

## Legal update

### Recent news in the energy sector

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September 17<sup>th</sup> of 2018

#### **Auction process for purchase-sale contracts of annual average electric energy and its respective schedule**

On July 31, 2018, the Ministry of Mines and Energy issued Resolutions No. 40791 of 2018 and 40795 of 2018, in order to implement a mechanism to promote long term contracts for electric energy projects, complementary to the mechanisms already existing in the Wholesale Energy Market. Said mechanism will be a two-tips closed envelope bidding process, of voluntary participation for buyers and sellers (the “**Auction**”).

The Auction for long term energy will allow a greater incorporation of renewable energies to the Colombian energy matrix. In the Auction, contracts for 10-year periods will be offered, under which energy delivery obligations will begin on December, 2022. The Auction will take place on January 2019 for an aggregate amount of 3.443 GWh-year, which is equivalent to approximately 1,000 MW of installed capacity. Sellers with generation projects of installed capacity equal or higher than 10 MW can participate in the Auction.

The purpose of the Auction is to award long term contracts for energy generation projects based on, amongst others, a criteria of resiliency against events of variability and climate change. The contracts awarded to generator-participants in the Auction shall be entered into with those energy marketers who opt to participate as purchasers in the process.

The projects will be qualified, based on the criteria of resource complementarity, reduction of emissions and energy safety in accordance with the ponderations established in Resolution 40791 de 2018. Once prequalified, the sponsors of those projects exceeding a certain set qualification will be able to bid in the Auction as generators.

The requirements established by the Ministry of Mines and Energy for the prequalification of those generators who wish to participate in the Auction as sellers include the following:

- Provide a certification issued by the UPME, which must evidence that the project is registered in the registry of electric energy generation projects, minimum in Phase 2<sup>1</sup>. This phase corresponds to the stage of feasibility of a certain project, in which it is defined if the project is technically, economically, financially and environmentally feasible and convenient, and the financial structure of the project is established. This implies that the sponsor must submit to the UPME the authorisation of the environmental authority whereby it (a) decides on the alternatives submitted in the Environmental Diagnosis of Alternatives<sup>2</sup> or Environmental Impact Study (EIA) or (b) determines that the project does not require an environmental licence.

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<sup>1</sup> The validity period of the registry in this phase is of 1 year for any kind of project.

<sup>2</sup> Requirement established in the article 2.2.2.3.4.2 Decree 1076 of 2015.

- Provide a certification issued by the UPME evidencing the approval of the concept of connection to the national or regional transmission grid.
- Submit the date of entry in commercial operation of the project; S curve with construction milestones.
- The participant must be organized in Colombia.
- In case the participant is not the owner of the project, the participant must demonstrate that it has an authorization issued by the project's owner.
- Submit an irrevocable and binding offer.
- Submit a promise to organize in the future a Public Domiciliary Services company (ESP for its Spanish acronym).
- Constitute a bid guarantee of the offer for the generation project.
- Have an accounting capital that exceeds the required bid guarantee amount.

Through External Circular Letter No. 028-2018 ([http://www1.upme.gov.co/Normatividad/Circular\\_028\\_2018.pdf](http://www1.upme.gov.co/Normatividad/Circular_028_2018.pdf)) the UPME issued the schedule for the Auction for electric energy contracts. In accordance with the schedule, the maximum term to request the concept of connection will be September 28, 2018. The publication of the definitive terms of the Auction will be October 1, 2018. The Auction will take place on January 2<sup>nd</sup>, 2019 and the respective execution of the contracts shall take on January 14, 2019.

In addition, on September 10, 2018, the draft of the long term annual average electric energy purchase contract (<https://www.minminas.gov.co/foros?idForo=24039435&idLbI=Listado+de+Foros+de+Septiembre+De+2018>) was published by the Ministry of Mines and Energy in order to receive comments thereto. The mentioned draft contract will be available in the web page of the Ministry of Mines and Energy for comments. The term for sending comments expires on September 24, 2018, as the definitive version of the contract will be published on September 26, 2018.

Please do not hesitate to contact us if you have questions or comments in respect to the Auction. We will be happy to discuss and review any topics you consider appropriate.

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