, joint ventures or any kind of business cooperation form

where individuals or entities have a share in a percentage higher than the one permitted by law.

(iii) Foreign public entities.

(iv) Associations under the same conditions to those for legal entities.

Furthermore, the law establishes the following limits to foreign ownership and possession:

- Generally, a 15% limit to rural lands in the Argentine territory which may be owned or possessed by foreigners.
- Regarding foreigners of a same nationality, a 30% limit of the above-stated limit is applied.
- Regarding each owner, one thousand hectare limit or the equivalent according to the location of the piece of land.
- Prohibition of foreign ownership over lands bordering water bodies, as well as properties located at security border zones.

Moreover, the law establishes a National Registry of Rural Lands, operating within the Ministry of Justice and Human Rights. Among its duties, the following are specified: a) keep the record of data regarding rural lands owned or possessed by foreigners; and b) issue certificates for any and all acts by which property or possession rights over rural lands are transferred. Those who own or possess rural lands who are foreigners shall have to state before this registry the existence of such ownership or possession.

Law N°4738. Río Negro Province. Repeal Law N°3981. Establishment of the Provincial Council for Mining Environmental Assessment.

The referred law, published in the Official Gazette on January 5, 2012, repealed the provincial law N°3981, which established the prohibition of the use of cyanide and mercury in metal mineral extraction, exploitation and/or industrialization process.

Furthermore, by this law the Provincial Council for Mining Environmental Evaluation is established, whose duty is to

assess environmental impact studies resulting from mining activity in the Province of Río Negro. Such Council shall be formed by members of different fields of the mining sector, including representatives of the enforcing authority, lawmakers, NGOs and indigenous peoples. The new environmental impact assessment process includes the following stages: a) environmental impact study; b) technical

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report; c) provincial environmental council report; and d) public hearing.

Law N°4736. Río Negro Province. Adherence to National Law N°26639.

By the referred standard, the Province of Río Negro adhered to the National Law N°26639, establishing the Minimum Standards Regime for the Protection of Glaciers and Periglacial Environment.

Communication "A" 5262. Central Bank of Argentina (CBA). Currency settlement due to hydrocarbon and mineral product export.

By the referred communication, the CBA clarified the situation of the collections before the entering into force of the obligation to settle currencies for mineral product exports. In this regard the communication establishes that: a) In the case of the operations informed as fulfilled until and including 10.25.2011, the entrance and settlement of the collections done from and including 10.26.2011 will correspond, even if the shipping license were reported as conformed in the follow up provided

under the previous communication; b) In the case of the operations pending at the close of 10.25.2011, the entity may grant conformance under the previous regime, up to the collected amounts until and including 10.25.2011, provided the collection date is proved, and the received funds correspond to the shipping license. For the balance pending to that date, the entrance and settlement of the funds shall have to be proved in the applicable terms, in order to grant shipping conformance.

Jurisprudence

National Supreme Court. Public Hearing. "*Comunidad Aborigen de Santuario Tres Pozos y otros c/Provincia de Jujuy s/Amparo*". Motion for protection of constitutional rights. 12.27.2011.

By virtue of the referred judgment, the CSJN decided to hold a public and oral hearing for the Indigenous people of Santuario Tres Pozos to express its grounds for requesting standing to be part of the administrative files held in Secretary of Mining, pursuant to which exploration and exploitation lithium and borate authorizations in the Guayatayoc Lake, Salinas Grandes, subbasin zone were granted.

In order to obtain such standing, the Indigenous People of Santuario Tres Pozos filed a motion for protection of constitutional rights before the CSJN, arguing that the salt

mines supply the community with natural resources of common use necessary for its subsistence. Furthermore, they seek the issuance of a cautionary measure that will direct not to grant administrative permits for mining prospection, exploration and exploitation at the zone in question, as well as the suspension of already granted permits. They grounded their requests under sections 6, 41, 75 of the Argentine Constitution, under the Convention No. 169 of the International Labour Organization (ILO) concerning Indigenous and Tribal Peoples, as well as the National Law N°25675 (General Law of the Environment).

4. ENVIRONMENT

Legislative updates

Law Nº14343. Buenos Aires Province. Environment. Environmental liabilities identification. Obligation to recover polluted sites.

The referred standard, published in the Official Gazette of the province on January 23, 2012, regulates the identification of Environmental liabilities and the obligation to recover polluted sites in the province of Buenos Aires. It establishes that the ones responsible for recovering environmental liabilities and/or polluted areas will be those in charge of the activity generating the damage and/or the owners of the properties, in the event those in charge of the activity cannot be found. In this respect, it is foreseen that the one responsible for the activity which has caused the environmental liability may be exempted when the enforcing authority unequivocally indicates that the environment affected by the exploitation is in sound environmental condition.

This standard also creates the Registry of Environmental Liabilities and establishes in

such regards that the enforcing authority shall inform the Property Registry when an environmental liability is recorded in the Registry of Environmental Liabilities, in order to have it in a marginal note of the stated the latest domain record. Additionally, those who want to stop or transfer their activities are compelled to perform an "Environmental Closing Audit".

As regards the sanctions for detected defaults, the Law provides for disciplinary measures, fines, partial or total closure of the establishment and cancellations of registrations with the enforcing authority. Last of all, an Environment Provincial Fund (FOPROA) is created, which will be managed by the enforcing authority and shall be composed of the fines received for the application of sanctions to provincial environmental laws.

Law Nº14321. Buenos Aires Province. Sustainable Management of Waste from Electrical and Electronic Equipment.

By this law, published in the Official Gazette of the province dated December 15, 2011, guidelines, obligations and responsibilities for the sustainable management of Electrical and Electronic Equipment Waste (WEEE) in the territory of the Province of Buenos Aires is established. Furthermore, said law regulates the prevention in the WEEE production and the promotion of reuse, recycling, assessment and reduction of its environmental impact.

The most relevant obligations of producers, distributors and marketers of EEE are as follows: i) marking with EEE which are put in the market; ii) establishment of systems for the reception of WEEE and the transport of such to the authorized treatment centers;

iii) counting with a piece of land or center for the reception of WEEE, when the place where its exhibition and sale is carried out comprises a surface greater than five hundred square meters. Additionally, the Law also provides for the establishment of a provincial registry where EEE agents shall be registered, and to which producers and distributors shall provide information as well as annually pay a special tax for WEEE management.

The defaults to the provisions set forth in the law may be sanctioned with disciplinary measures, fines, suspension of the activity, closure of the facilities and permanent ending of the activity.

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Law N°4118. Autonomous City of Buenos Aires. Incorporation of paragraph to Law N°2936 on outdoor advertising.

The referred law, published in the Official Gazette of the city of Buenos Aires on January 24, 2012, establishes that for outdoor advertising that due to its characteristics or class of technology used generates a moving sensation in its message or images, regardless its size or place, a visual impact assessment to the vehicular and pedestrian traffic shall be filed, prior to the granting of any permit. This, in turn, is to be analyzed by the

Townscape Commission when granting or renewing the permissions.

All the advertisements already installed fulfilling the requirements of the previous paragraph shall be readjusted between a 90-day term as of the publication of this law. Once said term has elapsed the Administration of the City of Buenos Aires (G.C.B.A.) is empowered to determine the expiration of such permits.

Jurisprudence

National Supreme Court. Environment. Municipal regulatory power in environmental matters. *“Provincia de Santiago del Estero c/Cía. Azucarera Concepción S.A. y otro s/amparo”*. Motion for protection of constitutional rights. 12.20.2011.

The Province of Santiago del Estero and the Ombudsman filed a motion for the protection of constitutional rights in the federal venue of that jurisdiction, *“Provincia de Santiago del Estero c/Cía. Azucarera Concepción S.A. y otro s/amparo”*, against two sugar companies so that they cease the pollution of the lake Dique Frontal of Termas de Río Hondo due to vinasse dumping into the affluent, and requested a cautionary measure to stop the bioethanol production.

The federal judge pronounced himself incompetent to hear the case and forwarded to the National Supreme Court, which dismissed the cautionary measure request since until that moment. In this regard, it dismissed the cautionary measure but ordered a notice to the National Secretary of Environment and Sustainable Development for it to notify the advancement of the action plan for the ecosystem preservation in a 10-working-day term.

National Supreme Court. Environment. Indiscriminate cutting of trees and woods. Local powers. *“Salas, Dino y otros c/Provincia de Salta y Estado Nacional s/amparo”*. 12.13.2011.

In the framework of the motion for protection *“Salas, Dino y otros c/Provincia de Salta y Estado Nacional s/amparo”*, which was initiated to have the immediate and final close of the clearing and indiscriminate cutting of native woods in Salta ordered, and to have defendants recover the environment, the National Supreme Court decided to render the

issued cautionary measure ineffective and to cease intervening in the case file, since it was the Provincial Administration that had exercised its local jurisdiction as regards natural resources generating a protective regime of native woods to overcome the conflict, whereby the *periculum in mora* had lost its entity.

Supreme Court of the Province of Salta. Environment. *Municipal regulatory power in environmental matters. C.I.A.C.S.A. c./Municipalidad de la Ciudad de Salta – amparo-recurso de apelación*”. Motion to appeal. 09.02.2011.

In the case *“C.I.A.C.S.A. c./Municipalidad de la Ciudad de Salta s/amparo - recurso de apelación”*, decided on 09.02.2011, the

Court of Justice of the Province of Salta dismissed the motion filed by a company exploiting a meat processing plant against

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the decision of the Appeal Chamber, which had dismissed the motion for the protection of constitutional rights filed by plaintiff against the municipal ordinance stating the removal of the meat processing plant since it considered that the plant affected the environment.

In order to take such a decision, the Court understood that the challenged ordinance to reallocate the meat processing plant was

in line with the general principles regulating the, such as the prevention and precaution principles. Furthermore, it recognized the existence of a restricted environmental public order, where biological and social rights and warranties were involved.

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