

NEC EXEMPT RESOLUTION NO. 176 THAT DETERMINES THE SCOPE ON THE EXCLUSIVE BUSINESS PURPOSE OF ENERGY DISTRIBUTION COMPANIES

The National Energy Commission (“NEC”) issued on May 29, 2020 the Exempt Resolution No. 176 (“NEC ER 176”) that determines the scope on the exclusive business purpose and separate accountings of energy distribution companies, for the provision of the energy distribution public service according to what was set in Law No. 21,194. The NEC ER 176 was published in the Official Gazette on June 9, 2020.

The NEC ER 176 most relevant issue is the prohibition for the Distribution Companies (the “DisCos”) to sell power and energy to final clients with a connected power capacity higher than 5,000 kW, and to those with a connected power capacity higher than 500 kW but lower than 5,000 which would have chosen for a free fare regime (i.e., to be deemed as a “free client”, a customer that is no subject to price regulation).

This prohibition is a concrete expression of the DisCos’ energy distribution exclusive business purpose requirement based on Law No. 21,194, that will open new competition opportunities for the energy supply to small free clients (those not subject to price regulation) that require better commercial conditions all the time, based on a sustainable power supply.

In addition, the NEC ER 176 sets the following:

- 1.- DisCos must be incorporated with the exclusive business purpose of energy distribution and, consequently, shall only provide the power distribution public service. Likewise, power distribution unions (Cooperativas) that -besides to provide power supply services- develop activities belonging to other business purposes, must carry out separate accountings regarding those activities related to the power distribution business purpose.
- 2.- The activities under the exclusive energy distribution business

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

purpose are those essential for the supply of such service, and those that contribute for such purpose. According to NEC ER 176, those essential activities and those that contribute for such purpose are the following:

- The energy transportation through distribution facilities for final customers' supply, whether in or out of DisCos' concession areas;
- The purchase and sale of the necessary power and energy required for the supply of the total consumptions of customers subject to price regulation;
- The use of distribution grid facilities that allow the injection, withdraw, or energy management;
- Those fixed rate services according to article 182 (added value for distribution costs) and 147 (services supplied by DisCos -others than power supply-, which has been fixed under a price regulation regime by decision of the Chilean Antitrust Court) of the Electrical Services General Law, including services and products related to power distribution that, because of safety measures or because of their own nature could only be provided by DisCos (or through a third entity on behalf of a DisCo).
- Services provided by DisCos using infrastructure or essential resources necessary for the provision of the aforementioned services, whose shared use with other services is essential or efficient.

Discos shall anyways execute activities that may generate efficiencies between companies that are part of their business group, taking advantage of economies of scope between distribution companies, transmission companies or medium power systems operating companies. Likewise, these companies may be shareholders of distribution companies, transmission companies and medium power systems operating companies belonging to their business group. Income and expenses due to these activities shall be carried out under independent separate accountings and annually notified to the NEC.

3.- The sale of products or services that are no essential for the provision of the power distribution public service are expressly excluded from the power distribution exclusive business purpose. Activities related to energy efficiency solutions and the sale of power generation units to regulated customers (for the exercise of their rights to inject power to the distribution grid through those power

generation units, whether through non-conventional renewable energy power means or through efficient cogeneration means, and individually or through a group of regulated customers) are also excluded from the power distribution exclusive business purpose.

4.- The Cooperativas and those distribution companies that operate in systems with a power installed capacity lower than 200 MW but higher than 1,500 kW must carry out a separate accounting regarding the income and expenses related to the provision of services that could be considered under the power distribution exclusive business purpose, according to what has been indicated previously.

5.- The requirements set forth in the NEC ER 176 will be enforceable since January 1, 2021. Exceptionally, operations that due to their nature could not be performed prior to said cutoff date must be notified to the NEC, including a schedule with terms for the compliance of ER 176, whose last milestone shall not exceed January 1, 2022.

Authors: Juan Francisco Mackenna; José Miguel Bustamante