

NEWSLETTER

August 2021



IMAGE: MATTHEW HENRY



Bill of Law No. 5,829 – Legal Framework for energy distributed generation (on-site generation) – approved by the House of Representatives

On August 18, 2021, the House of Representatives approved the content of the Bill of Law No. 5,829, responsible for defining the legal framework for energy distributed generation (on-site generation) in the country.

As already widely discussed in the market, the Bill results from conciliation efforts between governmental authorities and sector agents and seeks to democratize the development of energy distributed generation projects, based on strengthening the consumer's role.

The Bill suggests: (i) the evaluation of the costs and benefits that distributed generation projects provide to the national system by the National Energy Policy Council (CNPE) and by the National Electric Energy Agency (ANEEL); (ii) gradual remuneration within six years of the use of the distribution grid; (iii) transition regime for existing projects or projects that have already requested access by the end of 2045; and (iv) obligation to present to the distribution company a performance bond in the amount of 2.5% to 5% for certain types of distributed generation projects.

From this moment on, the Bill must be deliberated by the Senate and, afterwards, will be submitted to presidential approval.

ANEEL opens Public Consultation on market reliability

On August 10, 2021, the National Electric Energy Agency (ANEEL) approved the opening of Public Consultation No. 51/2021 with the purpose of obtaining subsidies for the review of resolutions No. 414/2015, No. 545/2013 and No. 678/2015, as to improve the criteria for entry, maintenance and exit of agents in the energy market. The public consultation will receive contributions until September 17, 2021.

The Public Consultation will discuss proposals made by the Energy Trading Chamber (CCEE) to ANEEL, in a delicate scenario in which the sector currently finds itself (characterized by the Differences Settlement Price (PLD) at high levels and discussion about default by energy traders and its impact to the Spot Market, which even led to the judicial reorganization of one specific sectorial agent). Among the points to be discussed for the reliability of the electric energy market, ANEEL presents (i) requirement of financial stability, (ii) technical capacity and knowledge of market rules and risks, and (iv) analysis of criminal record or administrative penalties. Such measures are seen by the regulator as a first step towards improving the reliability of the transactions conducted within the Free Market.

Please note that this is not the first initiative by ANEEL and CCEE related to market reliability. In July, Public Consultation No. 46/2021 was initiated with the purpose of receiving contributions (until September 10, 2021) related to the placement of financial guarantees within the Mechanism of Energy Surpluses Sale (MVE).

MME releases Ordinance containing guidelines for the voluntary reduction of electric energy demand

The Ministry of Mines and Energy (MME) published, on August 23, 2021, the Ordinance No. 22/GM/MME, establishing the guidelines for Voluntary Demand Reduction (RVD), to be conducted by energy consumers and aggregators.

According to the new ordinance, the consumer interested in taking part in the voluntary reduction shall send to the National Grid Operator (ONS) reduction offers valid from one to six months, with hourly duration of four and seven hours per day and minimum lots of 5 MW (megawatts) for each hour of duration, in the standard of 1 MW (megawatt), considering the day of the week. This mechanism was structured by the Federal Government as an effort to try to reduce the effects of the biggest water crisis in the country since 1931.



IMAGE: MUFID MAINUN

ANEEL opens Public Consultation for tariff sandboxes

ANEEL approved, on August 10, 2021, the opening of Public Consultation No. 049/2021, with the purpose of gathering information and subsidies for the improvement of the proposal for regulating the application of "Tariff Sandboxes". The consultation will receive contributions until October 13, 2021.

The "Sandboxes" consist of a temporary environment, created for testing and development with the protection of temporary permissions, which are sufficient for innovations to be tested. In the case of the Tariff Sandbox, the mechanism proposed by ANEEL will create a space for development of tariff projects applicable to low voltage consumers, users of technological innovations (such as electric vehicles and distributed generation), improving technical, commercial and regulatory knowledge, and thus also assisting in the decision-making process on the topics involved by the Agency.

ANEEL opens the second phase of Public Consultation No. 061/2020 related to the regulation of hybrid and associated plants

On August 18, 2021, ANEEL opened the second phase of Public Consultation No. 061/2020, which aims at obtaining subsidies for the regulatory treatment applicable to the development of hybrid and associated plants. Contributions will be received by the Agency between August 18 and September 16.

The proposal's goal is to prepare a regulatory environment suitable for new business models, allowing hybrid or associated enterprises to use the grid in an optimized way as to add new energy to the system.

MME publishes Ordinance establishing the guidelines for the 2021 capacity auction

On August 18, 2021, the Ministry of Mines and Energy published an Ordinance establishing the guidelines for the 2021 Capacity Auction. The bid is scheduled for December 21 of this year and only thermoelectric plants will be able to participate.

Capacity and energy trading contracts will be negotiated with term of 15 years and beginning of supply on July 1, 2026 and January 1, 2027, respectively. Two products will be offered, namely the Energy Product, related to thermoelectric plants, which operational inflexibility of annual generation is up to 30%, and the Capacity Product, in which the delivery commitment consists of power availability, in MW.

The amount to be contracted will be defined by the MME based on studies of the Energy Research Company (EPE) and the National Grid Operator (ONS). The deadline for the presentation of technical accreditation documents to EPE is September 3, 2021.



IMAGE: BILL OXFORD

Upcoming auctions to be conducted in the sector

ANEEL approved, on August 3, 2021, the Transmission Auction Notice No. 2/2021-ANEEL. Approximately 902 km of transmission lines and 750 MVA of transformation capacity will be auctioned.

The auction will be held on December 17, 2021 and corresponds to five lots of projects located in the following states: Amapá, Bahia, Minas Gerais, Paraná and São Paulo.

Additionally, it is worth remembering that, on September 30, the A-5 Auction will be held, with the purpose of promoting the acquisition of energy from new generation projects from hydroelectric, wind, solar and biomass sources as well as from national mineral coal, natural gas and urban solid waste treatment.



IMAGE: NASA

Changes to the State of São Paulo ICMS legislation in the Free Market

In June 2021, the State of São Paulo issued the Decree No. 65,823, modifying the São Paulo legislation that deals with the taxation of ICMS on electric power operations in the Free Market, to adapt the legislation to the understanding issued by the Federal Supreme Court (STF) in the judgment of ADI No. 4,281, from October 13, 2020. In said judgment, the STF recognized the unconstitutionality of the São Paulo ICMS regulation's provisions, which attributed to distribution companies the responsibility for paying the tax on energy operations in the Free Market that used its distribution grid for the acquisition of energy.

According to the new regime, the responsibility for paying the ICMS will be of the energy seller in internal operations or of the recipient (consumer) in operations in which the seller is located in another State and, through a special regime, the payment of ICMS may be deferred until the moment that the electric power enters the establishment of the recipient in São Paulo.

Despite the amendments made, distributors continue to be responsible for paying ICMS on connection and use of the distribution system charges, for the operations in the Free Market, when the end consumer is connected to their grid, although it is questionable the taxation of ICMS on these types of charges, which do not represent the effective sale of electric energy.

The distributors also continue to be responsible for the payment of ICMS incident on the sale of electric energy in the Regulated Market.

On August 31, the State of São Paulo postponed the enforcement of such new rules to January 1, 2022.



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