/Carey

August 2016

LAW 20,936: NEW POWER TRANSMISSION SYSTEMS AND NEW INDEPENDENT COORDINATING BODY

On July the 20th 2016, Law No. 20.936 that establishes New Power Transmission Systems and creates an Independent Coordinating Body for the National Power System (the "Transmission Law" or "New Law") was published. Its stated objectives are to ensure that transmission does not become an obstacle to power generation, increase competition in the electrical market and boost the development of non-conventional renewable energies. The New Law introduces relevant changes to the current electrical regulation contained in the Electrical Services General Law ("LGSE"), that was established by Decree No. 4/20.018, and to Law No. 18.410 that establishes the Superintendence of Electricity and Fuels ("The SEC Law").

Among the main modifications introduced by the Transmission Law are the following:

1. **Creation of an Independent Coordinating Body for the National Power System**

A new, centralized coordinating entity (the "Coordinator") for the electrical system will replace the current Economic Load Dispatch Centers ("CDEC" or "CDECs"). The Coordinator will be independent of the electrical market's players. This is in direct contrast to its predecessor, the CDEC, which was composed of members who were chosen by key players in the electrical system. The Coordinator will be a non-profit organism with an independent legal entity that is not part of the government's administration.The New Law states that the Coordinator will assume the CDEC's current responsibilities of ensuring the safety of the service provided by the electrical system, guaranteeing both the most cost-effective operation and open access to every transmission system. The law also requires that the Coordinator track and monitor industry competition and the payment chain, while ensuring information transparency.

According to Article No. 1 of the New Law, it is expected that the

This news alert is provided by Carey y Cía. Ltda. for educational and informational purposes only and is not intended and should not be construed as legal advice.

Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
www.carey.cl

specific regulation of the Coordinator regarding its duties and faculties will come into force before July, 20th 2017.

2. **New definition of the current Transmission Systems, Power Programming and Transmission Expansion**

The Transmission Law re-defines the terms by which each current transmission systems is named:(i) The Trunk Transmission System is replaced by the National Transmission System;

(ii) The Sub Transmission System is replaced by the Zonal Transmission System; and

(iii) The Additional Transmission System is replaced by the Dedicated Transmission System.

A new Transmission System is created under the name of Generation Development Hubs (the "Development Hubs"), which will be used to distribute power production from those geographical areas1.

In addition, the New Law regulates international power exchanges, with the creation of the concept of "International Interconnection Systems" which will be under the Coordinator's technical and economic management.

Regarding the system's programing, the Ministry of Energy (the "Ministry") will be in charge of the development of long term (at least 30 years) energy planning processes. For that purpose, power supply and demand projection scenarios shall be considered (especially electrical), taking into account the identification of Development Hubs of Generation, distributed generation (net billing), international exchanges of energy, environmental policies and power efficiency objectives, among others.

The National Energy Commission (the "CNE") will run an annual Transmission planning process that will consider a 20 year horizon, covering necessary expansion works of the National Transmission System, the Zonal Transmission System and the Dedicated Transmission Systems used by concessionaires of distribution services for the supply of regulated consumers or necessary for the delivery of supply, accordingly.

3. **Development Hubs**

The Ministry is entitled to identify, within the context of Ministry's long-term planning, areas of high potential for power generation

where Development Hubs can be established2. After the relevant Strategic Environmental Assessment3, such areas can be formalized, resulting in a significant contribution to the power supply. Regarding this matter, the Transmission Law requires that 20% of the yearly total power withdrawals from the Development Hubs must come from non-conventional renewable energy ("ERNC").Also, the Transmission Law establishes that in case of coordination conflicts between different power generation companies, in a way that the totality or part of the production capacity of one or more of the Development Hubs cannot be injected to the Transmission System, the CNE is authorized to consider in its annual transmission expansion plan, the construction of necessary transmission systems for those Development Hubs. For the above, the CNE will be able to incorporate dedicated lines and sub-stations, new or existent, as Transmission System serving such Generation Development Poles.

4. **Trace Development for the National Transmission System**

In the current plan for the trace definition, once the decision has been made to expand the transmission system with a new line, the operator must open a call for tenders to construct the new line. The operator must provide participants in the bidding process with information that meets at least minimum requirements. The company that wins the bidding process is responsible for trace development and obtaining the relevant environmental approval resolution, if required. In addition, implementation deadlines are stringently defined and penalties are applied in case of breach.According to the Transmission Law, the State will have a new role in the development of the National Transmission System, involving itself in the trace definition and the placement of the new transmission systems. The Transmission Law requires the elaboration of a new Trace Study process for electric transmission paths of public interest, which will be subjected to Strategic Environmental Assessment, to the indigenous consultation process contained in the International Labor Organization Agreement No. 169 if required, and to the Sustainability Ministry Council's approval4.

5. **Open access**

The open access is understood as the attribute by which the electrical system's transmission facilities can be used by third parties under non-discriminatory technical and economic conditions. In exchange, those third parties must pay the remuneration of the use of the corresponding transmission system.Even though the "open access" regime applied before the enactment of the New Law when

compliance with the legal requirements was observed (i.e. available technical capacity, among others), now the possibility of open access to Dedicated Transmission Systems is expanded. Before this change, it was only possible to have open access to Additional Systems when those facilities used electric concessions or national assets of public use.

The Coordinator will have to establish the proceeding payment for concepts of connection, studies, engineering analysis or rights of use over facilities, and terms for the connection.

6. **Payment of the system**

As a substantial modification to the old model, the New Law transfers to final costumers (both unregulated and regulated) the National, Zonal, and Dedicated (in part used by clients submitted to price regulation) Transmission Systems costs payment5. With the New Law, a single access charge is established, called "postage stamp method" (or “estampillado” in Spanish).The Transmission Law establishes a new transitory article to define the National Transmission System's collection, payment and remuneration, which will be valid through December 31, 2034, with the objective of maintaining the price of transportation of current supply contracts unaltered. In that way, payments made by final consumers shall be compensated, if applicable, under those contracts.

7. **Supply unavailability compensation**

With the Transmission Law, a new supply unavailability compensation system is incorporated for breaches produced in power generation and transmission zones, which will guarantee the performance standards compliance that are required by the electrical regulation. The previous, notwithstanding the sanctions applied by the Superintendence of Electric Power and Fuels, if applicable.In the context of this New Law, interruptions caused by supply unavailability of electric facilities will be compensated at the equivalent of non-supplied energy, valorized at fifteen times the current energy fee during the supply unavailability for the case of regulated costumers. For unregulated costumers, the compensation will be the equivalent to the non-supplied power, valorized at fifteen times the energy component of the average market price established by the definitive technical report of the current short term node price during the event. However, the compensation payment will not proceed if this item is already the object of any special clause in their supply contracts.

Finally, maximum values for concept of compensations by event are established, consisting of the lowest value of either 5% of the company's income for that year, or 20.000 UTA. The compensation paying company may claim before the Superintendence of Electric Power and Fuels such payment, which will have to initiate an administrative process to determine the preceding compensation. Once the Superintendence of Electric Power and Fuels payment claim process ends, affected parties may initiate the corresponding legal actions.

8. **Complementary Services**

Complementary Services are all those services that are necessary to maintain the quality and security of the electric power supply, tension and frequency control and power demand management. They also help to keep the technology of the System up to date. The New Law outlines a plan where the National Energy Commission annually determines the Complementary Services and its categories, by extent resolution, following the Coordinator's Proposal which determines the services required by the Electric System. The Complementary Services implementation will be made through competitive tender processes.

Finally, it is worth noting that given the magnitude of the amendments introduced by the New Law, a transitory regime will govern the implementation of a number of matters addressed in this law. For details on this, refer to the Transitory Articles in the New Law.

---

1 Details regarding Development Poles and Transmission Systems for the Generation Development Poles in section 3. that follows.

2 According to Article No. 85 of the LGSE, it is understood by Development Pole "geographically identifiable zones of the country, located in regions in which the National Electrical System is situated, where power generation resources from renewable energies are found, whose utilization by means of a single transmission system results of public utility due to their economic sufficiency to the power supply, complying with environmental legislation and territorial regulations".

3 According to Article No. 2 letter i) of the Law No. 19.300 of General Environmental Bases, Strategic Environmental Assessment is the procedure carried out by the respective sectorial Ministry by means of which environmental considerations are incorporated to the process of formulating general normative policies and plans seeking their integration in the dictation of such policies and plans.

4 According to Article No. 71 of the Law No. 19.300, the Sustainability Ministry Council is presided by the Environment Minister, and is also composed by the Minister of Agriculture, the Minister of Finance, the Health Minister, the Economy Minister, the Energy Minister, the Minister of Public Works, the Housing Minister, the Transport Minister, the Mining Minister, and the Planning Minister.

5 Before the entry into force of this New Law, the Trunk Transmission System was paid by Power Generation Companies and clients together, according to a prorate defined by the LGSE.

Authors: Juan Francisco Mackenna; José Miguel Bustamante; José Tomás Hurley