

# Argentine Regulation of Renewable Resources

■ **Javier Canosa**

**With a collapsed energy market in Argentina and a change of the current administration in 2015, it is clear that Argentina will have to develop and invest in the energy sector, and especially in the renewable energies sector. The purpose of this note is to briefly develop some of the main traits of the renewable energy legislation in – and the prospects for – Argentina.**

## ■ **National System for Wind and Solar Energy**

The first piece of legislation regulating the energy sector is Law No. 25,019 that entered into force in 1998. Its main purpose is to declare that the production of electricity from wind power and solar energy is a matter of national interest, and also to promote the research and use of renewable energy. It is noteworthy that this law provides that the production of power through such renewable sources does not require authorization from the national government.

Law No. 25,019 complements the following national legislation:

- Law No. 15,336, that law came into force in 1960 and regulates the electrical industries' activities in connec-

tion to the generation, transformation, transmission and distribution of electricity within the national jurisdiction, whatever their source, that belongs to public or private individuals, becoming a marketable good. This law regulates concessions and authorizations, transport and distribution of electricity, the Federal Council of Electric Energy ("FCEE") and the National Electricity Fund ("NEF").

- Law No. 24,065, which relates to electric power, and determines specific regulations on transmission and distribution of electricity. It is noteworthy that Law No. 24,065 provides that the NEF, which is managed by the FCEE, is subsidized by a special rate of zero point zero three pesos per kilowatt-hour (US\$0.03 Kw/h) to pay the wholesale market buyers such as distribution companies and large us-



ers (Section 70), and that the monies so raised shall be distributed as follows:

- » 60% to the provinces that have acceded to the tariff principles contained in Law No 24.065, and
- » 40% goes to the Electrical Inland Regions Development Fund (“EIRDF”), being that from this percentage the FCEE can use resources to promote the generation of wind power and solar energy (Law No. 25.019, Section 4).

In connection with this fund, Law No. 25,019 provides that the applicable assessment within the margins set by Law No. 24,065 shall be increased. The rate specified shall be allocated to the Trust Fund for Renewable Energy (“TFRE”),

which is created by Law No. 24,065. The use of resources shall remunerate the energy generated through alternative energy sources according to their origin (such energy should be aimed to the wholesale electricity market or the provision of public services).

In order to determine a charge established by the NEF, the value stipulated in Section 70 will be affected by the Quarterly Adjustment Coefficient (“QAC”) referred to seasonal periods. The QAC is calculated as a result of considering net revenue by forward contracts and spot in the market. Compensation arising from the zero point zero three pesos per kilowatt-hour (US\$0.03 Kw/h) increased “on demand” from Law No. 25,019, Section 5, the amount of zero point nine pesos per

kilowatt hour (US\$0.9 Kw/h) will be destined for solar photovoltaic generators already installed and/or to be installed in the future.

### ■ **Economic benefits of the National Regime of Wind and Solar Energy**

Law No. 25,019 provides that plants and/or solar equipments to be installed in Argentina shall have the following benefits for a 15 year period:

- The remuneration received by the alternative energy generated (Section 5).
- They have “fiscal stability” ensured, which involves the impossibility to



fix a higher total tax burden or creating new ones, which may apply to the relevant company (Section 7).

## ■ National Development Scheme for the Use of Renewable Energy Resources for the Production of Electricity in Argentina

Law No. 26,190 enacted on December 2006 deals with the specific subject of renewable energies. This legislation is further regulated by Decree No. 562/2009. We will analyze some of the main characteristics of these regulations.

### 3.1 Scope and purposes.

Law No. 26,190 declares of national interest the generation of electricity through renewable sources in general (it does not refer to specific types of energy), being both for the provision of public services and the investigation for the technological development and manufacture of equipment for those purposes.

This regulation aims for Argentina to be able to cover 8% of its energy demand with renewable sources in a 10-year term. Renewable sources comprise all energy sources of non-fossil character such as wind, solar, hydro power up to 30 MW, biomass, biogas, etc. (Section 4); biofuels are not considered renewable energy. In order to reach the goal set by National Law No 26.190, it is established an Investment Regime (“IR”) with an extension of ten years, destined to the construction of new facilities (civil, mechanical and assembly) aimed to the production of electricity from renewable sources (Section 7).

Basically, the Law intends to promote investments in the production of electricity from renewable sources throughout all the country.

### 3.2 Enforcement Authority.

The Enforcement Authority of Law No. 26.190 is the Secretary of Energy under the Ministry of National Planning, Public Inversion and Services. Its creation was established by the Regulatory Decree No 562/2009.

It is important to highlight that the legislation establishes the duty of the national government to apply public policies in order to promote investments on renewable energy (Section 6). As a consequence, its mandate is:

- To coordinate institutes and universities’ investigations on the development of technologies to improve the use of renewable sources;
- To create a National Schedule for the Development of Renewable Energies (now known as “GENREN Program,” to be discussed below);
- To organize activities to encourage domestic manufacturing of equipment for the generation of renewable energy;
- To execute international cooperation agreements (for example that is the case of the Statute of the International Renewable Energy Agency, as explained later).

### 3.2. Economic benefits of the National Regime for the use of Renewable Energy Sources.

The beneficiaries listed in this regulation are holders of investments and dealers of new constructions specified in Section 7 of Law No. 26,190, whose production is destined for the Wholesale Electricity Market or the provision of public services. These holders can be both individuals and legal entities.

Unlike as established in Law No. 25,019, Law No. 26,190 does not provide the ben-

efit of fiscal stability for fifteen years, but sets tax credit benefits in favor of renewable energy producers. As a consequence, those who have access to the IR may enjoy, for a period of ten years, the following tax benefits:

- Anticipated refund of VAT credits (as a result of the complementary implementation of Law No 25.924, Section 3).
- Practicing accelerated depreciation in relation to income tax (as a result of complementary implementation of Law No. 25,924, Section 3).
- They will not be included for the basis of Tax for Minimum Presumed Income until the end of the third fiscal year (this is established in accordance to Law No. 25,063).

The aim of the previous dispositions is to reinforce the importance of those companies that stimulate employment and strengthen the domestic production of capital goods (Law No. 25,063).

## ■ Statute of the International Renewable Energy Agency

The Statute of the International Renewable Energy Agency (“SIREA”) was approved in October 2012 by Law No. 26,769. The SIREA is an intergovernmental agency that works in accordance with the purposes and principles of the United Nations.

The SIREA aims to promote the production and use of renewable energy. To achieve its objectives, SIREA provides advice on matters regarding public policies and seeks to facilitate the building and transfer of technologies and information about the latter. The agency created for this purpose is primarily budgeted by SIREA’s member states’ mandatory contributions and by those made voluntarily.



The statute mentioned above has been criticized for several reasons. However, the hardest criticism is that it has no enforcement actions to implement against parties that do not seek to achieve sustainable development on renewable energy in their respective territories. At the same time it has been held that it is quite unrealistic to promote renewable energy potential to achieve a decentralized energy access as it is something that is still difficult to implement.

## ■ The Argentine Constitution and Renewable Energy

In the Argentine Constitution, in Section 41, Argentine citizens are directed to maintain a balanced operating environment. According to that, it is easy to understand that one of the best ways to achieve it is by incorporating renewable energies into the national energy system.

At the same time, as energy is a marketable good destined for consumption and also it is an element used for public service provision, we may relate Section 42 to this subject. Therefore, electricity users and consumers have the right to get information about what kind of energy they consume or use. For example, individuals and legal entities are able to require information on how much energy they pay for comes from renewable energies and require its increase.

## ■ General Environmental Law

Law No. 25,675, which came into force in November 2002, relates to the production of renewable energy and its aim is to maintain the dynamic and harmonious balance of ecosystems as a legal asset that should be protected. One way to pursue this legislation's objectives is to promote the

production and use of renewable energy. At the same time, salaries established by Law No. 26,190 are based on a principle of subsidiarity that is linked to environmental policies at national level and regulated by Law No. 25,675.

## ■ GENREN Program

In 2009, in order to implement the national program to encourage the development of renewable energy required by Law No. 26,190, the national government and the

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public company "Energía Argentina SA" ("ENARSA") launched the GENREN Program ("GENREN").

GENREN is a project comprising bidding electricity generation from renewable sources, offering buying megawatts (1,000 MW) of renewable energy by fixed contracts for fifteen years.

This program not only pretended to increase incentives for investments of approximately US\$2.5 million but also aims to:

- Reduce carbon dioxide from the atmosphere. To be more specific, the objective is to reduce 2,900,000 tons of carbon dioxide per year.
- Create eight thousand jobs.
- Increase national production levels.

Regarding the tender that has been carried out through the program, offers were presented by twenty private companies. As a result, 1461 megawatts of electricity was offered, exceeding 46% of the 1,000 megawatts tendered. The distribution between the different types of renewable energy has been set out in the following way:

- 500 MW wind energy.
- 150 MW thermal energy produced by biofuels.
- 120 MW energy obtained from urban waste.
- 100 MW biomass energy.
- 60 MW small hydro-electric projects.
- 30 MW geothermal power.
- 20 MW solar energy
- 20 MW biogas.

In connection to the distribution determined above, the higher incentive on investments in wind power has been justified by the fact that it required less economic investment, has lower financial risk, and has a significant local market.

However, in June 2010 a total of 895 MW was distributed, comprising only 61.3% of the energy bidders proposed to generate. Consequently, current generation of renewable energy in the country only reached 2.64% of what was expected by the GENREN, comprising only one-third of the target of 8% for year 2016.

Finally, it is important to conclude with some consequences from the application of the GENREN program:

- In connection with wind power production, the company IMPSA has

acquired four projects on two wind farms located in the province of Chubut and another in the province of Santa Cruz. Meanwhile, the company Isolux Corsán has been assigned four projects that have become one wind farm called “White Hill” with a hundred wind turbines, located in the province of Chubut.

- Regarding photovoltaic power, the 20 MW offered by ENARSA were obtained by the province of San Juan, where the first Argentine solar panels were manufactured and where an international tender was made to build the first solar park in South America.
- As for hydropower, five small-scale exploitation projects were installed in the provinces of Mendoza, Catamarca and Jujuy. They have been called “in passing” as they lie on the courses of rivers and have no significant environmental impact in contrasting with large-sized hydropower plants. The company IECSA Hyrocuyo S.A. was awarded with two projects in the province of Jujuy and one in Catamarca with two other projects in the province of Mendoza.

## ■ Conclusions

Currently, with regard to energy production in Argentina, unfortunately only one percent (1%) comes from renewable energy resources (including solar energy). This implies that there has been little development of it in Argentina, making it difficult to achieve the expected coverage of GENREN program of 8% of energy obtained from renewable sources, a goal that should be reached by 2016.

However, in view of a more attractive investment environment and as positive aspects for the future, we can highlight the following:

- Law No. 25.019 states that a prior government authorization to pursue activities generating wind and solar power is not required.
- Beyond the criticisms, the GENREN has been a first step toward implementing new policies to achieve sustainable development.
- Argentina has one of the largest global potentials for renewable energy. In that sense, our country has excellent geographical conditions that would enable the development of these energy sources.

In other words,:

- To the east of the territory lies the Argentine Patagonian Sea, which is considered one of the three zones worldwide with sufficient potential for harnessing hydro energy (the other two significant areas are the Yellow Sea of Korea and the north coast of Australia).
- Heading west we find the imposing Andes, a mountainous area characterized by volcanic activity with potential as an energy source.
- In the north of the country there are large areas that enjoy significant sunlight for the production of solar energy.
- Finally, in the southern Argentine territory strong winds facilitate the use of wind power, and those winds are also unidirectional, allowing the implementation of simple technological systems to obtain this type of renewable energy.



### About the Author

Javier Canosa is a partner in the BA firm Canosa Abogados. His practice develops in corporate law issues, advising several national and foreign companies in various corporate matters, including investment vehicles, corporate management, directors' duties and responsibilities, audits, risk detection and distribution, documents, policies and corporate contracts, and design and implementation of a suitable corporate form for each business.

Canosa Abogados - Montevideo  
711 4th Floor - C1019ABO -  
Buenos Aires, Argentina | [jc@canosa.com.ar](mailto:jc@canosa.com.ar)  
Tel: 54 11 5252 2462 and Fax: 54 11 5252 2463 | [www.canosa.com.ar](http://www.canosa.com.ar)

