

ANEEL proposes mechanisms to reduce the over-contracting effects on the Distributors

On June 9th, was judged at the Executive Board meeting of the National Electric Energy Agency - ANEEL (“ANEEL” or “Agency”), the process related to the opening of a public consultation with the objective to collecting subsidies and information for the improvement of regulatory mechanisms aimed at the contractual management of the energy contracted by the power distribution concessionaires (“Distributors”), with the objective of mitigating the impacts of COVID-19. In a unanimous decision, the Board voted to open the Public Consultation, with a contribution period from 06.11.2020 to 07.01.2020.

In general terms, the Public Consultation will discuss the mechanisms that have the objective of allowing the suspension or renegotiation of the power purchase agreement currently in force:

(a) Modulation of payments related to the power purchase and sale agreement from the Distributors

The purpose of modulating the payment of the current agreements aims to facilitate a negotiation between Distributors and generators with the main purpose of postponing / deferring payments related to power purchase agreements, through the payment of a remuneration rate to be prefixed. Therefore, a mechanism for deferring payment of regulated contracts was suggested by ANEEL.

The mechanism, according to ANEEL, could be implemented through a platform to be managed by CCEE, which allows the expression of interest in the adoption of deferral in the bilateral relationship between Distributors and sellers. In this platform, the sellers would offer their deferral period and the remuneration rate.

According to ANEEL, the deferral would allow cash relief in the short and medium term for the Distributors, which should provide a reduction on the need for raise funds via “Conta-Covid”.

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(b) Flexibility of the mechanisms for managing the Distributors' portfolios

The existing regulation allows the reduction of amounts of energy contracted under power purchase agreements by the Distributors via the Surplus and Deficit Compensation Mechanism (Mecanismos de Compensação de Sobras e Déficits in portuguese “MCSD”) and the Annual Surplus Sales Mechanism (Mecanismo de Venda de Excedentes in portuguese “MVE”).

However, even by the rules currently in force, these mechanisms can only be used in certain periods of time. ANEEL's proposal is to change the regulations to allow the Distributors to use such mechanisms to reduce the effects of eventual over-contracting.

In this context, ANEEL's proposal is to allow Distributors to declare up to 30% of the demand measured in the previous year in the MVE (the previous limit was 15%), in addition to changing the schedule for using the MVE and the MCSD.

Despite the proposed changes being subject to a Public Consultation, in the same judgment, ANEEL has also authorized “CCEE to carry out extraordinary processing of the MCSD and the MVE, both effective in 2021, in June and August 2020, respectively.”

ANEEL extends deadline for preventing the suspension of electricity supply to consumers due to the COVID-19 pandemic

In an extraordinary meeting held on 06.15.2020, ANEEL's Board of Directors postponed until 07.31.2020 the deadline for the prohibition to suspend the supply of power to consumers due to default. This is another measure by ANEEL to try to combat the effects of the COVID-19 pandemic on the power sector. This measure was already established in ANEEL Normative Resolution nº 878/2020 ("REN No. 878/2020"), but it was valid until June 26, 2020.

ANEEL has postponed the deadline because it considers that, although some states are easing social distancing measures, the state of public calamity still remains and several sectors of the economy are still being strongly affected by the pandemic.

Thus, only after 1.08.2020 the Distributors will be able to interrupt the supply of power of defaulting consumers, with the exception of low-income consumers, who will not be able to have the service interrupted while the emergency aid created by the Federal Government lasts. Within the same period, the Distributors must resume the provision of services that had been interrupted due to the REN No. 878/2020, such as face-to-face service and the delivery of printed invoices.

Finally, ANEEL determined the opening of a Public Consultation in the period from 16.06.2020 to 06.30.2020 to discuss with society the necessary improvements in REN nº 878/2020 and the transition of the return for the normality in relation to the power distribution services

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Published law that determines prior notification to the consumer of the day from which the suspension in the power supply will be carried out due to default.

On June 16, Law No. 14.015/2020 was published amending Law 13.460/2017, which provides for participation, protection and defense of the rights of users of public services in public administration, and Law No. 8.987/1995, which provides for public service concessions, to determine that the suspension of the electricity supply due to the default must be communicated to the consumer, indicating the day from which the suspension will be carried out.

The Law also determines that the suspension of supply due to default must necessarily occur during business hours and cannot be carried out between Friday and Sunday, nor on holidays and the eve of holidays.

Prior to the legal change, suspensions of electricity supply due to default could be carried out on weekends, holidays and outside business hours, with prior notice of 15 days in advance, but without specifying the day from which the suspension would take effect.

Contact us:

Rosi Costa Barros

☎ +55 11 3707 8370

✉ rosi.barros@nbfa.com.br

William de Figueiredo Lins Junior

☎ +55 11 3707 8370

✉ william.lins@nbfa.com.br

Thais Araujo Rato Tarelho

☎ +55 11 3707 8370

✉ thais.tarelho@nbfa.com.br



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