

LATIN AMERICA MINERAL AND ENERGY LAW

Newsletter

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ARGENTINA

Jimena Vega Olmos, Reporter

Argentine Congress Passes Omnibus Bill with Relevant Amendments to the Oil and Gas, Infrastructure, and Large Projects Sectors

On June 27, 2024, the federal Congress passed Law N° 27,442, known as the *Bases and Starting Point of the Freedom of Argentines Law* (the "Omnibus Law"), which included changes to several existing laws and approved the Incentive Regime for Large Investments ("RIGI," according to its acronym in Spanish).

The Omnibus Law amends several laws with the aim of applying the principle of subsidiarity and encouraging private participation in the sector.

Amendments to the Federal Hydrocarbons Law N° 17,319 (FHL) and the Hydrocarbon Sovereignty Law N° 26,741

The Omnibus Law establishes that the maximization of income from the exploitation of hydrocarbon resources is one of its main goals, along with securing the country's hydrocarbon needs. In line with this change, the Omnibus Law repeals section 1 of Law N° 26,741 that declared that hydrocarbon self-sufficiency was a public-interest goal.

Below is a summary of the key changes established under the Omnibus Law:

- Acknowledgment of the right to freely market production. Prohibits the Executive Branch from intervening in the market or setting prices.

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BOLIVIA

Gonzalo Dávila, Reporter

Biodiesel: An Alternative to Tackle the Economic and Energy Crisis in Bolivia?

Fuels in the Bolivian Economy, Biodiesel, and the Government-Business Agreement

Lately, Bolivia has been experiencing a severe economic crisis exacerbated by the importation and subsidization of gasoline and diesel oil to meet domestic demand, which stems from low production of liquid hydrocarbons. In an urgent search for solutions to alleviate the crisis, on February 16, 2024, the Bolivian government and national business leaders signed the "Economic, Productive, and Business Agreement," aimed at revitalizing the economy. This agreement prioritizes 10 points, with the sixth focusing on the production and use of biodiesel.

In the press release published on February 19, 2024, the Ministry of Economy and Public Finance states that the sixth measure of the agreement concerns the "promotion of private investment in biodiesel plants." On this point, the Minister of Economy noted that Law N° 1098 allows private entities to build biodiesel plants and provides incentives for them to undertake such ventures.

The need for such measures arises from Bolivia's low production of liquid hydrocarbons, necessitating the importation of liquid fuels to meet the growing diesel demand. Consequently, the government aims to reduce State expenditure on fuel imports and subsidies to avoid a price adjustment that could lead to increased fuel costs and potential social unrest.

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ARGENTINA

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- Provides for the right to freely import and export hydrocarbons and byproducts. Although exports shall be subject to a non-objection from the Secretariat of Energy, the agency may only object an export based on technical or economic grounds related to securing supply.
- Modifies surface fees and eliminates the need for authorization to conduct surface inspection activities.
- Amends the acquisition mechanism and the terms of unconventional concessions upon reconversion of conventional concessions.
- Amends the concession extension regime.
- Amends the rules on royalties, which shall apply to new concessions. Sets a reference 15% and provides for competition among bidders in connection with the amount of royalties to be paid to the grantor jurisdiction.
- Repeals section 51 of the FHL, which prevented foreign companies from submitting bids in contests for obtaining permits and concessions.
- Regarding midstream activities, the Omnibus Law replaces the transportation concession with a transportation authorization, and creates a processing authorization granting the right to develop and operate conditioning plants, oil pipelines, and gas pipelines, among others, including natural gas liquefaction plants (which are not subject to public bidding, do not confer exclusivity rights, and are subject to open access, subordinated to the needs of the authorization holder).
- Regulates underground natural gas storage.

Amendments to the Natural Gas Law N° 24.076

The Omnibus Law establishes the right to import natural gas freely without the need of prior approval. Regarding natural gas exports, the same shall be regulated by the Executive Branch. In addition, a special regime for LNG exports is approved that guarantees firm export permits.

As to natural gas transportation and distribution licenses, the law extends the renewal expiration term from 10 to 20 years. It also establishes that to ensure the supply under non-interruptible services, transporters and distributors may acquire, build, operate, maintain, and manage natural gas storage facilities, by themselves or through third parties.

Unification of Regulatory Agencies

The Omnibus Law creates the National Gas and Electricity Regulatory Agency ("*Ente Nacional Regulador del Gas y la Electricidad*"), to replace the existing Federal Gas Regulator and Federal Electricity Regulator.

Power

The Omnibus Law authorizes the Executive Branch to adjust, for a one-year period, the electricity regulatory framework in accordance with the following principles and goals: (1) promote the opening of an international market for trading electric energy; (2) guarantee the free marketing of electric energy and maximizing competition; (3) promote the economic dispatch of energy based on the hourly economic cost of the system; (4) adjust tariffs based on the actual costs of supply;

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and (5) promote the development of power transportation infrastructure through competitive mechanisms.

Incentive Regime for Large Investments (RIGI)

The Omnibus Law approved the Incentive Regime for Large Investments, a promotional regime that grants several benefits and guarantees of regulatory, fiscal, customs, and exchange rate stability to qualifying projects for 30 years as from the inclusion date. Approval applications must be submitted within two years of the law's effective date (which term may be extended by the Executive Branch for one additional year).

RIGI shall apply to large investments in the forestry, tourism, infrastructure, mining, technology, iron and steel, energy, oil, and gas sectors.

Eligible projects must be new projects (or new phases of an existing project), meeting the minimum required investments established by the Executive Branch for each sector, subsector, or production phase (minimum to be set between US\$200 million and US\$900 million). Forty percent of the minimum investment amount will need to be invested within the first two years.

Qualifying projects must be long-term projects, i.e., the ratio between the present value of the expected net cash flow (excluding investments) during the first three years from the first disbursement and the net present value of the projected capital investments for the same period not to exceed 30%. The law establishes a special scheme for "Strategic Long-Term Export Projects" (projects that may position Argentina as a new long-term supplier in global markets where it does not have a significant participation) with higher minimum required investments (US\$1 billion).

RIGI grants several tax benefits including reduced income tax rate, accelerated depreciation scheme, right to carry forward tax losses indefinitely and transfer unused tax losses after five years, inflation adjustment of tax losses, maximum rate for dividends, and reduction of the rate after seven years, among others. It also grants beneficiaries the right to pay VAT to project suppliers or the AFIP through tax credit certificates.

RIGI also exempts imports of new capital goods, spare parts, components, parts, and consumable goods for the project from import duties, statistical rate, destination verification rate, and other federal or local perception, retention, or advance payment regime. The law also exempts project exports from the payment of export duties as from the expiration of a two-year term from the inclusion date (Strategic Long-Term Export Projects) and three years for other projects.

The Omnibus Law recognizes the right to import goods for the construction, development, and operation of the project and to export freely the project's output, prohibiting the establishment of supply priorities in favor of domestic demand. The law also prohibits the application of prohibitions, direct and quantitative economic restrictions, maximum amounts, economic quotas on the project's imports and exports, and price controls or similar measures.

As to foreign exchange benefits, first the Omnibus Law recognizes the right to freely dispose (and therefore the non-application of the obligation to repatriate and settle for Pesos) of: (1) 20% of the proceeds of each export as from the expiration of a two-year period from the SPV's start-up date, (2) 40% of the export proceeds as from the expiration of a three-year period from the SPV's start-up date, and (3) 100% of the export proceeds as from the expiration of a four-year period from the SPV's start-up date. In the case of Strategic Long-Term Export Projects, it recognizes the free availability of 20% of export proceeds as from the expiration of a one-year period from the SPV's start-up date, 40% after the expiration of a two-year period from the SPV's start-up date, and 100% from the expiration of a three-year period from the SPV's start-up date.

It also establishes specific guarantees against the forced repatriation of equity contributions and external loan proceeds, and certain protection as to access to the FX market for the repayment of cross-border loans and payment of dividends.

The Omnibus Law also grants regulatory, fiscal, customs, and foreign exchange stability for 30 years from the inclusion date.

Finally, after a period of 60 days of amicable negotiations, the Omnibus Law establishes international arbitration (PCA, ICC, or ICSID) for any dispute in connection with RIGI by the beneficiary or its shareholders. Benefits granted under RIGI are considered protected investment under the bilateral investment treaties signed by Argentina.

Supreme Court of the Province of Neuquén Establishes Limits on Claims by Native Communities in Connection with Fiscal Lands

On April 11, 2024, the Supreme Court of Justice of the Province of Neuquén issued a ruling in the case *Municipality of Villa La Angostura v. Montes, Hugo y otros s. acción revocatoria*, in favor of the Municipality of Villa La Angostura in a case involving a claim by the Municipality against the Lof Paichil Antriao native community seeking the eviction of the native community from certain municipal land that had been transferred to the Municipality by its last owner during the 1950s.

The lower court (the Civil, Commercial, Labour and Mining Court N° 2) ordered the eviction of the native community from the municipal land. However, the decision was revoked by the Provincial Court of Appeals which suspended the eviction process until the federal government completed a certain survey required under Law N° 26,160.

The Provincial Supreme Court upheld the lower court's ruling ordering the eviction of the native community from the property.

The Provincial Supreme Court considered that the appeals court had carried out an erroneous interpretation of Law N° 26,160 since the land under discussion was not "native land" and that the aforementioned law did not protect all land occupied by indigenous communities, but only those lands occupied in a traditional, current, and public manner. Since the native community had originally acquired possession of the land through a concession of use, the court considered that there was not "traditional" occupation and that there were no elements evidencing that the native community had a spiritual and material relationship with the land. Lastly, the court considered that the property rights claimed by the Municipality over the land were protected by the National Constitution and international human rights treaties. In view of the above, it revoked the decision of the appeals court and upheld the lower court's decision ordering the eviction of the defendants from the municipal land.

Federal Government Approves New Reference Values for Surface Fees

Pursuant to Federal Hydrocarbons Law N° 17,319 (as amended, the "LFH"), holders of exploration permits and exploitation concessions enjoy condemnation rights to use the lands comprised in the relevant blocks or otherwise allocated to the hydrocarbon activities, provided that they pay compensation to the corresponding surface owner.

Through Joint Resolutions N° 1/2024 and N° 2/2024, dated May 3, 2024, the Secretariat of Energy and the Secretariat of

Bioeconomy updated the reference values of the surface fees payable to surface owners of properties affected by hydrocarbon activities in the Golfo San Jorge and Austral basins in the provinces of Chubut, Santa Cruz, and Tierra del Fuego, and in the Cuyana and Neuquina basins in the provinces of Neuquén, Mendoza, Río Negro, La Pampa, San Juan, and San Luis.

The updated surface fees shall apply retroactively as of August 1, 2023, considering that the request for update filed by the Argentine Association of Owners and Surface Owners Affected by Hydrocarbon, Mining, and Electrical Exploitation was submitted on July 1, 2023.

Voluntary Restructuring of Indebtedness with Power Generators and Natural Gas Producers Accrued Between December 2023 and March 2024

By means of Resolution N° 58/2024 of the Energy Secretariat (as amended and supplemented by Resolutions SE N° 66/2024 and 77/2024) (collectively, the “Resolutions”), the Energy Secretariat approved a mechanism for the settlement of outstanding payments accrued between December 2023 and March 2024 for transaction in the wholesale electricity market (WEM), owed by CAMMESA (the grid administrator) to power generators, transmission companies, and natural gas producers (owed by WEM users to CAMMESA). The Resolutions seek to lower energy subsidies, revert governmental budget deficit, and restructure the WEM’s indebtedness.

During the past 20 years the government subsidized energy prices payable by WEM users and established prices that did not reflect the actual costs of generating power. The Milei administration is openly against maintaining generalized subsidies since it considers that the same is not compatible with Argentina’s current fiscal and financial situation. Therefore, the Resolutions sought to restructure existing debts and guarantee the continuity of the power distribution service.

The Resolutions approved a transitory, specific, and exceptional regime pursuant to which the payments corresponding to the December 2023–January 2024 economic transactions were deferred and established rules for the payment of the current economic transactions. The Resolutions instructed CAMMESA to:

- (1) calculate and determine the amounts owed to power generators and natural gas producers for December 2023–February 2024 WEM transactions and execute agreements with such creditors pursuant to which outstanding amounts would be paid as follows: (a) indebtedness corresponding to December 2023/January 2024, by delivery of certain sovereign bonds issued by the federal government called *Argentine Republic’s Bonds in United States Dollars – Step Up 2038*; and (b) for the indebtedness corresponding to February 2024, through the payment in cash with funds available in CAMMESA’s accounts; and
- (2) determine and identify the amounts owed by each of the WEM debtors for invoices due in February, March, and April 2024, and execute individual agreements with such debtors, establishing that: (a) invoices due in February/March 2024 shall be paid in accordance with payment plans agreed with each debtor, in 48 monthly installments and subject to BNA’s interest rate on outstanding amounts; (b) invoices due in April 2024 must be paid within 30 days as from the publication of the Resolutions; and (c) invoices due as from May 2024

must be paid in the terms set forth by the applicable regulations.

Participating creditors were required to inform the amounts owed to each one of them for transactions during the December 2023–March 2024 period. In case of any disagreement between a WEM creditor and CAMMESA, the dispute should be settled through the dispute resolution mechanism established under the respective agreements.

Despite the initial reluctance, the majority of natural gas producers and power generators accepted this payment mechanism and entered into the corresponding agreements with CAMMESA.

Restructuring of Energy Subsidies

Through Decree N° 465/2024 (published on May 27, 2024), the Secretariat of Energy restructured energy subsidies and established a transition period between June 1 and November 30, 2024.

The new subsidy system approved by Decree 465 targets subsidies in order to ensure that only those users who really need them receive the subsidy. The new mechanism seeks to have users pay the real cost of producing energy, promote energy efficiency, and secure residential supply. Decree 465 eliminated the cap on tariff increases and states that the criteria for inclusion in each category may be reanalyzed and beneficiaries may be excluded from the subsidy system if their economic situation improves.

During the transition period, the Secretariat of Energy is authorized to make corrections or changes to ease the transition and, also, to: (1) set maximum levels of consumption at subsidized prices, (2) approve discounts for certain income groups, (3) periodically revise the consumption cap, (4) amend the households segmentation criteria, (5) invite residential users to register with the Registry of Access to Subsidized Energy and cross-check data in order to avoid double entries, and (6) establish the compensation mechanism for energy companies for the lower revenue derived from the subsidies.

Natural Gas Exports Suspension—Federal Court of Appeals Overturns Lower Court Ruling Against Metrogas Chile and Upholds Gas Transmission Default Under Firm Transportation Agreements

In 2011 and 2015, Transportadora de Gas del Norte S.A. (TGN) (one of the local natural gas distribution companies) filed two lawsuits against Metrogas S.A. (Chile) (Metrogas), *Transportadora de Gas del Norte S.A. c/ Metrogas S.A. y otro S/cumplimiento de contrato – Docket N° 7026/2011*, and *Transportadora de Gas del Norte S.A. c/ Metrogas S.A. y otro S/daños y perjuicios – Docket N° 7311/2015*, claiming damages for Metrogas’s alleged breach of certain natural gas transportation agreements entered into between 1997 and 2022. Pursuant to the 25-year agreements TGN would make available transportation capacity in favor of Metrogas on a firm basis and ship volumes nominated by Metrogas up to such capacity against payment of a firm tariff.

Beginning in 2004, the Argentine government suspended natural gas exports and re-routed natural gas volumes to supply the domestic market. Since Metrogas had executed the agreements to import natural gas into Chile, following the suspension of Argentine gas exports, in 2009 Metrogas suspended the tariff payments and terminated the agreements, invoking TGN’s failure to make available the agreed contracted capacity.

TGN argued that, despite the suspension of gas exports and the re-routing of the transportation service, it was entitled to obtain payment of the tariff since the same had been agreed as a ship-or-pay tariff and Metrogas had assumed the risks of production shortages. TGN initiated the claims against Metrogas seeking payment of unpaid invoices and damages as a result of the termination of the agreements.

The lower court rejected Metrogas's defenses, admitted TGN's claims, and ordered Metrogas to pay TGN amounts under the unpaid invoices and damages. On May 7, 2024, the Federal Civil and Commercial Court of Appeal accepted Metrogas's appeal, revoked the lower court's ruling, and rejected Metrogas's liability for breach of the transportation agreements.

The appeals court considered that TGN had failed to perform its obligations under the transportation agreements and ship volumes injected by producers to Metrogas. Although Metrogas had evidenced that it bought natural gas from local producers, TGN failed to receive and deliver such natural gas in favor of Metrogas in the inlet of TGN's pipeline (there were shortages of natural gas shipped compared to the agreed upon quantities). TGN had also failed to deliver to Metrogas the volumes injected by local producers and has been unable to prove the existence of the regulations it invoked to justify the shipment of lower amounts than those agreed upon by Metrogas (i.e., TGN alleged it received verbal orders from federal authorities determining the re-routing of its transportation capacity).

In view of the above, the appeals court considered that Metrogas had correctly terminated the transportation agreements and had not breached any obligation to pay the tariff for non-rendered services. This ruling is definitive; on May 21, 2024, TGN filed an extraordinary appeal before the Supreme Court of Justice, which is pending.

Inés Agüero Ovejero, Reporter

Latest Major Modifications to Mining Legal Framework in Argentina

New Argentine Secretary of Mining

On April 16, 2024, Decree 307/2024 appointed Luis Enrique Lucero as the Argentine Secretary of Mining.

Delegation of Powers

On April 23, 2024, Resolution 6/2024 of the Ministry of Economy, Secretariat of Mining, was published in the Official Gazette. It amends article 17 of Resolution 89/2019 to allow import authorizations, disaffiliation, or transfer of beneficiaries registered in the Mining Investment Law Registry to be executed by the Head of the Undersecretariat of Mining Development, the Head of the National Directorate of Mining Investments, the Head of the Directorate of Mining Investments, the Head of the Directorate of Analysis and Development of Mining Investment Projects, or by any other body replacing them. Additionally, Resolution 6/2024 revokes article 4 of Resolution 15/2020, which was issued by the Ministry of Mining of the then Ministry of Productive Development on April 27, 2020, reaffirming the powers to sign import authorizations included in article 17 of Resolution 89/2019.

"Bases Bill of Law" and the Fiscal Package Approved

On June 27, 2024, after months of debate that began in December 2023, the Chamber of Deputies gave final approval to the Bases Bill of Law and the Fiscal Package.

Both texts will now be sent to the Executive for enactment and will become effective upon their publication in the Official Gazette.

Although this version is watered-down compared to the original proposal, the Bases Bill of Law still includes a declaration of emergency, the delegation of certain legislative powers to the Executive Branch, authorization to privatize state-owned enterprises, and other significant provisions to liberalize markets, modernize labor laws, encourage investment, and streamline regulations for businesses. The approval of the fiscal package aims to support the government's fiscal balance plan over time by increasing revenues and reducing reliance on spending cuts.

Key issues to follow include the regulation of the Incentive Regime for Large Investments (RIGI) and privatizations, the lifting of capital controls, and the reduction of the PAIS tax.

The Incentive Regime for Large Investments (RIGI)

The RIGI aims to attract large investments to promote economic development, strengthen the competitiveness of strategic economic sectors, including mining, oil and gas, and energy, and generate conditions of predictability and stability for large investments. The RIGI sets out fiscal and exchange rate benefits for projects with minimum investments ranging from US\$200 million to US\$900 million. Export projects with investments greater than US\$1 billion are considered strategic and have additional benefits, such as VAT and income tax benefits, exemptions from import and export duties, benefits in transfer pricing, accelerated depreciation, compensation of losses, and credit for tax on bank debits and credits, among others. The RIGI will be open to applications for two years, with the possibility of a one-year extension. The investment can be completed after that period.

The RIGI applies to single project vehicles (SPVs) organized as companies or branches of foreign companies. Applications must include an investment plan describing the project, the investment amount and its main items, the schedule and estimated commencement of production date, description of financing, direct and indirect employment to be generated, production and export estimates, trade balance and foreign exchange flow for three years, feasibility report with risk matrix and mitigation plan, independent economic and financial evaluation, and description of permits available and to be obtained.

Investments must be made in eligible assets, which include all those related to the development of the project, including shares of companies with eligible assets. Investments in financial assets or tradeable goods do not qualify. At least 40% of the minimum amount must be invested in the first two years. Committed investment is mandatory. Unjustified non-compliance with the investment is an infraction subject to a fine of 5% to 15% of the minimum investment amount.

The regime also includes an obligation to develop a plan for the development of local suppliers of goods and services, who must represent at least 20% of the aggregate budget for the hiring of suppliers, provided there are local suppliers available under market conditions.

Disputes related to the RIGI must be settled by international arbitration, either by ICSID or the Permanent Court of Arbitration, at the investor's choice.

Modification to Mining Royalties

The Senate's amendments to mining royalties included in the fiscal package were approved by the Lower Chamber.

Section 112 of the Fiscal Package states that “the provinces that adhere to the regime of the present law and that receive royalties or decide to receive them, may not charge a percentage higher than 3% of the pit head value (*“Valor Boca Mina”*) of the mineral extracted.”

However, it modifies the Mining Investment Law by adding that

projects that have not started construction corresponding to the exploitation stage prior to the effective date of this article, the provinces that adhere to the regime of this law and that receive royalties or decide to receive them may, after adhering to the provisions of this article, receive a percentage not exceeding 5% as royalties.

Each province will have to adhere to this modification and, in many cases, even amend its own provincial mining royalty laws to increase the royalty limit.

Province of Mendoza—New Mining Procedure Code

On June 4, 2024, the New Mining Procedure Code of the Province of Mendoza (Law N° 9529) was published in the Official Gazette.

The regulation aims to accelerate the permitting process, avoiding prolonged unresolved files that could result in mining real estate speculation. It creates a Mining Council, which will hear appeals against certain resolutions from the Mining Directorate (Mining Provincial Authority) and it will also act as a consultative body when required by the Directorate.

The new Code also seeks responsible and sustainable economic development, with the professionalization and increase in the number of mining police and inspectors, who will have greater functions and powers than those that existed under the old regulations. Inspectors will be empowered to monitor underground and surface works and the elements, equipment, machinery and plants.

Another important section aims to enforce compliance with environmental, health, safety, and hygiene rules for the workings, in addition to strict requirements for the transportation of minerals.

With this reform, the Environmental Impact Assessment procedure will be initiated before the Environmental Protection Directorate, with an Environmental Impact Statement for each stage of the project.

The regulation applies to the entire production chain and covers mining rights holders, prospect and project operators, contractors, subcontractors, and employees. In this sense, it provides for the execution of a mandatory Affidavit of Good Practices, which will include a description of the groups and communities in the areas of direct and indirect influence radius to the mining project area and will guarantee the availability of information and citizen participation.

Creation of the Copper Roundtable (*“Mesa del Cobre”*)

On May 22, 2024, during a conference held in San Juan, the provinces of San Juan, Mendoza, Catamarca, and Salta signed an agreement to create the Copper Roundtable (*“Mesa del Cobre”*). On such occasion, the governors of the abovementioned provinces expressed their willingness to work together to harmonize conditions that promote and drive the development of the copper projects in those provinces. Specifically, the governors stated that “they are compelled to coordinate strategies for the prompt construction of all advanced copper projects.” The creation of this Copper Roundtable is considered a historic

event where all these four provinces align their interests for working together with a group of strategic advisors toward resolving the main challenges for the copper projects to advance to production stages in the near future.

Salta and Jujuy Provincial Legislatures Approve the Creation of an Inter-Jurisdictional Commission to Oversee Salinas Grandes

On November 23, 2023, the Provinces of Salta and Jujuy entered into an agreement to carry out a comprehensive and cumulative environmental impact assessment to establish a baseline for the Salinas Grandes Basin that takes into account the geological and geographical characteristics of such region.

The effectiveness of the agreement was subject to the approval of the provincial legislatures. In the case of Jujuy, this occurred on April 15, 2024, and in the case of Salta on May 14, 2024 (Law 8,429).

The agreement should allow the provinces (1) to have more information at the time of granting mining concessions in this basin, (2) to have a better and more agile audit of the environmental impact reports, and (3) to mitigate any claims from the communities.

The main terms of the agreement are:

- (1) Interjurisdictional Commission: an Interjurisdictional Commission for the environmental management of the Salinas Grandes water basin (Commission) is created.
- (2) Cumulative Environmental Impact Report: the Commission will carry out a comprehensive and cumulative environmental impact assessment that takes into account the geological and geographical characteristics of the region.
- (3) Hydrogeological Report: the Commission will commission hydrogeological studies in order to establish a baseline for the basin, to understand the actual state of the water resource and potential impacts.
- (4) Other issues: the existing legislation governing the exploration and exploitation of mining activities will be analyzed in order to propose possible modifications.

Province of Salta Will Move Ahead with the Bidding Processes for 37,000 Hectares in the Salar de Arizaro

The Salta Energy and Mining Resources Company (REMSa) reported that the concession process for a lithium area of around 37,000 hectares located in the Salar de Arizaro will begin in the first days of July. It is worth highlighting that the Salar de Arizaro is one of the largest salt flats in the world, and the third largest in the region after Bolivia’s Uyuni and Chile’s Atacama salt flat. The area will be subdivided into 4 subareas, between 6,000 and 8,000 hectares.

BOLIVIA

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Indeed, the increasing purchase of these products at subsidized prices represents a significant and growing loss of foreign exchange for Bolivia. According to former Hydrocarbons Minister Ríos, as cited in the article “Biodiesel in Bolivia: Economic Opportunity or Another Threat to the Amazon?” published by Dialogue Earth on January 27, 2023, “the country imports 70% of the diesel and 50% of the gasoline it consumes, and demand grows every year.”

Data from the National Statistics Institute (INE), referenced in the article “Biodiesel Plants: An Alternative” published by *La Razón* newspaper on February 27, 2024, indicates that approximately 1.3 million tons of diesel and 2.5 million tons of gasoline were imported to Bolivia in 2020. Import values for fuels (gasoline and diesel) nearly tripled in the first half of 2022, reaching \$2.945 billion. Given this pace of diesel and gasoline demand growth, sustaining subsidies will become unsustainable, potentially leading to social problems if fuel prices rise.

To address this problem, the government’s proposed solution is the Biodiesel Plant 1, constructed in Santa Cruz with an investment of US\$40 million. It began operations on March 26, 2024, and has the capacity to produce 1,500 barrels of diesel per day, equivalent to over 38,500 liters daily. Simultaneously, construction is underway for two other plants: Biodiesel-2 with a capacity of 1,500 barrels per day, and a third plant for renewable diesel (HVO) with 9,000 barrels per day capacity. In July 2023, the current Minister of Economy Marcelo Montenegro told France Press that these three factories will allow the country to replace “between 43 and 45 percent of diesel and gasoline imports.” This translates to a biodiesel production of 12,000 barrels per day and potential savings for the State of up to \$400 million. For biodiesel production, the government will use soybeans as well as *jatropha*, *total*, *culi*, and other sources, extracting second-generation vegetable oils unfit for human consumption. To this end, they launched the “Promotion Program for Oilseed Production.”

The Accompanying Legislation

Thus, Bolivia’s commitment to biofuels opens the door to economic and social development, while also contributing to environmental protection, combating climate change, and changing the energy matrix. The initial governmental step toward developing biofuel projects must necessarily involve the creation of a favorable regulatory environment.

Thus, the agreement signed in February ratifies and gives life to Law N° 1098 of September 15, 2018, which serves as the framework and legal basis for “the production, storage, transport, commercialization, and blending of vegetable-origin additives, with the aim of gradually replacing the importation of Inputs and Additives, and Diesel Oil, safeguarding food and energy security with sovereignty.” Law N° 1098 art. 1.

Article 1 of the law defines biodiesel as the vegetable-origin additive resulting from the chemical transformation of a properly refined oil or fat in reaction with anhydrous ethanol.

Article 4 establishes in sections III and IV that it allows the production, storage, transport, commercialization, and blending of vegetable-origin additives produced from products, sub-products, intermediate products, residues, or waste of vegetable origin, prioritizing the commercialization of vegetable-origin additives in the domestic market.

Meanwhile, Article 6 states that the National Hydrocarbons Agency (ANH) will be responsible for regulating the production, storage, transport, and commercialization, in the technical, economic, and regulatory aspects, in accordance with guidelines established by the Ministry of Hydrocarbons. But as well, it gives the responsibility for controlling the proportion of vegetable-origin additives to be blended with gasolines or diesel oil up to a maximum of 25%. This regulatory body is also tasked with determining the price of vegetable-origin additives.

Regarding the commercialization, import, and export of vegetable-origin additives, article 8 of the law specifies that the State-owned Yacimientos Petrolíferos Fiscales Bolivianos (YPFB) will procure vegetable-origin additives certified with Gross Pro-

duction Cost Certification issued by the competent authority. It prioritizes purchasing additives produced in Bolivia by public or private companies using domestically sourced raw materials over those of foreign origin. Importation may only be considered if domestic supply fails to meet demand, and any certified surplus can be exported. Thus, national government has established blending percentages for biodiesel and anhydrous ethanol with fossil fuels to gradually replace the importation of inputs, additives, and diesel.

Consequently, the aforementioned law, which was originally in effect solely for the production of anhydrous alcohol or ethanol to be blended with gasoline, after the agreement signed with the private sector, had been accompanied by a series of regulatory legal provisions to enable the introduction of biodiesel. These provisions are currently in force and are as follows:

The Supreme Decree N° 5135 of March 13, 2024, which details the proportions of vegetable-origin additives that must be blended with conventional fuels for commercialization. According to the regulation, fuels resulting from the blending of biodiesel or anhydrous ethanol with base fossil fuels may contain up to 25% volume of vegetable-origin additives. And through its final provision, the decree reaffirms YPFB’s commitment to the private sector by prioritizing the purchase of biodiesel produced domestically, using locally sourced raw materials, from both public and private enterprises.

Ministerial Resolutions: Between March and May 2024, the Ministry of Hydrocarbons and Energies approved Ministerial Resolutions to complement Law N° 1098 and Decree N° 51235, finalizing national legislation to facilitate the introduction and utilization of biodiesel in Bolivia. Thus:

- Ministerial Resolution N° 36-2024 of April 8, 2024, approving the regulation for the transport by tankers and storage of additives of vegetable origin and base fossil fuels.
- Ministerial Resolution N° 37 of April 8, 2024, approving the regulations for the commercialization of liquid fuels with blended with vegetable origin additives at service stations.
- Ministerial Resolution N° 38 of April 8, 2024, approving the methodology for the determination and updating of prices for final fuels resulting from the blend of biodiesel with diesel oil base, as well as aspects of the commercialization of final fuels and the diesel oil base used for its mixture with biodiesel.
- Ministerial Resolution N° 42 of April 23, 2024, approving the calculation methodology to determine the ex-refinery price and pre-terminal price of diesel oil base to be used for its mixture with biodiesel.
- Ministerial Resolution N° 43 of April 23, 2024, approving the regulation of technical aspects for diesel oil base.
- Ministerial Resolution N° 54 of May 13, 2024, approving the regulation of technical specifications and quality control methods of biodiesel for its use as vegetable origin additives, as well as testing methods for its measurement.

The Biodiesel Dilemma

However, indigenous, peasant, and scientific sectors are concerned because they argue that the introduction of these vegetal species into the country for biodiesel production, would contradict the ideological stance articulated in 2007 by then-President Evo Morales, who, like current President Arce, belong

to the same political party. Morales advocated against diverting agricultural products to automobiles, emphasizing that crops should primarily serve to feed the population. "Naming that product as biofuel is a tremendous distortion," stated to *Los Tiempos* newspaper by Vincent Vos, a Dutch biologist specializing in the Amazon. "The same law prohibits Bolivia from producing fuel from agricultural products: neither soy nor corn, nor oil palm if it's part of an agroforestry plantation. Calling it biodiesel is a complete manipulation when we're actually talking about agrofuels." Rocio Lloret Cespedes, "Biodiesel in Bolivia: Economic Opportunity or Another Threat to the Amazon?," *Dialogue Earth* (Jan. 27, 2023).

The regulation referred to article 24 of the Mother Earth's Law N° 300 of September 5, 2012, which in its section 11 states: "Prohibit the production of agro fuels and the commercialization of agricultural products for their production."

Another concern revolves around deforestation and the expansion of agricultural frontiers, with the addition of three new monocultures to the existing ones: soy, sugarcane, sunflower, sesame, and corn.

To the end, only time will tell whether the government's bet on biodiesel will result in reality as both an economic incentive and an environmental benefit.

Mattías Garrón, Reporter

The Latest Lithium Tender in Bolivia: Legal Insight

The Bolivian Constitution establishes that all mineral and metallic resources within Bolivia are the exclusive property of the State, which is entrusted with managing them in the best interest of the nation. This includes granting rights for their utilization and extraction, ensuring adherence to national regulations. Additionally, the Constitution designates nonmetallic natural resources such as salt flats, brines, and sulfur as strategic assets, thereby granting the State control over all associated activities, encompassing exploration, extraction, processing, transportation, and distribution. This responsibility is delegated to public entities tasked with overseeing these strategic resources to achieve Bolivia's broader economic and social objectives. See Simon Romero, "Bolivia: The Saudi Arabia of Lithium?," *Seattle Times* (Feb. 3, 2009).

To this end, Yacimientos de Litio Bolivianos (YLB), was established. YLB is responsible for the comprehensive management of mining activities related to evaporitic resources, including the execution of essential chemical processes, and the production and commercialization of various lithium and potassium compounds, maintaining 100% state ownership. However, the processes of semi-industrialization, industrialization, and waste treatment may be carried out in collaboration with private mining entities, both domestic and international. See Law N° 535 (2014).

YLB has introduced "implementation agreements" as a new legal avenue for partnering with international companies on large-scale projects, such as those involving direct lithium extraction (DLE). These agreements are initiated through international invitations to participate in specific tenders, culminating in the selection of the most suitable proposer and the signing of the agreement.

Currently, an active call for expressions of interest is underway, focusing on the development of projects and technologies for the utilization of evaporitic resources. This initiative aims to implement pilot projects for the utilization of these re-

sources under real conditions in various salt flats. The call is divided into five phases, commencing with the presentation of administrative and technical requirements, followed by the development and submission of project proposals, the presentation of financial requirements, project evaluations, and concluding with negotiation and signing of agreements.

Presently, this process is in its final phase, where only 10 out of the initial 38 companies remain. These companies will negotiate with YLB to establish agreements for the implementation of pilot projects. To achieve this, the companies will need to navigate the options available under Bolivian law, such as public-private partnerships, association contracts, or strategic alliances, all while adhering to the principle of maintaining state control over strategic resources.

Bolivia's legal framework for the lithium sector is strategically designed to balance state control with private sector collaboration. The establishment of YLB and the ongoing tender process for pilot projects underscore Bolivia's commitment to leveraging its lithium resources for national development while embracing technological innovation and international partnerships. The successful conclusion of this process will not only contribute to Bolivia's lithium industry but also serve as a model for future collaborations in the sector.

CHILE

Joquín Corvalán Azpiazú, Reporter

Publication of the Green Hydrogen National Action Plan (2023-2030)

After a year of work in which different actors participated, and the collaboration of a strategic committee, on April 25, 2024, the Ministry of Energy published the Green Hydrogen Action Plan 2023-2030. The Plan considers 81 actions, distributed in 18 lines of work, with short-, medium-, and long-term milestones that will allow the development of the green hydrogen industry and its derivatives in Chile.

The actions will be implemented in two phases. The first phase, from 2023 to 2026, will focus on establishing the necessary conditions for the industry's development. This includes defining environmental, social, and labor standards, implementing an efficient permit system, promoting scientific research related to the industry, and advancing fiscal and financial incentives. From 2026 to 2030, the second phase will take place. This phase will focus on having territorial and regulatory planning instruments, promoting local development, ensuring citizen participation, and preparing human capital for the development of green hydrogen.

Context: Where Chile Is Located in Relation to Green Hydrogen Development

We have already commented in Vol. 2, No. 1 (2024) of this *Newsletter* that during December 2023, the Government of Chile, through the Ministry of Energy, published a document entitled "Working Document: Strategic Committee for the Green Hydrogen Action Plan 2023-2030." Additionally, we noted that the Strategic Committee of Green Hydrogen has agreed to address the Green Hydrogen Action Plan under five main headings: (1) environmental, (2) international, (3) economic, (4) human capital and technological development, and (5) citizenship.

We must remember that the Green Hydrogen Action Plan is framed within the National Green Hydrogen Strategy, published in 2020 in Chile, which in turn has these three objectives: (1) to produce the cheapest green hydrogen on the planet by 2030, (2) to be among the top three exporters by 2040, and (3) to have

five gigawatts of electrolysis capacity under development by 2025.

Five Actions to Highlight

As we have said before, the Plan considers 81 actions, distributed in 18 lines of work. Within these actions, we would like to highlight five.

- (1) Promote the conversion of thermal power plants using hydrogen-based fuel alternatives (Concrete Action N° 53): The aim is to evaluate and implement options for converting thermal power plants to hydrogen and synchronous condenser technologies. This study will include the analysis of two technological conversion options for thermal power plants and their integration into the National Electric System, using hydrogen and hydrogen-derived fuels, through combustion or blending options. In 2024, a roadmap for the Decarbonization Plan will be published, which will include incentives for the conversion of thermal power plants, with the goal of having the first converted coal-fired power generation unit operational by 2030.
- (2) Amend regulatory bodies to address the operation of generation-consumption systems (Concrete Action N° 47): The goal is to amend the Coordination and Operation Regulation of the National Electric System (Supreme Decree N° 125 of 2019), along with specific adjustments to other regulations and technical standards. This is to ensure proper implementation of the provisions listed in Article 225 of the General Law of Electrical Services, which defines generation-consumption systems and specifies the charges to be calculated based on the energy and power withdrawn from the grid, and not on the potential energy supplied. This will allow for the establishment of costs that hydrogen projects will need to assume if they use their own renewable energy generation at a connection point, and therefore do not require withdrawing the entire electrical demand from the electric system necessary for hydrogen production.
- (3) Strengthen 10 instruments of the Chilean Economic Development Corporation (CORFO) related to access to financing for the implementation of technological development activities associated with green hydrogen (Concrete Action N° 12): The aim of this measure is to encourage investment and provide financing instruments for the development of green hydrogen throughout the supply chain. Among the 10 instruments we can find: Strategic Technological Programmes; Delivery of Funds of up to 3,500 million pesos (around US\$3.8 million) for different technological development programmes associated with the green hydrogen industry; delivery of direct subsidies to initiatives associated with the demand for green hydrogen in Chile, among others.
- (4) Accelerate the implementation of the first industrial green hydrogen projects and their derivatives, through financing rounds (Concrete Action N° 20): The above, with the objective of supporting the construction and developing of industrial scale green hydrogen projects, through subsidies that support the final investment decisions. The institution responsible for doing this acceleration will be the Chilean Economic Development Corporation (CORFO), and the development deadlines involved are from 2023 to 2026. As part of these actions, on May 17, 2024, CORFO opened a call

for funding (R&D fund) with up to 60% of the total cost for the manufacture of electrolyzers and their components in Chile, with a ceiling of up to US\$10 million. Legal entities created or incorporated in Chile, public or private, for-profit or not-for-profit, may apply as Recipient Entities to access the R&D fund. The deadline for applications is August 30, 2024.

- (5) Allocation of fiscal land for the green hydrogen industry and its derivatives (Concrete Action N° 11): This aims to accelerate the implementation of projects to be carried out in the Northern Zone of Chile, mainly in the Antofagasta Region, as well as to give certainty to more industry players and lower operating costs. In 2024, the process of allocating public land will be closed, and in 2025 the call for the second process of direct allocation of these state lands will be published, for hydrogen, ammonia and derivatives projects.

There are currently 67 announced green hydrogen projects in Chile, of which eight are already underway. Twenty-six of these are in "Región de Antofagasta" and 19 in "Región de Magallanes." Nearly half of the projects are in the pilot phase.

Publication of the Hydrogen Facility Safety Regulations

On June 24, 2024, the Regulation of the Ministry of Energy, which contains safety standards for hydrogen facilities, was published in the Official Gazette (through Supreme Decree N° 13 of February 25, 2022, of the Ministry of Energy). The purpose of this Regulation (art. 1) is to establish the minimum safety requirements to be met by hydrogen facilities as an energy resource, for the stages of construction, operation, maintenance, repair, modification and termination of operations, in which hydrogen production, storage, transfer, and consumption activities will be carried out.

The regulation contains applicable national and international technical standards (arts. 6 and 7), related to technology, construction, and safety; it establishes responsibilities of the owners and operators of hydrogen facilities (arts. 9 to 18) and specifies the safety management requirements of such facilities (arts. 19 to 31), as well as their design, construction, and operation (arts. 32 to 47). In addition to those other provisions related to production systems, hydrogen facilities for hydrogen consumption, definitive termination of operations in hydrogen facilities, are established in the regulation.

Besides that, the decree revised the Gas Installers Regulation to include, among other changes, the introduction of a new type 5 gas installation. This allows for the development of activities that involve the production, handling, and consumption of both gas and hydrogen.

Finally, title XI of the regulation (articles 70 and following) establishes the system of inspections and sanctions, granting powers to the Superintendence of Electricity and Fuels (SEC) to supervise and monitor compliance with the regulation, as well as to apply possible sanctions to offenders.

The publication of this regulation occurs only a few months after the publication of the Green Hydrogen Action Plan 2023-2030, as discussed above, as part of the implementation of that plan.

Initiation of the Procedure for the Identification of Priority Sites of the National Biodiversity Strategy, Southern Macrozone

In Vol. 1, No. 1 (2023) and in Vol 1. No. 2 (2023) of this *Newsletter*, we commented that in June 2023, Congress approved the bill that created the Biodiversity and Protected Areas Service, which was enacted by Law N° 21,600, published in the Official Gazette on September 6, 2023. It should be recalled that Law N° 21,600 strengthened the instruments for the conservation of biodiversity and introduced important modifications to the legal framework governing priority sites. This law also establishes a series of amendments to Law N° 19,300 of General Bases of the Environment, and repeals Law N° 18,302, which creates a National System of State Protected Wildlife Areas (art. 143).

On June 17, 2024, Resolution N° 1560 of the Ministry of the Environment was published in the Official Gazette, which initiates the procedure for determining the priority sites of the National Biodiversity Strategy and Regional Biodiversity Strategies of the Southern Macrozone, which will be governed by the provisions of Law N° 21,600. The territories included within the Southern Macrozone ("Macro Zona Sur") correspond to the regions of Ñuble, Biobío, Araucanía, Los Ríos, Los Lagos, Aysén and Magallanes, and Chilean Antarctica.

The process of determining the priority sites will be developed according to the methodological and scientific bases specified in Resolution N° 326 of March 27, 2024, of the Ministry of the Environment. Once the process of identifying priority sites in the Southern Macrozone has been completed, the proposal for the final list of priority sites must be discussed and approved by the Council of Ministers for Sustainability and Climate Change, and the corresponding Supreme Decree of the Ministry of the Environment must be issued.

Paragraph 3 of Resolution N° 1560 of the Ministry of the Environment establishes a period of 30 days to receive information on the determination of priority sites in the Southern Macrozone, which will be governed by Law N° 21,600. Any person, natural or legal, may, within the aforementioned period, provide technical, scientific, and social background information on the matter, particularly those related to the ecological values of the site and its uses, which must be delivered to the Regional Ministerial Secretariats (SEREMI) of the Environment of the respective region.

Alejandro Montt, Reporter

CODELCO and SQM Joint Venture Agreement for the Joint Exploitation of the Atacama Salt Flat

On May 31, 2024, Corporación Nacional del Cobre de Chile (CODELCO), a State-owned major copper mining company, and Sociedad Química y Minera de Chile S.A. (SQM), a global leading company in the production of lithium products, announced the execution of a joint venture agreement (the "Agreement") whereby they agreed on the steps, stages, rights, obligations, terms, and conditions to implement a public-private partnership to jointly develop extractive and productive activities aimed at producing lithium products, potassium products, and others from the Atacama salt flat and their subsequent commercialization, through the merger by incorporation of CODELCO's subsidiary, Minera Tarar SpA, into SQM's subsidiary, SQM Salar S.A. (the "Joint Venture").

The Agreement contemplates several annexes, including drafts of the shareholders' agreement, the purchase and sale of SQM's properties in the Salar de Maricunga, the license that SQM will grant to the new Joint Venture over certain industrial property rights, the bylaws of the Joint Venture, and the manner in which SQM will contribute to SQM Salar S.A. those assets and contracts of the business that are not currently owned by SQM Salar S.A., among others.

In general terms, the Agreement distinguishes two periods for the CODELCO-SQM joint venture: (1) a first period that runs from the formation of the Joint Venture until December 31, 2030; and (2) a second period that runs from January 1, 2031, until December 31, 2060:

- (1) In the first period, CODELCO and SQM will have equal participation in the board of directors of the Joint Venture, and SQM will hold the majority of shares, with certain matters having qualified quorums. Also, production in the Salar de Atacama may be increased by 300,000 tons of LCE; and
- (2) In the second period, CODELCO will have both a majority on the board of directors and a majority of shares of the Joint Venture.

The materialization of the joint venture is subject to a series of conditions precedent, including, among others, obtaining governmental authorizations in Chile and abroad and the completion of an indigenous consultation process. It is also a condition that contracts be signed between the Joint Venture and the Chilean public entity Corfo to increase the amount of lithium that the Joint Venture can exploit from the Atacama salt flat between 2025 and 2030 and to establish the right to exploit lithium from the Salar de Atacama between 2031 and 2060. Even if the conditions could be met earlier, closure will be at a date no earlier than January 1, 2025. However, the parties estimate that such conditions could be met within the first half of 2025.

New Power Transfer Regulation

On May 31, 2024, the Office of the Republic General Comptroller (CGR) approved Supreme Decree N° 70 (DS N° 70) which amends Supreme Decree N° 62 of 2006 (DS N° 62) that approves the "Regulation of power transfers between generating companies established in the General Law of Electrical Services."

This fact represents a new step in the promotion of storage systems and renewable energies in the country, since the DS N° 70 includes stand-alone storage systems and defines the methodologies, procedures, and criteria applicable to determine the power transfers resulting from the coordination of the operation.

The main modifications to DS N° 62 refer to:

- (1) Recognizing the capacity payment for pure or stand-alone storage systems, i.e., those storage systems of independent operation not associated to generation plants.
- (2) Encourage storage, by establishing a transitional rule that ensures for 10 years the recognition of the sufficiency power for storage units, both for stand-alone systems and those linked to generation plants, establishing incentives for those that have more hours of capacity.

In this way, the initial power of an energy storage system (SAE) or of the storage component of a "Re-

newable Power Plant with Storage Capacity” (CRCA) will correspond to the multiplication between the maximum power of such component or system and the percentage of “initial power recognition” according to the following table:

Storage capacity (hours)	Percentage of initial power acknowledgment
<1	0%
1	36%
2	65%
3	85%
4	98%
≥5	100%

The methodology for calculating the initial power of the EDCs will be applied according to the contribution to the load curve of the optimization result at the daily level that allows decreasing the differences of maximum and minimum demands of the system.

In those cases of storage components or stand-alone systems whose capacities are fractions of hours, the percentage recognition will be determined from the previous table, making a linear approximation between the corresponding hours.

- (3) In the case of CRCAs, the recognition of the sufficiency power will be made separately between the generating unit and its storage component. In this sense, the remuneration will be calculated considering the sum of the remuneration of the renewable plant plus the storage component, each one with its own methodology for determining its contribution.
- (4) It is recognized with respect to the SAEs or the storage component of the CRCAs that the withdrawals made for the purposes of their load will not be considered power withdrawals.
- (5) Supreme Decree N° 125 of 2017 of the Ministry of Energy, which approves the regulation of the coordination and operation of the National Electric System, is also amended in order to recognize the SAEs and CRCAs that are in operation as participants in power transfers. For such purpose, the National Electric Coordinator shall incorporate in the operation programming the withdrawal schedule communicated to it by the holders of the storage systems, also recognizing for the CRCAs the “load,” “discharge,” and “direct generation” modes.

New Obligation to Disclose Exploration and Geological Information

On May 2, 2024, Supreme Decree N° 9 of the Ministry of Mining, which establishes the new regulations governing the obligation to provide geological information, was submitted for approval to the Republic General Comptroller (CGR). Said regulation will repeal Supreme Decree N° 104 of 2017 of the Ministry of Mining that approved the regulation that regulates the delivery of geological information of a general nature obtained from basic geological exploration works.

The amendment for the delivery of geological information specifies the delivery times and increases the fine for non-delivery to 100 UTA (approximately US\$100,000), which may be

doubled if such information is not delivered and is then required by the Chilean geological authority SERNAGEOMIN, also disqualifying the mining concessionaire to obtain the benefit of a reduced patent or mining fee.

Under the new regulations, exploration concession holders will have 30 days from the termination of their concession to submit to SERNAGEOMIN a report with all the geological information obtained from the exploration work carried out in the area corresponding to such concession.

Likewise, the exploration concessionaire must also submit a report with all the geological information obtained in the exploration works that have been carried out during the term of its concession before requesting the renewal of its concession for another four years.

On the other hand, the exploitation concessionaire must submit to SERNAGEOMIN every two years a report with all the geological information obtained from the geological exploration work carried out during that period.

The details of the geological information to be submitted are contained in the new regulations governing the obligation to submit geological information contained in Supreme Decree N° 9 of 2024 of the Ministry of Mining.

Among the relevant provisions of the new regulation for the delivery of geological information are the following:

- (1) The report with the geological information must be submitted through a form that SERNAGEOMIN will have available for these purposes on its website;
- (2) The background information that must accompany the report and its delivery format includes a presentation of the project, georeferenced geological maps, geophysical surveys, geochemical surveys, drilling information, and others;
- (3) The geological information received by SERNAGEOMIN will remain the property of the reporting company, but will be considered public information in accordance with the provisions of Law N° 20,285 on Access to Public Information; and
- (4) Notwithstanding the foregoing, the reporting company may request that all or part of such information be considered confidential for a period of up to four years from its delivery.

COLOMBIA

Tomás de la Calle, Reporter

One Hundred Years of Certitude . . . Almost

Introduction

Over the last 100 years, almost 12 billion barrels of crude oil have been produced in Colombia. At a macro-economic level, it has meant foreign direct investment attraction, exports generation, hard currency availability, and fuel self-sufficiency . . . most of the time. During the decade from 1976 to 1985, Colombia became a net importer of hydrocarbons bringing about serious economic consequences for the country. At the dawn of the current century, a sharp drop in crude oil production set off alarm bells and prompted policy makers to react accordingly. In both cases, the reactions meant newer oil-contracting arrangements: in the 1970s case, the “Ancient Concession” system was abolished and a Colombian version of the then-in-vogue Production Sharing Contract was set off: a Joint Venture Agreement (JVA) between the Colombian National Oil Company, Ecopetrol—Ecp, and the International Oil Companies (IOCs). In

the 2000s case, a “near miss” was conjured up by turning back to the concessional scheme, although this time nicknamed the “Modern Concession.”

Since the current status of the Colombian upstream oil sector very much resembles the aforementioned cases, the objective of this report is to compare them and discuss the likelihood of Colombia becoming, again, a net importer of hydrocarbons in the near future.

The Ancient Age

In the beginning was the oil-concession—and the oil-concession was in Colombia too. The first one, signed off in 1905, yielded oil production only 17 years afterwards and the Standard Oil Company exploited it until 1951 when it reverted to the Colombian NOC newly created for the purpose: Ecopetrol (perhaps such a birth marked its fate: excelling on the “P”—Production via EOR, but not so much on the “E”—Exploration).

During the 70 years that this system lasted (1905–1974) a total of 454 licenses were awarded (the last one of its kind, Yalea, reverted to the State last year). Oil production peaked in 1970 at 220mbd, when SOC, and also Gulf, Texaco, Shell, and Chevron, operated in the country. What followed next was the “perfect storm”: the production decline was compounded by the continuous reduction of reserves as well as the low level of exploration activity, measured by the number of A3 wells: oil reserves were halved during the period from 1965 to 1974 and rose to just 580 million barrels in 1974; and, over the same 10 years, only 19 such wells were drilled, on average, each year (the peak being 33 exploratory wells in 1960). The low level of exploration has been attributed to:

- “Frozen” areas: Since 1940 the Ministry of Mines & Oil, charged with granting the oil licenses, used to take not months, but years to review and eventually award an area, and since during such long approval period the area couldn’t be awarded to another bidder, the original one was able and pleased to retain it without having the obligation to perform any exploration activity.
- Domestic Market Obligation: Historically, Ecp oil production was not enough to supply the domestic market, so the IOCs were compelled to sell the gap to Ecopetrol instead of exporting it. That worked fine until 1967 when the price started to be set by regulation below the export parity, and partially paid in the local currency (i.e., Colombian pesos); that is almost the worst nightmare for an IOC, only second to an expropriation.

The Elephants Age

Policy makers, aware of the exhaustion of the prevailing system, changed it in 1974 by the Decree-Law 2310: it abolished the concessional system, and established the “Association Contract,” a sort of JV whereby the IOC would: act as the operator, take the exploration risk, and hold a 50% working interest; and Ecp, the mandatory partner, would hold the remaining 50%. In 1955 and under a concession license (Las Monas), Ecp had “tested” with success a partnership with Cities Service (later on to become Citgo), and that’s probably the reason to opt for a JV type of contract instead of the Indonesian Production Sharing Contract—PSC type, adopted by many countries during the 1960s and 1970s. However, the die was already cast: two years later the country would become a net importer of hydrocarbons for a 10-year period: on average the net imports came to be 18 mbd per year which does not seem much in quantity; however, the imports consisted of expensive gasoline and crude oil while the exports were low-priced fuel-oil. A pretty ill-timed moment to become a net importer: amidst two world oil shocks! The hy-

drocarbon trade balance reached a maximum deficit in 1980, of 470 million dollars. Moreover, when the country regained its status as net exporter in 1986, oil prices plummeted.

Such bad luck regarding oil prices was partially offset by two commodity booms that took place between 1976 and 1980: coffee and illegal marijuana; but even so, during the 1975–1985 period the total money spent in hydrocarbons imports plus domestic purchases made in hard currency amounted to US\$6,920 million, or 60% of Colombian public external debt by 1985. See <https://www.repository.fedesarrollo.org.co/handle/11445/3972>. Also in 1974, and like a premonition, the word “oil” was removed from the Ministry of Mines and Oil, renaming it as the Ministry of Mines and Energy. And eventually, after such a painful period, the new policy began to bear fruit not only in terms of oil self-sufficiency, but especially on exports.

Over the 30 years this system was in force, 493 JVs were signed off, averaging 16 per year. The production peak was achieved in 1999 at 815 mbd, mainly driven by three majors discoveries: Caño Limón (by Oxy), and Cusiana/Cupiagua complex (by BP) which together represented almost 70% of such peak (there was another discovery of heavy crude oil at Cubaral; it was the first JV agreement, operated by Chevron that later on would become—and remains—a key area for Ecp (see next section)). The price of the success of such system was that the policy makers of the time deemed that the country had turned into a sort of “Saudi Colombia,” hence the commercial terms of new JVs were modified to increase the government take. This fact, plus the worsening of the social unrest experienced at the end of the last century, gave rise to a new oil contracting scheme.

The Capybaras Age

By 2003, the urgency to reverse the oil production trend was all too apparent, hence the need to change the prevailing system. In addition to the reasons just mentioned (high G-Take and social unrest), reference is made to two others that would justify the change:

- Conflict of Interest: Ecp acted as a firm partnering the JV but at the same time it was the regulator of the sector (the MME used to serve as Ecp’s chairman of the board of directors); and
- Materiality: when an IOC discovered a field of say, 100, the next day it would be able to register in its books an oil reserve of 40, since Ecp would take 40 and the State 20 via royalties. When considering that big oil fields in Colombia are the exception rather than the rule, the situation worsened.

See <https://pagegob.wordpress.com/wp-content/uploads/2012/07/memorias-prap.pdf>.

So, another Decree-Law 1760 was issued in 2003: it reinstated the concession system but this time not administered by Ecp nor the MME; instead by a new institution: the National Hydrocarbons Agency (“Anh” in Spanish). Likewise, Ecp was transformed into a public limited company whose shares would be traded on the Colombian stock exchange and later on the NYSE. The “modern” adjective was added to the concession’s new system: cynics say that was in order to avoid colonialist memories, but the truth is that such concessions would include much more than the R/T (Royalties/Taxes) elements of the ancient ones.

This new age has proved so far that on-shore Colombia’s basins are about small fields: of the approximately 150 fields producing oil in 2023, 80% of them produced on average less than 1 mb/d, and only 15 fields produced above 10 mb/d (no

more elephants, in their place capybaras or chigüiros abound, an animal omnipresent in the most prolific oil basin in Colombia: the Llanos basin). This feature is not intrinsically negative, but it requires a constant, sustained exploration which, under the current government, is going to be challenging having halted the awards of new E&P contracts. In addition to this, the high hopes placed on “unconventional oil” projects have been frustrated due to government opposition to them, and so Exxon and Conoco, that had been working on this have left unfinished their respective projects, and abandoned the country. Although a bill (#413) to ban “unconventional oil” was sank by the legislature last June (for the fourth time!), the government has already announced it will insist on the next legislative session (which began on July 20, 2024). If such policies were to continue, Colombia may again become a net importer of hydrocarbons in five to 10 years’ time, but every year from now on, its much-needed oil exports would fall.

Over the 20-year period of the new system 449 concessions have been granted (average: 24/year), except for the last two years when no new contracts have been awarded due to the current policies. Peak production of one million barrels happened twice in 2013 and 2015; since then, the production has been declining at an average rate of 3.2% per year.

Last May, the Anh issued the “2023 Oil & Gas Reserves and Resources” report. See https://www.anh.gov.co/documents/24758/Informe_de_Reservas_y_Recursos_2023.pdf. According to it, the country’s crude oil proved reserves at the end of 2023 amounted to 2,019 mmbbls, a 2.6% decrease compared to 2022. The report also informs about the annual addition of reserves (see page 13): 229 mmbbls, which compares unfavorably with a total production of 283 mmbbls. However, what is alarming is not the former figure itself, but how it is made up: 2 mmbbls (yes, two) come from discoveries, and 227 mmbbls come from technical reserves’ revisions, etc., from already discovered fields, which evidently means that the country is adding very few reserves through the “drill bit”: 2 mmbbls are three days of production! In 2022, the equivalent figure was 6 mmbbls (coming from discoveries) instead of the 2 mmbbls of 2023.

Janine Acosta, Reporter

Key Changes in Colombia’s Environmental Liability Regime

With the enactment of the draft of the law N° 251/2024 and 116/2022, which is now ready to be signed by the President and become the law of the republic, Colombia has introduced significant modifications to its environmental liability regime, previously governed by Law N° 1333 of 2009. These changes reflect the country’s increasing commitment to environmental protection and stricter enforcement measures. Businesses operating in Colombia must now navigate a more rigorous regulatory landscape, marked by higher fines, extended procedural timelines, and new mechanisms for addressing environmental infractions. The following highlights the seven most critical updates that companies need to understand and integrate into their compliance strategies.

First, the maximum fines that environmental authorities can impose have increased substantially. The previous limit of 5,000 current legal monthly minimum wages (SMLMV), equivalent to approximately US\$1.6 million, has been raised to 100,000 SMLMV, now around US\$32.5 million. This substantial increase underscores the heightened emphasis on environmental compliance.

Second, the introduction of a stage for concluding arguments in the environmental sanctioning procedure is noteworthy. This stage will be included only when evidence has been presented during the evidentiary period. This change aims to ensure a more thorough and fair process by allowing all parties to summarize their positions before a decision is made.

Third, the timeframe within which the environmental authority must declare the responsibility of the alleged offender has been extended. Under the new law, the authority has 80 days from the end of the period for submitting defenses or concluding arguments to make a determination. This is a significant increase from the 15 working days previously mandated by Law N° 1333 of 2009, providing more time for a comprehensive review of the case.

Fourth, new provisions allow the alleged offender to request the suspension and early termination of the environmental sanctioning procedure. This can be done before the decision on responsibility is made, through corrective actions and/or environmental compensation. These mechanisms did not exist under the old law and offer a way for businesses to potentially mitigate sanctions by proactively addressing environmental issues.

Finally, the law now requires businesses undergoing dissolution, merger, split, reorganization, restructuring, liquidation, or insolvency to notify the environmental authority and provide guarantees to cover any obligations resulting from the environmental sanctioning process. This requirement addresses scenarios that were not regulated by the previous law, ensuring that environmental liabilities are not overlooked in corporate restructuring processes.

In summary, the new legal framework significantly intensifies environmental liability. This shift necessitates that businesses enhance their corporate management practices, implementing measurable actions with specific goals to improve processes, prevent the initiation of environmental procedures, and mitigate potential liabilities.

ECUADOR

Rafael Valdivieso, Gustavo Almeida & Analía Andrade, Reporters

Amendments to the Electricity Regulation in Ecuador

On December 20, 2023, the Ecuadorian President proposed to the National Assembly a bill to address the country’s energy framework. The bill included several amendments to the Organic Law of the Electric Energy Public Service (“LOSPEE” or “Energy Law”) (published in the Official Gazette Supplement N° 418, dated January 16, 2015) focused on encouraging the generation of clean energy, the participation of private companies in the business, and the structuring of solutions involving the energy industry.

The National Assembly approved the bill and enacted the *Ley Orgánica de Competitividad Energética* (Organic Law on Energy Competitiveness) (“Energy Reform Law”) (published in the Official Gazette, Second Supplement N° 475, dated January 11, 2024), effectively amending the Energy Law. Subsequently, the Regulation to the LOSPEE (“Regulation to the Energy Law”) (published in the Official Gazette N° 507, dated February 28, 2024) was amended by the President.

This report is intended to examine the two main matters introduced by the Energy Reform Law and the Regulation:

- (1) Purpose to codify as law aspects from the electricity regulation in Ecuador.

- (2) Encouragement to the private sector to be involved in the generation of electricity, transmission infrastructure construction, distribution of electricity, public lighting, and new tax and environmental incentives.

Purpose to Codify as Law Aspects from the Electricity Regulation in Ecuador

One of the significant advances driven by the Energy Reform Law is its role of organizing several features of the electricity regulation into one single legislation. Before January 2024, there were important elements which source was directly the Regulation (enacted by the President) and many third-tier regulations (issued by the Agency for the Regulation and Control of Energy (ARC)).

Even though the ARC is the technical administrative body in charge of regulating and controlling the electricity activities, several modalities of energy generation and netting were only governed through its regulations and were not legally provided by the Energy law. For instance, the energy generation for self-consumption named ("SGDA" for its acronym in Spanish) was not recognized by the Energy Law. Instead, it was referenced in the Regulation to the Energy Law and broadly detailed in the ARC Regulation 008/23 (published in the Official Gazette Supplement N° 441, dated November 21, 2023) and ARC Regulation 006/23 (published in the Official Gazette Supplement N° 333, dated June 16, 2023). Currently, with the Energy Reform Law, the LOSPEE now includes this modality in Section.

Other elements that have been recognized in the Energy Law are the following:

- (1) participation of foreign state-owned companies in the corporate structure of the Ecuadorian electricity industry (art. 10, LOSPEE) and
- (2) delegation from the State to private companies exclusively for new projects in transmission activity (art. 42, LOSPEE).

By virtue of having codified features that were not previously set in the Energy Law, amending said element is considerably more complex because it requires the intervention of the National Assembly. Otherwise, it is relatively simple for the President to amend (or even eliminate) matters from the Regulation, as well as for the ARC to amend its regulations.

Promoting the Participation of the Private Sector in Electricity Activities

Admittedly, it is important to consider that, even though the LOSPEE recognizes private investment in the electricity sector, the Ecuadorian Constitution establishes in Section 313 that energy is a public service and a strategic sector. As such, the State reserves the right to develop, regulate, and control energy in all its forms. Consequently, the participation of private companies is exceptional and must be regulated in the law. LOSPEE details all modalities where private investment is possible.

As to the electricity activities, the LOSPEE, amended by Energy Reform Law, envisages a wide array of modalities that allow and incentivize the private sector to participate:

- (1) SGDA (distributed generation system for self-supply for regulated and non-regulated consumers). The system consists of small generation plants installed close to the consumption point and allows the energy consumer (individual or companies) to operate non-conventional renewable energy systems including residential photovoltaic micro-generation system for self-consumption. This modality allows consumers to still be connected to the distribution grid and produce en-

ergy. Furthermore, SGDAs may now be owned by the consumer or third parties, as long as the energy produced is destined for the consumer's demand. Additionally, third parties may intervene in financing, management, operation, monitoring, installation, and maintenance of the SGDA.

- (2) Renewable energy projects not foreseen in the national Electricity Master Plan proposed by the private sector. When projects comply with these conditions, the applicable regime that the Ministry of Energy and Mines (MEM) will grant relies on the nominal capacity of the project. For instance, (1) if the project will generate up to 10 megawatts (MW) and the energy will be destined to the regulated demand (sell to national distributors), a tender process (PPS) will not be required and the private party will still have preferential commercial conditions; (2) the MEM may also authorize projects that will generate up to 10 MW, without preferential commercial conditions; (3) if the project is larger than 10 MW, a declaration of public interest issued by the MEM is required and a PPS is mandatory; (4) likewise, if the MEM declares that a project larger than 10 MW is not in the public interest, the proponent may develop it with prior authorization from the MEM.
- (3) Transmission infrastructure construction and distribution activities. The Energy Law expressly recognizes that the State may exceptionally delegate the transmission activity for new projects to private companies. However, the delegation to the private sector of existing infrastructure that has been financed with funds from the State's General Budget may not be delegated to private entities. Likewise, the Regulation reinforces that the private entities, through a PPS, can undertake transmission infrastructure projects. In addition, the LOSPEE reaffirms that participants can construct dedicated transmission lines, with prior authorization from the MEM.
- (4) Participation in distribution activities. The LOSPEE posits that the construction of new distribution networks and infrastructure to supply the demand of commercial and/or industrial customers that are isolated from the distribution network may be built by such customers or companies, pursuant to a tender summoned by the distribution companies. Once the infrastructure is completed, it will become the distributor's property.
- (5) Participation in public lighting activities. The LOSPEE encourages private participation regarding public lighting activities. The MEM can exceptionally delegate to private companies, by executing a concession contract, to carry out public lighting activities, which may supply energy for traffic lights, public safety systems, public lighting, in coordination with the corresponding municipality. The infrastructure implemented in these projects at the end of the concession term will revert to the State at no cost.

Incentives to Promote the Participation of the Private Sector in Electricity Activities

The Energy Reform Law grants tax incentives for the electricity activities. For illustration, the depreciation and amortization arising from the acquisition of machinery, equipment, and technologies destined to the implementation of SGDAs based on non-conventional renewable energy will be deducted by an additional 100%. In addition, transfers and imports of equip-

ment and accessories for solar photovoltaic generation will have a zero tariff.

Likewise, although it is not a direct incentive for private entities per se, the LOSPEE has established that the ARC will have new responsibilities, related to the environmental (1) regulation (issue authorizations), (2) control, (3) sanction, and (4) monitoring. In that sense, this is expected to bring agility and reduce time periods for obtaining the environmental authorizations, which are required to perform the electricity activities by participants.

Conclusion

As a conclusion, the Ecuadorian electricity regulation is adapting by the recent legal reforms to widen the framework for new modalities of participation by private companies. This is, theoretically, favorable to increase the power demand, in the long term, and strengthen the country's energy industry.

Patricio Albuja, Reporter

What to Expect of the Yasuni ITT Decommissioning Process

How Ecuador Got Here

On August 23, 2023, Ecuador people, through a national referendum, decided to keep Yasuni ITT (Ishpingo Tamococha Tiputini) oilfield – Block 43 of the Amazon Basin crude oil under the surface. The exact translation of the question asked in the mentioned referendum was if we agreed to retain crude oil of Block 43 indefinitely under the surface. Despite different interpretations of what to understand of this question, it is commonly understood that this means decommissioning a currently producing oilfield: Block 43.

The result was 5,541,585 votes (58.95%) in favor of terminating oil and gas operations in Block 43; and 3,859,507 votes (41.05%) against it.

In order to provide context, and to understand the potential consequences for the country, it is worth mentioning that Block 43 is one of the major producing oilfields in Ecuador. According to Petroecuador—the public company operator of the oilfield—in 2023 this oilfield produced an average of 54,466 barrels per day. According to the National Central Bank (*Banco Central del Ecuador*) Ecuador produced in 2023 a total average of 475,270 barrels per day; which means that ITT was roughly 11% of Ecuador's total production in 2023. Currently, Ecuador's Hydrocarbons Regulatory and Control Agency (*Agencia de Regulación y Control de Hidrocarburos*) reported that as of July 3, 2024, ITT's production dropped to 10,655 barrels per day, most likely as consequence of the referendum and to comply with its obligation to decommission.

To understand how Ecuador got to this point it is necessary to briefly review the process that concluded with the referendum.

Article 407 of Ecuador's Constitution determines that it is prohibited to produce hydrocarbons within protected areas and areas declared as intangible, except for when the President requests it and the legislature approves it on national interest grounds. Yasuni ITT – Block 43 is an oilfield inside Yasuni national park, which is considered one of the most biodiverse places on earth. As such, on September 24, 2013, the National Assembly of Ecuador declared Block 43 oil production of national interest and approved exploration and production operations of Petroecuador.

Before the approval from the legislative power, an NGO called Yasunidos started a constitutional referendum request by which they sought to ask Ecuador's citizens if they were in favor of the government to begin E&P operations in Block 43. The question was proposed before the National Assembly approved operations in Block 43. The process for the referendum ended almost 10 years later with the final ruling from the Constitutional Court (N° 6-22-CP/23) dated May 9, 2023, which approved the referendum. The referendum took place on August 23, 2023. This ruling analyzed the formal and material requirements of the question in regard to its constitutionality—six of nine Constitutional Judges ruled in favor of the request and the referendum had complied with the needed requirement to be launched. The Constitutional Court determined that if the referendum result was favorable, which it was, the decommissioning activities in Block 43 should be done orderly and progressively within one year from the results' official notice. This means that complete decommissioning should occur by August 31, 2024. Additionally, the Court ruled that Petroecuador is not able to contract any services for Block 43 that would entail E&P operations (this probably explains the decline in production).

Despite having won the referendum, the debate and questions are far from over on how to decommission a producing oilfield and which was, not long ago, one of the most relevant oilfields in the country; and what is the true scope of the referendum obligation, especially when Ecuador is undergoing a security and economic crisis and these resources are highly needed.

How to Decommission a Productive Oilfield

Has It Ever Been Done?

Decommissioning or abandonment is the term used to describe a series of activities for the end of life of a well or oilfield for nonproducing wells to be made safe. Decommissioning typically involves plugging wellbores with cement to prevent groundwater contamination and protect oil- and gas-bearing formations. Storage tanks, wellheads, waste handling pits, processing equipment, pumpjacks, and other equipment are removed. See Owen L. Anderson et al., *International Petroleum Law and Transactions* § 7.4.1.1 (Rocky Mt. Min. L. Fdn. 2020).

The aforementioned book broadly presents the main obligations that countries have enacted in regard to decommissioning obligations of the operator: (1) request for partial or total removal; (2) filing of a decommissioning plan; (3) title to useful structures; (4) guarantees for decommissioning activities; (5) compensation for environmental liabilities; (6) residual liabilities of the decommissioned areas; and (7) fiscal and accounting mechanisms to secure decommissioning activities.

In Ecuador, decommissioning procedures and specific rules are usually enacted on E&P contracts for private operators considering it occurs after contract termination or when an area is relinquished. Additional technical rules and approvals are found in the Hydrocarbons Operations Regulation (*Reglamento de Operaciones Hidrocarburíferas*). For public operators, since there are no contracts applicable, the only specific technical decommissioning rules are the ones set in the Hydrocarbons Operations Regulation. These regulations contain approval and procedure obligations for well plug-ins for when wells have not been successful or have been damaged. There is no hypothetical for plug-in for perfectly healthy and currently producing wells such as the ones in Block 43. Perhaps Petroecuador would rely on international technical parameters to safely plug-in operating wells. In addition, the infrastructure is useful, therefore, unlike other decommissioning processes, most assets may be useful in other Petroecuador operations. Furthermore,

this specific operation, due to the environmentally fragile area, required the use of water transportation, which increased the costs and technical difficulties of any other Petroecuador operation in the region.

I have not been able to encounter other examples around the world of a decommissioning process of a producing oilfield, especially of a young operation such as the one in Block 43 of Ecuador. Legally and technically this process will be a challenge to perform. Afterwards, we should expect to leave several lessons for similar cases in the future especially in regard to new regulations and technical feasibility.

Decommission in One-Year

In addition to the legal and technical potential problems that will face the decommissioning of Block 43, the Constitutional Court added that it has to be done within one year from the date of notification of the official results of the referendum—this is August 31, 2024. Is it possible to decommission a producing oilfield in one year? Technical, administrative, and economic arguments have been discussed in regard to how this decommissioning may not be performed in a year.

As discussed above, there is no regulation nor clear examples on how technically decommissioning of an operating oilfield should be performed. Aside from the technical difficulties, there is a legal and administrative side that has to be taken into account: the contracting process and budget needed for decommissioning services. Petroecuador has administrative and economic autonomy to procure the required decommissioning services. Nevertheless, the procurement procedures are usually lengthy and will probably require a deep search for international specific services in order to avoid any environmental risk in the decommissioning process in an environmentally protected area and which has the public eye on it. It is still to be determined if there are specific services companies that would provide services for decommissioning of a producing oilfield.

Furthermore, these services will have to be included in Petroecuador's budget. Petroecuador estimates that decommissioning would cost the public company approximately US\$600 million and a total cost, including lost profits, of up to US\$5 billion. In addition, Petroecuador disclosed to the Constitutional Court that they should terminate at least 900 service contracts that are currently enforceable for Block 43. For these reasons, a former Minister of Energy declared that complete decommissioning would take at least five years. Aside from these difficulties, it is worth mentioning the political instability of the country which has resulted in changes in Petroecuador's management. The Constitutional Court did not foresee these circumstances in their ruling when analyzing the deadline imposed.

Interpretations of Referendum Obligations

In regard to the Constitutional Court requirement to execute the referendum obligations within one year, there have been different interpretations on the obligation that may grant Petroecuador additional time to complete a decommissioning process.

In November 2023, the General Manager of Petroecuador declared that by August 31, 2024, the oil production of Block 43 will terminate and as of this date the decommissioning process will begin. This is an interpretation of the referendum question and of the Constitutional Court ruling: that the obligation is to terminate production operations and not to complete decommission in one year.

It is true that neither the referendum question nor the Constitutional Court specifically stated that the decommissioning

process should be concluded by August 2024, and that the questions only stated to "keep the crude oil beneath the surface of Block 43" by such date. From a literal reading of the question, it does not establish decommissioning and may be argued in favor of the interpretation that the obligation only included the termination of production operations in the oilfield. Nonetheless, was that the understanding and true objective of the referendum promoters and of the Constitutional Court?

The motive of the referendum promoters was clear from the beginning—to protect the environment of one of the most biodiverse areas in the world—ITT. Therefore, it is safe to argue that they expected not only for production operations to stop but for all operations—including any decommissioning services—to conclude by August 2024. The Constitutional Court's understanding is harder to analyze. In their ruling N° 6-22-CP/23, paragraphs 83 to 91, the court established that it is "prudent" to grant a one-year period to comply with the referendum in order to repair any environmental liability and to be orderly for the legal, economic, social, and environmental consequences. From these passages of the mentioned ruling, it may be argued that the court is expecting certain decommissioning activities especially in relation to environmental repairs—and not only to stop production operations—therefore the deadline provided. It can be argued that if it were not for the additional activities that the court is expecting, it would have requested an immediate halt of the production operations. It is worth mentioning that the court does not invoke nor analyze the technical side and feasibility of these alternatives.

It is possible that Petroecuador will not complete all decommissioning activities by August 2024 for the reasons analyzed above. Thus, it may be possible for the referendum promoters to begin a procedure before the Constitutional Court requesting that Petroecuador fully comply with the referendum obligations. After which, the parties may argue before the court on the reasons and activities performed up until such time discussing the execution of its obligations. Finally, a ruling of the Constitutional Court on the execution of the referendum will determine the scope of the decommissioning activities Petroecuador should have complied with.

Environmental Permits

Since there are no specific rules, nor examples, of a decommissioning process of a currently producing oilfield, a question that has been raised is the need to perform the rights of indigenous people and communities living in the influence area to be consulted in accordance with the Constitution and international obligations.

Indigenous communities have the right to be consulted in regard to plans and programs of oil production in their lands in order to determine the potential affected interests of these communities in accordance with article 57.7 of the Constitution and article 15 of the International Labor Organization Convention N° 169. According to Petroecuador, seven indigenous communities live in Block 43 including Kichwas and Waoranis. Currently, there is no law or secondary regulation that fully develops the scope of this right. It may be argued that the termination of oil production has a direct effect on the indigenous communities living within Block 43 in regard to compensation and other benefits from oil production; therefore, they should have the right to be consulted prior to decommissioning the oilfield.

Another consultation right refers to article 398 of the Constitution and the Escazu Convention enacted on March 4, 2018, and in force in Ecuador as of April 22, 2021. The consultation refers to a requirement to obtain an environmental license for

high environmental impact activities such as oil and gas operations. This is the right to be informed and afterwards be consulted of all people who are directly affected by a high impact project, in this case: E&P operations. The consultation result is not binding. In this regard, an argument that could be raised is the environmental impact of the decommissioning process of an operating oilfield is of high impact to the environment and may require an environmental license for these specific activities and therefore for the communities affected to be consulted.

Interestingly, the only two provinces that by majority voted against the referendum consultation were Orellana and Sucumbíos, where Block 43 is located. This may be due to the fact that ITT operations leave the local Municipality of Aguarico approximately US\$70 million per year and that local communities offer transportation and other services to Petroecuador, which is an important source of income. It may take long for another source of income, such as tourism, to be as profitable and immediate for these communities as oil and gas operations. Especially since these provinces are among the most impoverished of Ecuador: In Orellana 59% (and Sucumbíos 55%) of their population live in poverty according to a 2022 survey conducted by Ecuador's Statistics Agency (*Instituto Nacional de Estadísticas y Censos – INEC*).

Under these conditions and numbers, it may be argued that a potential consultation to the indigenous communities and to affected communities enforcing their constitutional and international rights in regard to the decommissioning activities of Block 43 could provide additional arguments to determine how and when the referendum decision should be applied.

What to Expect Next

The referendum obligations impose Petroecuador and the Ecuadorean State with a very high threshold to meet in a very unprecedented situation. As shown above, there are several milestones to meet and positions to be discussed before Block 43 is finally decommissioned, which is the ultimate objective of the referendum.

The Government has to juggle between arguments to demonstrate its compliance with the people's will to preserve the environment in ITT whilst determining the technical feasibility of the obligation and the economic complications entailed.

Most certainly by August 31, 2024, we should expect a position by the Government on how they have complied with the referendum and with the Constitutional Court ruling, but also a position by the promoters on what legal ground they should challenge its compliance.

MÉXICO

Rodrigo Sánchez Mejorada Raab, Reporter

Ganfeng Lithium Group Files Arbitration Claim Against Mexican Government over Lithium Concession Cancellations

In a significant legal move, Chinese company Ganfeng Lithium Group has filed an arbitration claim against the Mexican government. The claim is in response to a decision by Mexico's Directorate General of Mines to cancel nine mining concessions over mining lots covering a lithium deposit near Bacanora, Sonora.

The arbitration request was submitted to the International Centre for Settlement of Investment Disputes (ICSID), an arm of the World Bank. Ganfeng's subsidiaries, Bacanora Lithium Limited and Sonora Lithium, are also part of the legal action aimed at initiating proceedings against Mexico.

Ganfeng Lithium's plans, which had promised lithium production in its financial statements since 2019, were disrupted by the 2022 Mining Law reform. The reform prohibited the granting of new lithium concessions, banned open-pit mining—necessary for lithium extraction in the Bacanora project—and basically nationalizing lithium by making the entire lithium exploitation chain exclusive to the State.

Ganfeng Lithium Group is seeking compensation from Mexico for damages resulting from alleged violations of bilateral investment treaties between China and Mexico, and between the United Kingdom and Mexico. The company also demands payment of interest and all relevant arbitration costs and fees.

As of now, the financial impact of the canceled concessions is unclear, as the process allowing the Mexican government to defend itself has yet to commence.

Following the cancellation of the concessions, the affected corporations filed administrative review appeals with the Ministry of Economy to contest the decisions. In November 2023, the cancellation of the mining concessions, originally issued by the Directorate General of Mines, was confirmed.

In May 2024, Shanghai Ganfeng, Bacanora, and Sonora initiated arbitration proceedings with the ICSID, challenging a series of laws, regulations, and measures enacted by Mexico, including the nationalization of lithium decreed by President Andrés Manuel López Obrador.

PERÚ

Luis Felipe Huertas del Pino, Reporter

Southern Copper Restarts Activities at Its Tia Maria Mining Project

On July 1, 2024, Southern Copper Corporation (SCC) announced the restart of activities at its Tia Maria project. The company stated that the appropriate social and political conditions have been reached, allowing the resumption of the project, which had been suspended for some time.

Tia Maria is a copper oxides project that, despite having obtained all the necessary governmental authorizations, has so far been unable to be built and operated. This is due to the numerous tensions between SCC, its owner, and the population of the Tambo Valley in Arequipa, a predominantly agricultural region located downstream of the project.

The mineral deposit of the Tia Maria project was explored intensively between 2006 and 2008. SCC was unable to carry out the project based on the first environmental impact assessment (EIA), submitted for approval in 2009, as it aimed to source groundwater and surface water from the watershed, which was considered unfeasible by local farmers. The EIA was subsequently approved in 2014 after the company opted for seawater instead. Subsequently, SCC obtained authorization to build the mine, but has so far been unable to start construction due to local opposition.

SCC has operated several mines continuously in Peru since the 1950s. It started its activities with the development of the Toquepala copper mine, located in Tacna. In the 1960s, it began operating its copper smelter in Ilo and later, in the 1970s, it started operations at its second copper mine, Cuajone. Today, after expanding successfully its operations in both mines, SCC is one of the companies with the largest copper reserves in the world and one of the main copper producers in Peru.

An interesting fact is that SCC was the only company belonging to the *Gran Minería*, a term that designates the largest

mines in the country, that was not expropriated during the government of Juan Velasco Alvarado (1968–1975). This unique situation has made SCC a long-standing player in the industry, now having to contend with the legacy issues of past mining practices in a way that is uncommon for other companies.

In Peru, the first environmental regulation, the *Código del Medio Ambiente y los Recursos Naturales*, was enacted in 1990, marking the beginning of the establishment of environmental institutions and governance in the country. Prior to this, environmental pollution was virtually a legal byproduct of economic activities, and in the mining sector, it was not subject to government sanctions until 2000. Consequently, up until the 1990s, mining in Peru was a highly polluting activity, resulting in significant environmental liabilities. These issues remain a bitter memory for the local communities who had to endure the negative externalities.

Between 1968 and 1975, Peru's main mines, along with several other extractive businesses and utilities, were nationalized by the government and operated by State-owned companies under an economic model that viewed the State as the primary driver of the economy. In the 1990s, the government of Alberto Fujimori liberalized the economy and privatized these State-owned mines. This economic liberalization was accompanied by the establishment of environmental institutions in Peru. Legal principles such as the polluter-pays principle, the mitigation hierarchy, and the requirement to prepare EIAs for new projects were introduced into the legal framework. Consequently, the government had to assume a significant portion of the existing environmental contingencies to facilitate the privatization process. This approach theoretically allowed new private operators to acquire State-owned operations without inheriting costly environmental liabilities.

In the case of SCC, although its operations had to undergo PAMA adaptation processes to comply with new environmental standards, the absence of a “clean slate”—common in privatizations—has led the population to continue associating the company with past malpractices. In other words, the company's continuity became a hindrance rather than an advantage. This sentiment was clearly expressed by the mayor of Islay, a province downstream of the Tambo River, who stated: “We are not against mining activity, but we are against the company.”

The resumption of activities at Tia Maria represents a great opportunity to reactivate the local and national economy, due to the potential for employment generation and the increase in copper production implied by this project. SCC's decision to restart the project indicates that progress has been made in creating favorable social and political conditions. The start-up of the project will improve the perception of stability in the country and will likely attract more investment in the mining sector.

However, this restart will also revive old conflicts. Opposition from the local population, especially farmers in the Tambo Valley, has been a significant obstacle in the past. However, SCC's continuity of nearly seven decades of operations may be its best tool to build trust with the population. SCC has demonstrated in the past its ability to successfully adapt to new environmental standards and learn lessons, which generates optimism. Proper management of these challenges will be crucial to the success of the project.

Oscar Benavides, Reporter

Positive Signals for the Peruvian Mining Industry

Previous reports have focused on the messages provided by Peruvian authorities reaffirming the government's intention to improve and reduce the permitting requirements to invest in the Peruvian mining industry.

In May and June 2024, the Peruvian Ministry of Energy and Mines (MINEM) implemented concrete measures, which can be seen as a good signal for investors. Those measures are briefly described below.

Another positive message is the announcements made by the board of Petroperú indicating that approval has been requested from the government to appoint a third-party expert to manage Petroperú with autonomy, sell some of its assets, reduce its personnel, and relocate staff, among other initial measures directed toward mitigating Petroperú's financial stress. Petroperú is the emblematic State-owned company that transports, refines, and distributes fuel, which according to most sources is technically bankrupt.

Authorization to Explore in Border Areas

As context, under Article 71 of the Peruvian Constitution, no foreigner or foreign-owned company can, directly or indirectly, hold or possess (among others) mining concessions located within 50 kilometers of the country's borders, unless expressly authorized through a Supreme Decree approved by the Cabinet.

Obtaining this Supreme Decree, which involves obtaining approvals from different entities (including the favorable opinion of the Joint Chiefs of Staff of the Peruvian Armed Forces, establishing that the relevant foreign ownership does not pose a risk to the national security), has proven throughout the years to be a very cumbersome and politicized process. They have been rarely granted in the last 20 years or so.

However, after more than 20 years, the Peruvian government has finally green-lighted the development of a mining exploration project within 50 kilometers of the Peruvian southern borders. This has been the case of a Peruvian subsidiary of Barrick Gold Corporation, which has been authorized through Supreme Decree N° 009-2024-EM, to acquire four mining concessions located in the region of Tacna on the border with Chile.

Legal Easement for a Tailings Project

The MINEM has also recently granted an approval (which issuance has been uncommon practice in the last years) in the imposition of a mining easement in favor of a Peruvian subsidiary of the Canadian listed company Cerro de Pasco Resources Inc. This easement was granted to benefit the potential development of the “Quiulacocha” tailings project.

The Peruvian Mining Law grants the right to holders of mining concessions to request the MINEM to impose a legal easement over surface lands owned by third parties for the purpose of developing mining activities. Naturally, the holder of the easement must pay fair compensation to the owner of the land (which is set by the MINEM).

It has been difficult in recent years to obtain these legal easements, as the MINEM has been reluctant to grant them due to the burden imposed on the owner of the lands. Changing this trend, on May 2024, through Supreme Resolution N° 008-2024-EM, Cerro de Pasco Resources was granted a two-year legal easement over a surface land owned by ACTIVOS MINEROS

S.A.C., a State-owned private company, which had denied authorizing the use of its land.

Initial Steps for Cutting the Red Tape

As indicated in Vol. 2, No. 1 (2024) of this *Newsletter*, mining has been identified by the Peruvian government as one of the key economic sectors for which red tape needs cutting. One of the critical aspects that needs to be revisited by the Peruvian government is the simplification and reduction of permitting requirements (and the timing to obtain those permits). It is in this context, during June 2024, that the MINEM enacted two measures that can be seen as initial steps in the efforts toward cutting the red tape:

Ministerial Resolution N° 237-2024-MINEM/DM amended the “Content Guide of the Technical Environmental Report for Mining Exploration Projects” and approved the “Content Guide of the Technical Environmental Report for Mining Exploration Projects of Minor Complexity” (the “Simplified FTA”).

In short, the Technical Environmental Report (the “FTA,” as per its acronym in Spanish) is an Environmental Management Instrument complementary to the National Environmental Impact Assessment System (known as the “SEIA”) for mining exploration projects that due to their location or characteristics are expected to generate nonsignificant negative environmental impacts.

By means of this Ministerial Resolution, two types of FTAs have been established, one of them being the Simplified FTA. The practical distinction between the two FTAs lies in the content of each one. In a nutshell, the Simplified FTA requires less information and has a reduced scope. It will only be applicable to exploration projects that (1) comprise up to 10 exploration platforms; (2) cover no more than five hectares of areas to be disturbed; and (3) are to be located at least 100 meters away from water bodies and primary forests, among others.

Through Supreme Decree N° 011-2024-EM, the daily tolerance margin of the processing capacity of beneficiation plants was increased from 5% to 10% of the approved capacity. As a result, holders of operating beneficiation plants may now operate their plants up to an additional 10% capacity, without obtaining a prior approval from the MINEM. This increase in processing capacity, however, cannot be the result of installation of new equipment, new auxiliary installations, repowering or modification of equipment operating parameters, or improvement of processes, among others, which must follow the procedures set forth for those effects.

These measures are positive signals from the Peruvian government and, most importantly, are also indicators of the State’s willingness to comply with its offers. However, there is still much more to be done, some of which is expected to be concretized if Congress delegates in the government the ability to legislate on several matters. Such delegation has been approved by Congress.

Another positive sign is that Southern Peru Copper Corporation announced that construction activities in the “Tia Maria” mining project (located in the region of Arequipa) will resume. Tia Maria is one of the most important copper projects of the MINEM’s mining projects portfolio.

VENEZUELA

Santiago Fontiveros & Isabella Sordo, Reporters

Legal Framework to Develop LNG and CNG Opportunities Within Venezuela’s Domestic Gas Market

Venezuela’s natural gas industry offers significant business opportunities within the liquefied natural gas (LNG) and compressed natural gas (CNG) sectors for private companies, since there is demand for natural gas in the country in places where gas pipelines do not reach, and this market has not yet been developed.

This report explores the potential for LNG and CNG ventures in Venezuela, highlighting how the law allows business development across the natural gas value chain for private companies. It examines the necessary authorizations for LNG and CNG projects, the commercial aspects of the regulatory framework, and how the evolving environment is set to boost the domestic gas market. With increasing local demand for cleaner, cheaper, and more reliable energy sources, there are opportunities for businesses to thrive in Venezuela’s gas industry.

General Legal Framework

The Venezuelan *Ley Orgánica de Hidrocarburos Gaseosos* (1999) – Natural Gas Master Law (NGML), regulates the whole value chain of natural gas, which includes: exploration, production, transportation, distribution, commercialization, and any activity within the chain. In accordance with its Article 2, all these activities can be carried out by the State directly or by private companies once the appropriate authorizations have been obtained in accordance with the NGML.

The NGML separates the type of authorization required by the Venezuelan State to develop each activity by reference to the value chain. To carry out upstream activities, like exploration and production, it is required to have a license issued by the Venezuelan Ministry of Oil (Ministry), and to carry out mid-stream and downstream activities (M&D Activities), such as processing, transportation, distribution, and commercialization. It is also required to have a permit issued by the Ministry as established in Article 27 of the NGML.

Specific Legal Framework

LNG and CNG are not specifically regulated under the NGML. Therefore, to develop and implement an LNG or CNG project it is necessary to determine which activities must be carried out in each particular project, taking into account its specifications and scope. For the purposes of this report, we will study the case where the scope of the project is: for the company to purchase natural gas from a producer in Venezuela (which is allowed under Article 29 of the NGML) in order for such company to transport the gas to sell it to a distributor. (It is important to note that in Venezuela the natural gas can be purchased by the State-owned company or private producers, such as Ypergas or Cardon IV, and then it can be sold to private distributors.)

In this scenario, LNG and CNG are used as a mechanism to transport the gas, when there are no pipelines, for its commercialization within the domestic market. Therefore, we are under the scope of M&D Activities (regulated under the NGML by Articles 27 to 33):

- (1) processing (in case it is necessary to separate some gas components for liquefaction or compression process);

- (2) transportation; and
- (3) commercialization.

As mentioned above, it is required to have a permit issued by the Ministry to develop these activities.

Permit Application

As described by Cesar Mata García in his book *Manual de Derecho de los Hidrocarburos en Venezuela*, to request a permit, the company shall submit an application to the Ministry accompanied by a project-motivation indicating a detailed description of the plan and the destination of the product to be processed and commercialized, in accordance with Article 27 of the NGML.

With this information, the Ministry will decide whether to grant the permit or not at its own discretion, considering the recommendations from the Gas Vice-Ministry. If granted, the permit may include special contributions to be established in favor of the Republic (for example, a percentage of the value of the commercialized gas to be paid to the Republic, similar to royalties).

Destination of the Gas and Policy Advantages

Commercialization of gas may be done via exports (which shall be specifically allowed by the permit granted by the Ministry) or within the Venezuelan domestic gas market. Recently, there has been an increasing interest from local gas producers and potential local consumers located in areas that are outside of the scope of the gas pipeline system that are currently using diesel or fuel oil to generate electricity to find cleaner, cheaper, and more reliable alternatives, such as natural gas. These potential local consumers are currently purchasing diesel at elevated prices (higher than it would be to purchase CNG or LNG).

It is important to point out that a CNG or LNG project to develop the domestic gas market may have policy advantages over export projects to obtain the relevant permits, since the NGML establishes in its Article 3 that “the activities related to

gaseous hydrocarbons shall be directed primarily to national development, through the intensive and efficient use of such substances, as fuels for domestic or industrial use, as raw material for industrialization purposes and for their eventual export in any of its forms.” This policy emphasis on national development creates a favorable environment for CNG and LNG projects aimed at supplying the domestic market and strong arguments that may be used in the permit application for the Ministry.

Gas Prices

In Venezuela, the State participates in the gas pricing process. In accordance with Article 46 of the Rules for the NGML, the Ministry “will establish the methodologies for the calculation of the gas prices in the domestic market” via resolution. However, Article 47 of the Rules for the NGML establishes that gas producers and marketers may request the approval from the Ministry to establish a price, different from those established in the respective price resolutions, for specific supply contracts. This exception is contemplated in order to consider the economics of each particular project and it provides for an opportunity for the relevant parties to negotiate and agree on a price.

Final Thoughts

Venezuela’s established legal framework and policy, coupled with the potential rising demand for natural gas as a less expensive and cleaner energy source, creates a favorable environment for CNG and LNG projects for private companies. Companies entering this sector may expect to find opportunities for growth, contributing to the country’s first stages of development of the natural gas domestic market.

Editor’s Note: The reporters serve as director and counsel for Sucre Energy Group. The group participates in gas producing companies in Venezuela.