

Rio de Janeiro, 24 de março de 2020

NEWSLETTER

EFFECTS OF THE COVID-19 PANDEMIC ON THE REVISION OF AGREEMENTS AND AUTHORIZATIONS OF THE POWER SECTOR, ADJUSTMENTS ON THE IMPLEMENTATION AND OPERATION SCHEDULE UNDER THE FORCE MAJEURE

The whole world is feeling the consequences of the pandemic caused by COVID-19, the new coronavirus (Sars-Cov-2), that affected the whole production chain on numerous sectors of the economy, reducing and suspending various services and the abrupt decreasing in the industrial activity.

This situation is already affecting the contractual relations and is raising the possibility of suspension, revision and termination of the agreements, imposing the concessionaires, permitted and authorized agents on the power sector to start analyzing delays and consequently the rescheduling of the implementation and operation of the projects based on the concept of the force majeure and frustration of purpose doctrine.

Last Friday, March 20, 2020, the Brazilian Congress approved the Legislative Decree n. 6, which acknowledges the state of

emergency requested by the Federal Government due to the COVID-19 situation, which, combined with the numerous measures being taken by all other governmental authorities, per se may justify the request for revision of the agreements. Of course, the actual impact on each business is different and must be accessed individually to determine the resulting effects.

In connection with the public services of distribution of power, Brazilian Electric Energy Agency (ANEEL), today, March 24, 2020, held the 3rd Extraordinary Public Management Meeting of 2020, with the purpose to adopt measures to preserve the Brazilian Electric System (SEB) upon the COVID-19 chaos and decided, unanimously, in short, the following (subject to further confirmation of the vote to be published and the relevant normative ruling to be enacted):

(i) The distribution companies (DisCos) cannot suspend or cut the power even upon lack of payment of all residencies and services that are essential to the population. Asked all the consumers that have the means to pay their bills. Instructed the DisCos to seek alternative ways to collect their unpaid bills, but without suspension.

(ii) Waiver of the compliance by the DisCos of ancillary obligations and suspend the compliance of certain other regulatory obligations.

(iii) Maintenance of the Power Social Tariff and flexibilization of the required proof and revision of the poverty condition to keep the benefit up to the end of the pandemic.

(iv) Alternative commercial routines for the DisCos such as the consumer informing the reading of the power measuring devices, electronic bills or accessible via website, remote customer service, make urgency and emergency services as well as essential services a priority (especially hospitals and clinics), and reduction of scheduled maintenances.

(v) Releasing the regulatory impact analysis and Public

Audience and immediately enactment of a normative ruling.

On the other sector activities, the agents must have attention to the force majeure provisions on the agreements, especially in relation to the procedures and terms for notification to the Governmental Authorities.

On the same token, any penalty to be imposed by ANEEL resulting from the breach of the agreement milestones or the impossibility to render the required services must be contingent upon the commencement of a penalizing administrative procedure evidencing that the concessionaire is actually liable for the delays or if such delays are due to force majeure events or acts from governmental authorities.

Usually, agreements (whether EPCs, concession agreements or authorization acts, for instance) provide for the relief in contractual obligations when a party is affected causing delays in construction works or the impossibility to render certain services due to the acts of the Governmental Authorities or resulting from force majeure events. The same principle is applied on the energy marketing agreements when such events

cause the drastic reduction or even absence of power consumption in certain businesses. It is important to note that this must be addressed on a case by case basis.

Currently there is no position from ANEEL on such matter. The existing rule determines that in the event of occurrence of a force majeure event and/or status of emergency, ANEEL will start a specific administrative procedure to evaluate the request for determination of a force majeure event.

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render the required services must be contingent upon the commencement of a penalizing administrative procedure evidencing that the concessionaire is actually liable for the delays or if such delays are due to force majeure events or acts from governmental authorities.

At this point, the important is to act on a preventive manner and follow all the legal, regulatory and contractual rules to inform or notifying the other parties or the governmental authorities of such force majeure impacts on your business.

In case you have any questions regarding the above, our energy team is prepared to respond to all your queries.