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Provisional Presidential Decree for Electric Power Sector Reform is Published.

NEWSLETTER

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On May 21, 2025, Provisional Presidential Decree No. 1,300/2025, regarding the Electric Power Sector Reform, was published. The text, published in an extra edition of the Federal Register and effective immediately, was submitted to the Brazilian Congress to be approved and converted into law within sixty (60) days, extendable for another sixty days.

The Provisional Presidential Decree covers matters such as changes to rules applicable to the so-called power self-producer by equivalence, a figure created by Law 11,488 of June 15, 2007.

The new criteria brought in by the Provisional Presidential Decree for self-production by equivalence require consumer units to have an aggregated contracted demand equal to or greater than thirty thousand kilowatts (30,000 kW) – against the current three thousand kilowatts (3,000 kW), as established in art. 16 of Law No. 9,074, of July 7, 1995 –, composed of one or more consumption units each with an individual demand equal to or greater than three thousand kilowatts (3,000 kW).

In addition, the self-producer by equivalence must: **(i)** hold, directly or indirectly, an equity interest in the capital

of the concession-holding company, or **(ii)** be under common corporate control, directly or indirectly, or be a controlling, controlled or affiliate company, directly or indirectly, of the concession-holding company, subject to the direct or indirect ownership interest, with voting rights.

Exclusively in case the company holding the concession issues non-voting shares that grant economic rights greater than those attached to voting shares, the Provisional Presidential Decree requires that the economic group of each self-producer by equivalence hold a minimum interest of thirty percent (30%) in the company's capital.





However, the Provisional Presidential Decree ensured that the new criteria do not apply to consumers already treated as self-producers by equivalence before May 21, 2025 (date when the Provisional Presidential Decree was published) until the expiration of the authorization or concession to operate and for as long as the conditions justifying equivalence remain in effect, provided that:

- power purchase agreements (PPAs) were registered with Brazil's Power Trade Chamber (CCEE) before the Provisional Presidential Decree was published;
- economic group holds one hundred percent (100%) equity interest in the shares issued by the concession-holding company; or
- within sixty (60) days of May 21, 2025, consumer submits to CCEE a share purchase agreement or share option agreement to purchase shares of

an SPV holding the energy generation assets, with notarized certification of authenticity of signatures or executed with a digital certificate recognized by Brazilian Public Key Infrastructure (ICP-Brasil), in which case, the power generation project must not have started commercial operations before the enactment of the law that created the figure of the self-producer by equivalence, and the transfer of shares or units of interest must be completed within twenty-four (24) months counted from the date the agreements are signed, with proof being submitted to CCEE.

Thus, after sixty (60) days from the publication of the Provisional Presidential Decree, new self-production arrangements, including by equivalence, can only be carried out for power generation projects whose commercial operations started after the date of publication of the Provisional Presidential Decree.

Finally, the Provisional Presidential Decree also ended the fifty percent (50%) discount on the wire usage tariff for consumers of incentivized energy, i.e. energy from renewable sources, while ensuring the discount for contracts whose energy amounts have been registered and validated with CCEE by December 31, 2025.

Please read below FAQ on the Provisional Presidential Decree

Power Sales Agreements in Free Contracting Environment



- 1. Will it be possible to assign incentivized (renewable energy) PPA agreements after December 31, 2025?** Yes, assignment will be possible. However, the assignee will not be entitled to the discount on the Tariffs for the Use of Transmission and Distribution Systems (TUST and TUSD in Portuguese).
- 2. Can the incentivized PPAs be amended to increase or reduce the contracted amount and keep the TUSD and TUST discounts?** After December 31, 2025, it will be possible to amend the incentivized PPA to increase the amount, but the TUST and TUSD discounts will be limited to amount registered with CCEE before December 31, 2025.
- 3. Does having an incentivized PPA guarantee a discount on TUSD and TUST even if consumption is higher than the contracted amount?** As of May 21, 2025, tariff discounts will only apply to the amount under contract. Consumption exceeding it will require the parties to pay an additional charge, calculated on the basis of the deviation and in compliance with the usage tariffs levied on power consumption.

Self-production by Equivalence

4. What are the requirements for an entity to be classified as a self-producer by equivalence as of May 21, 2025? The new requirements for being classified as a self-producer are:

- **Aggregated contracted demand of consumption units:** equal to or greater than 30,000 kW.
- **Minimum demand of the consumption unit:** 3,000 kW.
- Direct or indirect equity interest in the SPE (special-purpose entity) holding the concession, subject to the equity interest with voting rights or common controlling interest. Subject to direct or indirect equity interest with voting rights or be under common controlling interest, directly or indirectly, i.e. controlling, controlled or affiliate company, directly or indirectly, subject to direct or indirect equity interest with voting rights.

5. Is it possible to sign an agreement with a developer to structure a self-production project after May 21, 2025, without being subject to the new requirements of the Provisional Presidential Decree? Yes. Signing a sales agreement of shares

or units of interest, or a stock or units of interest option agreement, submitted to CCEE within 60 days of publication of the Provisional Decree, guarantees the parties the right to structure the self-production project by equivalence without meeting the new requirements.

The agreements must be notarized or executed with a digital certificate, and the amendment to the articles of incorporation or entry in the stock transfer book must be submitted to CCEE within 24 months of the execution of the sales agreement or stock option, as applicable.

6. Can I include new consumers treated as self-producers in projects preceding the Provisional Presidential Decree? Yes. However, new consumers treated as self-producers must meet the requirements set out in the Provisional Presidential Decree, while previous consumers will follow the former rules.



Self-production by Consortium

7. **Is self-production by consortium affected by the Provisional Presidential Decree?** Yes. Sixty (60) days after the Provisional Presidential Decree is published, only projects that start commercial operations after December 31, 2025 can be classified as self-production, which includes self-production by consortium.
8. **Is the execution of an agreement or any form of pre-agreement for the**

formation of a consortium prior to the publication of the Provisional Decree sufficient to guarantee that a project in operation will be classified as self-production before the 60-day deadline? The Provisional Presidential Decree does not specify what requirements would be necessary to classify existing generation projects as self-production by consortium before the 60-day deadline expires.



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Our **Infrastructure & Energy** team is available to clarify any questions about the subject.