

Desde Santiago (from Santiago)

Desde Santiago (from Santiago) is Núñez, Muñoz & Cía. Ltda. Abogados' bulletin, which seeks to reach out to colleagues, partners, and the community as well as to inform of relevant issues concerning legal matters, taking place either in Chile or Latin America.

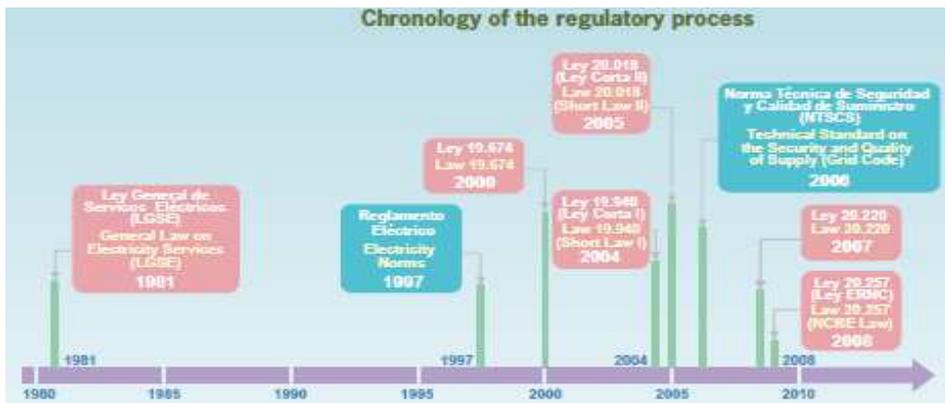
You are warmly welcomed to forward this information to anyone who may be interested.

Núñez, Muñoz & Cía. Ltda., Abogados provides legal services to national and foreign clients in different areas of law.

We are committed to provide the best legal service to our clients, and to solve their requirements in the fastest and most effective way.

Non-Conventional Renewable Energy Law No.20,257 A means to an end

By Carolina Benito Kelly



Source: National Energy Commission

The Global Setting

Across the board, concerns revolve around economic expansion, sustainable energy supply and environmental protection. Though potentially conflictive topics, Non-Conventional Renewable Energies ("NCRE") promise to secure all.

Of course, advancement in the application of NCRE is proving no easy task and will need to outweigh initial obstacles such as costly investment, resistance of lethargic bureaucratic systems, and lack of technology. In this context, Chile –while not legally bound by international commitments– has taken up the challenge and endeavored to carry out its own local reform.

Keeping The Pace

To a great extent, such initiative has been embodied by Law No. 20,257, commonly known as the Non-Conventional Renewable Energy Law (hereinafter, the "Law").

Said law came into force in April, 2008 and introduced substantial amendments into the Electrical Services General Law, mainly by virtue of its acclaimed article 150 bis.

The Law seeks to diversify Chile's energy grid, which relies heavily on fossil and traditional hydraulic energy plants, thereby promoting the use of NCRE sources. The Law achieves this goal by requiring electric companies that withdraw energy from specific electric systems –described

hereinafter– to certify that a certain percentage of the annual withdrawal, used for commercialization, is supplied by NCRE.

Scope of Application

As set out above, the Law shall apply only to commercialized energy; understood as energy sold within the framework of a direct negotiation contract executed by and between a generation company, as one party, and distributors or final clients, both regulated and non-regulated, as the other.

All agreements of said nature entered into as of August 31st, 2007, whether newly executed, renewals, extensions or alike, shall be bound by the Law. Consequently, energy traded on the spot market and that which is self-consumed is automatically exempt.

Regarding the electric systems from which the above mentioned energy must be withdrawn, the Law refers to interconnected electrical systems with an installed capacity of over 200 MW. At the present, this would discard all systems operating in Chile but two: the Central Interconnected System ("SIC") and the Great North Interconnected System ("SING"), which together satisfy more than 90% of Chile's power demand and which

gather almost all generation companies nation-wide. Certainly, such scenario is a guarantee of the Law's broad scope of application and, therefore, of its potential effectiveness.

Accreditation

With a view to compliance, as clarified by the rules issued by the National Energy Commission for the correct implementation of the Law (hereinafter, the "Rules"), companies bound by the Law's provisions shall deliver, by January 10th of each year, a sworn declaration signed by the company's legal representative in which a detailed description of the agreements and contracts subject to the Law's requirements during the previous year shall be provided, as well as a description of the contracts that will be subject thereto during the incoming year. The foregoing declaration will be delivered to the Toll Board of the Economic Power Discharge Center of the corresponding interconnected system. A copy shall also be provided to the Superintendence of Electricity and Fuels. In 2010, deadline for submission lapsed on March 10th.

Should power purchase agreements be entered into during the course of the year, these must be notified within a 30 calendar day term counted as of the date of their execution. Amendments affecting the amount of energy withdrawn must also be notified within a like term.

As for the specific compliance requirement, the following target scheme applies: the first compliance period covers a 4 year term, spanning from January 1st, 2010 to December 31st, 2014, during which 5% of all yearly commercialized energy must be provided by NCRE sources. The Law then establishes 1 year periods which call for successive 0.5% increments, until finally reaching the ultimate target of 10% in 2024.

Compared with the "20-20-20" package deal clinched by the European Union in late 2008 -which

Landmark Dates

- ▶ **August 18th, 2009**
The National Energy Commission (CNE) and the Production Development Commission (CORFO) jointly **inaugurate the Renewable Energy Center** for the purpose of **investigating, developing and promoting** non-conventional renewable energy **by encouraging investment and the transfer of technology and information** in connection with NCREs.
- ▶ **December 1st, 2009**
Resolution No. 1,278 provides **rules for the proper implementation** of Law No. 20,257.
- ▶ **February 1st, 2010**
By virtue of Law No. 20,402, the **Ministry of Energy was officially created**.
The newly created Ministry **shall be directly in charge of** the Superintendence of Electricity and Fuels (**SEC**), the Chilean Commission of Nuclear Energy (**CCHEN**), the National Energy Commission (**CNE**), as well as the future Chilean Agency of Energy Efficiency.

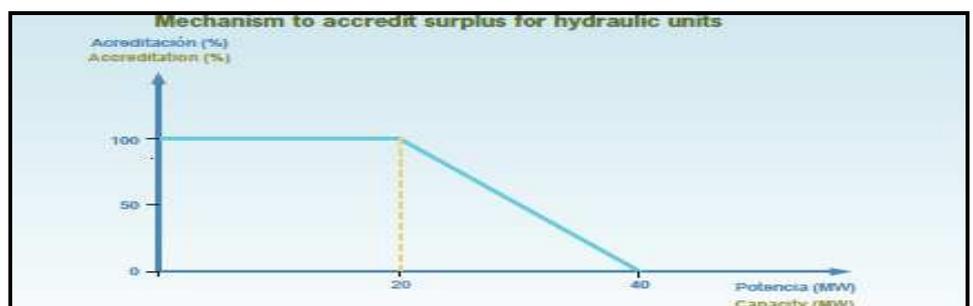
targets a 20% increase in the use of renewable sources by 2020-, the Law is laudably ambitious and attests to Chile's promptness at implementing efficient measures.

As for energies that qualify for accreditation, Article 225 aa) of the present year and shall follow the amended Electrical Services General Law defines NCRE as that which is provided by biomass, geothermal, solar, wind and tidal sources, or by means of small hydro plants with less than 20 MW of installed capacity, as well as other eventually be identified as such by the National Energy Commission.

Despite the above, the Law does allow for energy generated by hydro plants with an installed capacity of less than 40 MW to be used for accreditation

Furthermore, the Law only recognizes NRCE generation sources that may have been connected to the electric systems as of January 1st, 2007 or that, having been previously connected, have increased their installed capacity as of the mentioned date and, on account of their new total installed capacity, still qualify as NRCE, in accordance with the above definitions. Once such qualification is ascertained, the Law provides for the application of yet another mathematical formula by virtue of which only a percentage of the total installed capacity will be considered for compliance purposes.

Additional analysis of the Law reveals that NCRE injected into the system during the immediately previous calendar year may also be used for accreditation, provided that it has not



purposes. Room is made for this exception by means of a specific mathematical formula which, when applied, increasingly punishes those plants which produce over 20 MW. The larger the plant is, the less energy may be used for accreditation. As for energy produced by a hydro plant with 40 MW or more of installed capacity, none whatsoever will qualify.

already been considered for such purpose.

Ancillary Effects

In the quest for compliance with the Law, certain big-league generation companies have been required to acquire NCRE accreditation surplus from smaller, green competitors.

The Law regulates this type of transaction by allowing generation companies that exceed their yearly compliance percentage to transfer their accreditation surplus to other generation companies at the end of the corresponding compliance year.

Hence, under the Law, NCRE energy acquires *added value* vis à vis accreditation and provides NCRE generation companies with the opportunity to obtain supplementary revenue.

Supervision

Of course, effectiveness is hardly plausible without enforcement. For this reason, the Law, greatly assisted by the Rules, establishes provisions which seek to oversee, regulate, and inspect its proper implementation, as well as impart disciplinary measures to breaching parties.

For such purposes, generation companies must be registered with the Toll Board of the interconnected electrical system they inject energy to, as well as with the Superintendence of Electricity and Fuels.

The Toll Boards shall keep a sole, updated public registry – accessible without limitation on the web site of both Economic Power Discharge Centers– indicating all obligations,



In 2010, Chile will be home to the 1st photovoltaic plant in South America; located between San Pedro de Atacama and Toconao.

Concerning this type of ERNC, studies prepared by the National Commission of Energy and Chilean universities show that the northern desert of Chile has a potential of 8 kwatt/day per m², while in Europe the average is only 3-4 kwatt/day.

injections, surplus transfers and alike, and may request all information needed on account of such duties, with the purpose of publishing preliminary annual reports, monthly balance reports (with the exception of December) and annual balance reports, indicating each companies' NCRE requirements.

In particular, copies of the surplus transfer agreements must be provided to the respective Toll Board before March 1st of each year and shall express the surplus in MW/hour.

Additionally, the Toll Boards shall be in charge of calculating the sanctions resulting from breaches on the part of companies that exist within their respective systems, as well as allocating the resulting proceeds. In this regard, the Law empowers Toll Boards to fine lack of or deficient compliance with 0.4 UTM per megawatt/hour; and, should the infraction recur during the following three years, with 0.6 UTM per megawatt/hour.

Surprisingly, the sanctions are not construed as a means of fiscal income but are intended to promote competition among complying and non-complying companies and, ultimately, to encourage all to meet the Law's requirement. This is achieved by allocating the fines among final clients and clients of distribution companies that have received power from complying generation companies. Fines shall be allocated in proportion to the amount of energy consumed.

The Superintendence, on its part, shall lodge complaints against the Toll Board's decisions and resolve accordingly.

With An Eye on the Future

Greatly due to governmental endorsement and subsequent legislative initiatives such as the 20,257 Law, statistics issued by the National Energy Commission show that, as of early 2009, more than 1,600 MW in NCRE projects had been either approved or were being processed by the national Environmental Impact Evaluation System. Long-term forecasts are likewise positive.

Further Provisions

- In order to assist generation companies in adjusting to Law No. 20.257, the Law contemplates a **1 year extension on the annual obligation to accredit compliance** in connection with up to 50% of the required NCRE percentage. The Superintendence must be **notified before the 1st of March of the year subject to accreditation**.
- For purposes of accreditation, **NCRE surplus may be transferred to** generation companies existing in **a different electrical system**.

In this regard, the Chilean Association of Renewable Energies (ACERA) assures that, with the aid of additional institutional and legislative support, NCRE has the potential to represent 30% of the energy grid by 2040.

Further analysis reveals the ability of NCRE to promote additional social progress. As highlighted by the former Vice President of the Chilean Economic Development Agency (CORFO), Carlos Álvarez, "the development of renewable energies and the establishment of an associated product and service industry in Chile provide an opportunity [...] to introduce new technologies and to generate new jobs for qualified technicians and professionals".

As NCRE continues to yield positive returns, we hope to see speedy achievement of the Law's objectives and for private capital to willingly spearhead future development in this area.



Help to Chile

As you may know, on February 27th, Chile was hit by an earthquake of 8,8 points Richter and, afterwards, by three tsunamis. Núñez, Muñoz & Cía. appreciates all the kind emails we received inquiring about our members, their families and friends and offering help to assist our country. Fortunately, we are all fine and wish to express our gratitude for the concern shown.

Nevertheless, our country is facing an enormous tragedy. In fact, 80% of the Chilean population has been affected and it is estimated that, at least, 2 million families have lost their homes.

Should you care to cooperate, contributions can be deposited in the following account of "Banco de Chile" (www.chileayudaachile.cl/):

- **Beneficiary**
Name of Beneficiary: Fundación Teletón
Address: Mario Kreutzberger 1531, Santiago
Country: Chile
Account No.: 5 000 - 24 500 - 08
- **Beneficiary Bank**
Account No.: 10922666
Name of Bank: Banco de Chile
Address: Ahumada No. 251
City: Santiago
Country: Chile
Swift Code: BCHICLRM
- **Intermediary Bank**
Name of Intermediary Bank: CITIBANK NA
City: New York
Country: United States of America
Swift Code: CITIUS33
ABA: 21000089

Please bear in mind that, by virtue of Decree Law No. 45 and Law No. 16,282, taxpayers may obtain **tax breaks for donations made to Chilean earthquake construction efforts**. In particular, legislation provides that all natural and legal persons, both national and foreign, may benefit from tax deductions on either all or part of the goods or cash donated for such purposes. Therefore, the general 5% limit that affects all other donations shall not apply nor shall the earthquake construction donation be counted toward the aforementioned limit.

Núñez, Muñoz y Cía. Ltda.

Abogados
Av. Isidora Goyenechea 3250,
13th floor, Las Condes,
Santiago

Phone Number

+562 431 9040

Fax

+562 378 8060

E-mail

info@nam.cl

Núñez, Muñoz & Cía. wishes to convey its condolences to those who have suffered the devastating consequences of the earthquake that took place on February 27th, 2010.



We hope to offer legal assistance to those who need it most by joining our fellow colleagues and firms in cooperating with the Fundación Pro Bono.