



ENERGY

Newsletter

Nº 34 / November 2020

This issue of our Energy Newsletter provides information on the main administrative and regulatory actions and legal texts related to regulation of the electric energy sector in Brazil. This material is for informative purposes only and should not be used for decision making. Our lawyers are available to provide specific legal advice.

ENERGY AND NATURAL RESOURCES AREA

ENERGY TEAM

Rafael Gagliardi, Raphael Gomes, Pedro Dante, Bruno Crispim, Renato Edelstein, Carolina Delamare and Yasmin Yazigi.

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On October 5, 2020, **Raphael Gomes**, partner of the Energy team at Demarest Advogados, contributed to an article for the magazine Valor Econômico, under the title “End of discount accelerates renewable projects”.

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On October 7, 2020, **Raphael Gomes** and **Bruno Crispim**, members of the Energy team at Demarest Advogados, were recognized by The Legal 500 in the categories of Next Generation Partner and Rising Star, respectively.

On October 19, 2020, **Pedro Dante**, a lawyer for the Energy team at Demarest Advogados, contributed to an article for the magazine Canal Solar, under the title ‘Free market grows 22% and reaches the mark of 8,247 consumers”.

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On October 26, 2020, **Raphael Gomes**, partner of the Energy team at Demarest Advogados, contributed to an article for the magazine Energy Today, under the title "Asset successfully completed: time to take care of the reliability of the operation".

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Corporate PPAs may break record in 2020, points out BNEF

Global volumes of corporate energy contracts are above that recorded in 2019 in the last three months. According to Bloomberg NEF, by the end of September there are already 14.9 GW against 19.6 GW for the whole of last year. In an historical comparison since 2010, it is already the second largest volume of contracts.

“What we have seen is an impact of the pandemic differentiated from country to country. The volumes are increasing in places due to the drop in prices that have made these PPAs more attractive”, explained the executive in her participation in Brazil Windpower.

[Read in full](#)

Pepitone recognizes Aneel’s inaction in relation to the social tariff

The director-general of the National Electric Energy Agency, André Pepitone, admitted on Tuesday (27) that the institution is taking a very passive stance in relation to the fulfillment by the distributors of the policy of including low-income consumers in the social tariff. Pepitone recalled that the federal government's unique register of social programs has 29 million subscribers, of which 16.5 million are eligible for discounts on the electricity tariff, but only 11 million benefit from the initiative.

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The Energy Research Company (EPE) made available to the market another resource booklet of the Technical Assistance Project of the Energy and Mineral Sectors (META) Project, whose main objective is to contribute to expanding and consolidating the advances of the Brazilian energy and mineral sectors, giving support to the country's competitiveness and economic and sustainable growth. Data will be used to update the projection methodology for Brazilian industrial energy consumption.

[Read in full](#)**EPE publishes instructions for auction of isolated systems**

The Energy Research Company (EPE), in compliance with Ordinance MM No. 341/2020 and in accordance with Law No. 12.111 / 2009, published a document with instructions for the drafting and preparation of supply proposals for serving customers isolated systems. The bidding is expected to take place in March 2021. The event will contract solutions for the supply of energy to 23 locations in the North of the country that are not connected to the national interconnected system (SIN).

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The return of tax credits resulting from the withdrawal of ICMS from the PIS and Cofins calculation base may lead to an average reduction of 4.2% in the tariffs of captive consumers in subgroup A4 as early as 2021, according to an estimate by TR Solutions.

[Read in full](#)**Minister announces investments of BRL 15.5 billion in nuclear in the coming years**

The Minister of Mines and Energy, Bento Albuquerque, announced on October 28, during the XI International Seminar on Nuclear Energy, the figure of BRL 15.5 billion in the coming years for the resumption of the sector, with expected expansion of uranium/yellow cake exports up to 1.5 tons/year and projections for generating positive employment and income for the country: the plan is to accelerate, build and operate Angra 3 and resume Caetité.

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MME believes conversion into law of MP 998 still possible this year

The Ministry of Mines and Energy is working with the prospect of approval of MP 998 by the National Congress later this year. For the time being there is no alternative if the matter does not pass the scrutiny of the legislature whose deadline for analysis is until February, as the recess occurring at the end of the year is not counted in this period.

The secretary pointed out that the premise of the measure is not to affect the R&D chain in the country, especially at a time when the modernization of the power sector is being discussed. In addition, they are analyzing the proposals that deal with the deadline for reducing subsidies. Another point is the possibility of opening existing projects to the capacity reserve.

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Aneel sees space for hiring DG to improve supply

Christiano Vieira da Silva, director of the National Electric Energy Agency (Aneel), embraced the challenge of unlocking this agenda and believes that there is room for efficient contracting of DG by distributors. Although the legislation authorizes the full transfer of the costs of this type of solution to energy consumers up to the limits established by the regulation of the electricity sector, the issue is viewed with caution by the concessionaires.

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Wind generates impact of BRL 260 billion in Brazil since 2011

On the day that the wind power in the country reached 17 GW in installed power, a study commissioned by the Brazilian Wind Energy Association points out that the socioeconomic and environmental impacts of wind power generation in the country are more than BRL 260 billion.

A highlight given by the study is that due to its characteristic of being complementary to other economic activities, the wind source brings an important increase to the income of the producing regions. It also says that in view of the value of electricity, this complementary income becomes the main source of income for the areas dedicated to its production.

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Offshore wind could arrive in 2027

The first offshore wind projects may have their first MWh produced in Brazil in 2027. This is the forecast of the Brazilian Wind Energy Association (ABEEólica), which sees this type of project with economic viability three or four years from now. This should be the deadline for three barriers to be overcome in the country: competitiveness, regulatory issues and the market, the latter being the most challenging in ABEEólica's view.

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Price for Southeast/Midwest, South and North increased 17% for the first week of November; Northeast saw a 19% drop – the second consecutive reduction.

[Read in full](#)**Electricity consumption increases 2.6% in September**

Electricity consumption in Brazil grew for the second consecutive month and in September 2020 totaled 40,227 GWh, representing an increase of 2.6% compared to the same month of 2019, according to EPE. The accumulated consumption in 12 months reached 472,368 GWh, showing a negative variation of 1.4%.

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The National Bank for Economic and Social Development (BNDES) released about BRL 1.1 billion to finance two large solar projects, one in the municipality of Oliveira de Brejinhos (BA) and the other in Araxá (MG), the financial institution announced in a press release on October 23. The projects are expected to generate 3,400 jobs.

[Read in full](#)**National electricity consumption rises 4.8% in October, says CCEE**

The national consumption of electricity in the first 15 days of October was 4.8% higher when compared to the same period of 2019. The performance in this month represents the biggest positive variation observed so far in 2020, informed the Electricity Trading Chamber - CCEE.

There was an increase of 3.4% in the regulated market and 8.2% in the free market. Excluding the impact of consumer migrations between environments, it is possible to observe an even greater growth in consumption in the regulated market, of 5.5%.

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Consultations](#)[Regulatory Calendar](#)**Integrated CCEE collection modernizes measurement process**

With the new Integrated Collection, the Electric Energy Trading Chamber brings a technological solution for the capture of measurement data directly with the distributors. The innovation, made available on Monday, October 19, will allow agents to build a direct connection between their management systems and the organization's Energy Data Collection System.

[Read in full](#)**Proposal changes rule to define plant delay after decommissioning**

The National Electric Energy Agency opened a public consultation to discuss changes to Normative Resolution 595, of 2013. The proposal changes the deadline for defining the delay in projects, due to temporary decommissioning agreements between generators and distributors.

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Always seeking to keep our clients and partners constantly updated on the various topics involving Energy, our Environmental area brings together news that involves Environmental Law.

We emphasize that this material is informative, and should not be used for decision making. Specific legal advice may be provided by one of our lawyers.

TEAM: LUIZ FERNANDO SANT'ANNA, FERNANDA STEFANELO, MARINA BASTOS, MANUELA ZINI AND IZABELA MEDEIROS

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On 10.23.2020, the São Paulo State Secretariat of Infrastructure and Environment (SIMA) published in the Official Gazette the Resolution No. 86, which regulates the procedures for the integration between authorizations, licenses and environmental permits with the grants, declarations and registrations of use and interference in water resources.

The Resolution describes the procedures that must be followed in an integrated way in the Environmental Agency of the State of São Paulo (CETESB) and in the Department of Water and Electrical Energy (DAEE) in cases such as (i) activities with interference in water resources, (ii) activities with hydraulic works (such as dams), (iii) macro-drainage works; (iv) renewals of licenses and grants; (v) regularizations, modifications and deactivations of activities.

MMA'S ORDINANCE No 518, PUBLISHED ON OCTOBER 1, 2020

On 10.01.2020, the Ministry of the Environment (MMA) published in the Official Gazette the Ordinance No. 518, establishing the program Forest + Carbon, with the objective of stimulating the voluntary market, public and private, of carbon credits from the native forest.

According to the Ordinance, the voluntary market of carbon credits by reducing emissions from the deforestation and forest degradation (REDD+) may establish its own rules and parameters.

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On 10.01.2020 the Federal Law No. 14,066 was published in the Official Gazette, modifying the National Dams Safety Policy, creating new rules related to water and waste dams, including changes in the Emergency Action Plan (PAE), and instituting new rules related to administrative infractions, stipulating fines of up to BRL 1 billion.

The new Law also modifies the National Water Resources Policy, increasing the fine applicable for infractions related to water resources by up to BRL 50 million.

Finally, the scope of the legislation also modifies articles of the Mining Code, increasing the obligations of prevention, mitigation and compensation of environmental impacts caused by mining.

LAW No 11,194 FROM THE STATE OF MATO GROSSO, PUBLISHED ON SEPTEMBER 25, 2020

On 09.25.2020 the Law No. 11,194 was published in the State of Mato Grosso's Official Gazette, establishing the State Policy for Promotion of Use of Biomass for Power Generation, which has the objective of diversifying the energy matrix and stimulating the production and use of renewable energy in the State of Mato Grosso.

The Policy's instruments include (i) promotion of scientific and technological research for the use of biomass in energy production, (ii) incentives for municipalities promoting projects for energy production through biomass, (iii) incentives for the creation of cooperatives and consortia, (iv) simplification of licensing for entrepreneurs in the biomass energy production chain, and (v) tax incentives for electricity generated through biomass.

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PUBLISHED ON OCTOBER 9, 2020**

On 10.09.2020, the State Secretariat of Environment and Sustainability of Pará (SEMAS) published in the Official Gazette the Normative Instruction No. 1, establishing the procedures and standards for adhering to the Environmental Regularization Program of Pará (PRA).

Such Program will be applicable to the properties whose technical analysis of the Rural Environmental Register (CAR) identifies the need to recover or recompose permanent preservation areas, legal reserves and restricted use areas, as well as the need to compensate legal reserve areas.

**SEDEST'S TECHNICAL ORIENTATION No 5,
PUBLISHED ON OCTOBER 21, 2020**

On 10.21.2020, the State Secretariat of Sustainable Development and Tourism of Paraná (SEDEST) published in the Official Gazette the Technical Guidance No. 5, which explains the need for a Declaration of Public Utility (DUP) in processes of implementation, transmission and generation of electric power, by concessionaires, permitted and authorized parties.

Under the perspective of the Federal Law nº 12.651/2012 (Forest Code), for the implantation of electric power generation, transmission and distribution by concessionaires, permitted and authorized parties, there is no obligation of issuing a Declaration of Public Utility (DUP) to consider the energy activity as public utility.

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On 10.28.2020, Justice Rosa Weber, of the Supreme Court (STF), issued an injunction suspending the National Environmental Council (CONAMA) Resolution No. 500, published in the Official Gazette on 10.21.2020, which declared the revocation of the Resolutions: (i) No. 284/2001, regulating the licensing of irrigation enterprises; (ii) No. 302/2002, regulating the parameters, definitions and limits of Permanent Preservation Areas (APP) of artificial reservoirs and use of its surroundings; and (iii) No. 303/2002, regulating the parameters, definitions and limits of APPs.

[Read in full](#)**BNDES issues BRL 1 billion in green bonds**

The National Bank for Economic and Social Development (BNDES) issued BRL 1 billion in Green Financial Letters (LFV) on 10.22.2020.

The issuance was made in the form of a private offer to BNDES' main business partners, directed at the Brazilian domestic market and with a two-year maturity.

LFV guarantees that the application of the resources is destined to finance environmentally sustainable projects, attested by a company specialized in the area. In the case of this issuance, the resources will be destined to wind or solar generation projects.

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**ORDINANCE No. 360, OF THE ASSISTANT
SECRETARY OF ENERGY PLANNING AND
DEVELOPMENT OF THE MINISTRY OF MINES
AND ENERGY, PUBLISHED ON SEPTEMBER 30,
2020**

Defines the new amounts of physical energy guarantee for the Wind Power Plants mentioned in art. 1, item II, of MME Ordinance 416, of September 1, 2015

**ORDINANCE No. 361, OF THE ASSISTANT
SECRETARY OF ENERGY PLANNING AND
DEVELOPMENT OF THE MINISTRY OF MINES
AND ENERGY, PUBLISHED ON SEPTEMBER 30,
2020**

Defines the new amounts of physical energy guarantee for the Thermoelectric Plants referred to in art. 1st, item I, of MME Ordinance No. 564, of October 17, 2014.

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MANAGEMENT SUPERINTENDENCE,
PUBLISHED ON OCTOBER 1, 2020**

Fixes the credits and debits of the Centralized Account of the Tariff Flags Resources, for the purpose of the Settlement of short-term market operations with the Electricity Trading Chamber - CCEE.

**ORDER No. 2.838, OF THE TARIFF
MANAGEMENT SUPERINTENDENCE,
PUBLISHED ON OCTOBER 2, 2020**

The Electricity Service Inspection Fee (TFSEE) is fixed for interested parties.

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**PUBLIC CONSULTATION NOTICE No. 59/2020,
FROM THE NATIONAL ELECTRICITY AGENCY,
PUBLISHED ON OCTOBER 7, 2020**

Obtain subsidies to establish the limits for the indicators of continuity of Equivalent Duration of Interruption per Consumer Unit (DEC) and Equivalent Frequency of Interruption per Consumer Unit (FEC) of Enel Distribuição Rio - Enel RJ, for the years 2021 to 2023.

**ORDER No. 2,867, OF THE TARIFF
MANAGEMENT SUPERINTENDENT,
PUBLISHED ON OCTOBER 6, 2020**

Sets the average cost of energy and power sold by distribution agents in the Regulated Contracting Environment - ACR_{med} at R\$ 253.50 / MWh for the calendar year 2021.

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**ORDER No. 2,914, OF THE TARIFF
MANAGEMENT SUPERINTENDENT,
PUBLISHED ON OCTOBER 9, 2020**

Fixes the values of the resources of the Covid Account to be passed on to the electric energy distribution concessionaires and permissionaires, until October 13, 2020, in the current accounts linked to the pass through of the Energy Development Account (CDE) Tariff Modicity, referring to the declared regulatory assets in the Term of Acceptance and accounted for in accordance with the Accounting Manual of the Electric Sector, of September 2020

**ANEEL ORDINANCE No. 6,527, PUBLISHED
ON OCTOBER 13, 2020**

Approves the second review of ANEEL's Regulatory Agenda for the 2020-2021 biennium.

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**ORDER No. 2,946, OF THE TARIFF
MANAGEMENT SUPERINTENDENT,
PUBLISHED ON OCTOBER 14, 2020**

Set the values of the cost quotas for the Incentive Program for Alternative Sources of Electric Energy - PROINFA, for the month of December 2020.

**ORDER No. 2,945, OF THE TARIFF
MANAGEMENT SUPERINTENDENT,
PUBLISHED ON OCTOBER 14, 2020**

Set the values of the quotas referring to the charge of the Energy Development Account (CDE), for the month of August 2020.

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**PUBLIC CONSULTATION NOTICE No. 60/2020,
FROM THE NATIONAL ELECTRICITY AGENCY,
PUBLISHED ON OCTOBER 21, 2020**

Obtain subsidies for the amendment of Normative Resolution No. 595/2013, in order to adjust the definition of delay of generating units, when bilateral agreements are signed between generators and distributors to postpone the beginning of supply of the Energy Commercialization Contracts in the Regulated Environment (CCEARs).

**ORDINANCE No. 383 OF THE MINISTER OF
STATE OF MINES AND ENERGY, PUBLISHED ON
OCTOBER 23, 2020**

Submits, for Public Consultation, the Electricity Transmission Concession Plan (POTEE) 2020 - Expansions and Reinforcements - Basic Grid and Other Transmission Installations (1st Issue), the Electricity Transmission Concession Plan (POTEE) 2020 - Major Improvements and Reinforcements for Increasing Useful Life (1st Issue) and the Electricity Transmission Concession Plan (POTEE) 2020 - Small Reinforcements (1st Issue)

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PUBLIC CONSULTATION	MATTER	MODALITY	DEADLINE FOR CONTRIBUTION
No. 61/2020	Obtain subsidies for the Regulatory Impact Analysis - AIR about the regulatory treatment for the establishment of hybrid and associated plants.	Documentary Exchange	21/10/2020 to 04/12/2020
No. 60/2020	Obtain subsidies for the amendment of Normative Resolution No. 595/2013, in order to adjust the definition of delay of generating units, when bilateral agreements are signed between generators and distributors to postpone the beginning of supply of the Energy Commercialization Contracts in the Regulated Environment - CCEARs.	Documentary Exchange	21/10/2020 to 04/12/2020
No. 59/2020	Obtain subsidies for the establishment of the limits for the indicators of continuity of Equivalent Duration of Interruption per Consumer Unit - DEC and Equivalent Frequency of Interruption per Consumer Unit - FEC from Enel Distribuição Rio - Enel RJ, for the years 2021 to 2023.	Documentary Exchange	07/10/2020 to 23/11/2020

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PUBLIC CONSULTATION	MATTER	MODALITY	DEADLINE FOR CONTRIBUTION
No. 57/2020	To obtain subsidies to improve the revision of the Average Price of Hydraulic Energy - PMEH and the Updated Reference Tariff - TAR, effective as of January 1, 2021.	Documentary Exchange	30/09/2020 to 16/11/2020
No. 55/2020	To obtain subsidies for the improvement of the proposal related to the Extraordinary Contractual Tariff Review of Energisa Acre - Distribuidora de Energia S.A, effective as of December 13, 2020.	Documentary Exchange	16/09/2020 to 03/11/2020

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<p>03.11 Deadline for disclosure of MCP pre-settlement reports for September</p> <p>Deadline for disclosure of the penalties pre-settlement reports for October.</p>	<p>04.11 End of period to insert surplus or deficit statements - Energy Nova MCSD for September.</p>
<hr/>	
<p>06.11</p> <p>End of the period to insert declarations of surpluses or deficits - MCSD of Existing Energy referring to November.</p> <p>Deadline for exercising the option of not receiving PROINFA's energy quotas for October.</p> <p>Deadline for disclosure of the preliminary calculation of PROINFA's energy quotas for October.</p>	

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<p>09.11</p> <p>MCP Financial Settlement Debt for September.</p>	<p>10.11</p> <p>Deadline for disclosing the calculation of the Surplus Sale Mechanism for October.</p> <p>MCP Financial Settlement Credit for September.</p>
<p>11.11</p> <p>Deadline for disclosure of pre-settlement reports of Physical Guarantee Quotas for October.</p>	<p>12.11</p> <p>Deadline for final calculation of PROINFA's energy quotas for October.</p> <p>Deadline for manifesting disagreement of the values to be settled for the MCSD assignments of Existing Energy referring to October.</p>

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Deadline for the validation of the registration of the sale price of CCEAL for the restoration of ballast of overdue plants for October.

Deadline to inform the amount of declaration of restoration of ballast of plants overdue by contract or physical guarantee.

Deadline for application WITHOUT PENDING ISSUES for voluntary termination of agent.

Deadline for application WITHOUT PENDING ISSUES: (i) registration inclusion associated with the candidate agent's adhesion process, and/or (ii) inclusion / alteration / exclusion of agents / assets / metering points.

16.11

Deadline for disclosure of the post-settlement reports of the Surplus Sale Mechanism for October.

Deadline for disclosure of MCSD processing reports for Existing Energy for November.

18.11

Deadline for disclosing the amounts of financial guarantees to be contributed for November.

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23.11

Deadline for disclosing the results of the financial settlement of Physical Guarantee Quotas for October.

Deadline for the provision of financial guarantees (except for distribution agents).

26.11

Financial Settlement of the New Energy MCS D for October.

25.11

Financial Settlement of the Existing Energy MCS D for October.

Deadline for disclosing the Energy Penalties Assessment for October.

Deadline for registration and validation of bilateral CCEAR agreement, effective for the following month.

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