



CAMPOS MELLO ADVOGADOS
IN COOPERATION WITH DLA PIPER



ENERGY InSIGHT

Newsletter
Volume VI
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Editorial

The constant review of rules and regulations in the power sector is essential to bring legal certainty to the industry. The 6th volume of the Energy InSight brings together the main proposals and improvements to Brazilian regulation that deserve to be highlighted this quarter, as well as the discussions that should guide the sector over the coming months.

In this sense, Energy InSight opens this edition commenting on the opening of **Public Consultation No. 015/2023 (CP 015/2023)** by ANEEL, published on May 11, 2023 - referring to the exceptional **proposal for the amicable termination of Agreements for the Use of the Transmission System (CUST)** that focused on consumption and generation from renewable sources.

We also paid special attention to two Normative Resolutions – REN No. 1,064/23 and REN No. 1,064/23 – published by ANEEL in May of this year, which **ensured greater legal certainty for agents in the power sector with regard to the safety and inspection of dams** under the jurisdiction of ANEEL. Both Resolutions not only strengthen the provisions of Law No. 12.334/2010 – responsible for establishing the Legal

Framework for the National Policy on Dam Safety – but also solidify ANEEL's authority on this topic.

Still within the scope of the power sector, **we analyzed the new wording of the arbitration agreement of the Chamber of Commercialization of Electric Energy (CCEE)**. This amendment brought improvements in relation to the previous arbitration convention in force, which dated from 2007.

Finally, turning our attention to regulatory revisions in the oil and gas sector, we highlight **ANP Resolution No. 924/2023**, which resolves a regulatory gap with regard to the **certification of local content for the charter of foreign rigs, vessels and stationary units (i.e., that were built outside of Brazil)**.

We wish you all a good read!

**Energy and Natural Resources team
of Campos Mello Advogados in
cooperation with DLA Piper**

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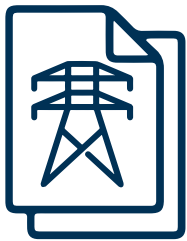
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ANEEL REGULATES PROPOSAL FOR AMICABLE TERMINATION OF CUST

**Adjustment of
installation deadlines**

On May 11th, 2023, the National Agency for Electric Energy ("ANEEL") issued notice for Public Consultation No. 015/2023 ("CP 015/2023"), aiming to obtain contributions to a proposal for exceptional measures in the management of authorization grants and Agreements for the Use of Distribution System (CUST) executed by generation agents.

To summarize, **the proposal aimed to address the impacts of the "Gold Rush"**, an event known among the sector's agents, resulting from the approval of Law No. 14,120/2021, which established the extinction of discounts on Use of Distribution and Transmission Systems Rates (TUSD and TUST) that were applicable to both consumption and generation based on renewable sources.

It is worth remembering that, pursuant to this Law, the agents would be entitled to TUSD/TUST discounts, if they:

- (i) Filed a grant request, or a request for a grant amendment resulting in an increase in installed capacity, within no longer than 12 months from the publication of Law No. 14,120/2021 – that is to say, by March 2nd, 2022; and
- (ii) Started commercial operations within forty-eight (48) months from the date of issue of the grant or its amendment.

In view of this rule, a race for obtaining grants began. One of the major problems was the difficulty in obtaining the applicable access documentation for complying with the regulatory requirements related to grant issuance, in a timeframe that would make it possible to benefit from the usage rate discount.



The proposal aimed to address the impacts of the "Gold Rush".

See Public Consultation No. 015/2023

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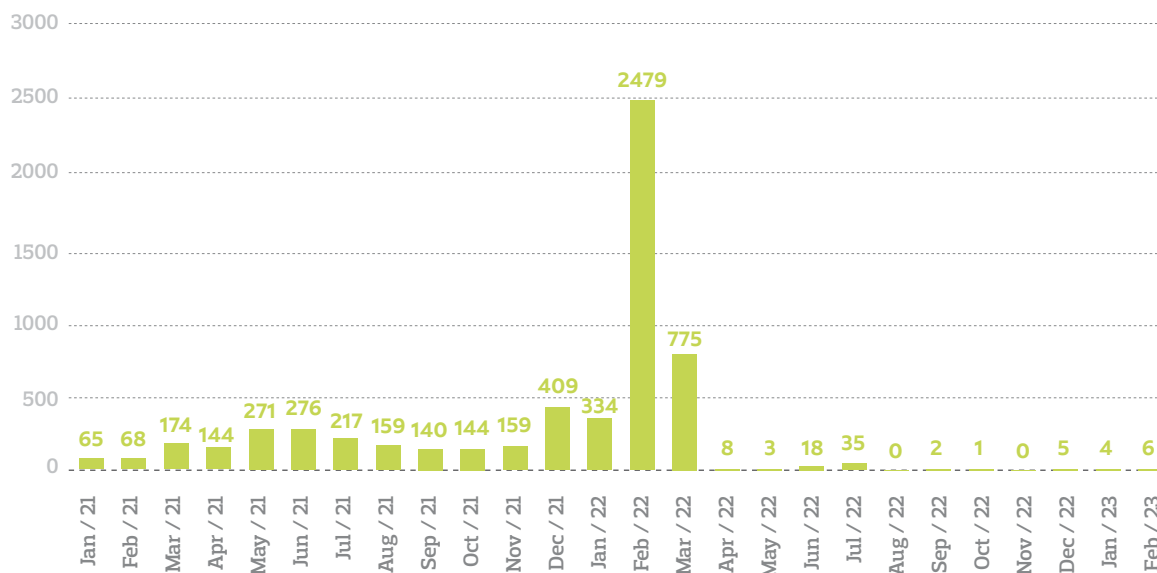
See Law No. 14,120/2021

[Link](#)

Therefore, with the legislative changes aforementioned, there was a marked increase in the number of requests for power generation authorizations filed by agents before ANEEL. Altogether, over three thousand new grant requests were filed in a short period of time, which would represent an increase of over 180 GW to Brazil's total installed capacity. In other words, if these projects were to go into operation, Brazil would then double its installed capacity¹.

¹ Available on:
[Link](#)

EVOLUTION OF GRANT REQUESTS SUBMITTED TO ANEEL



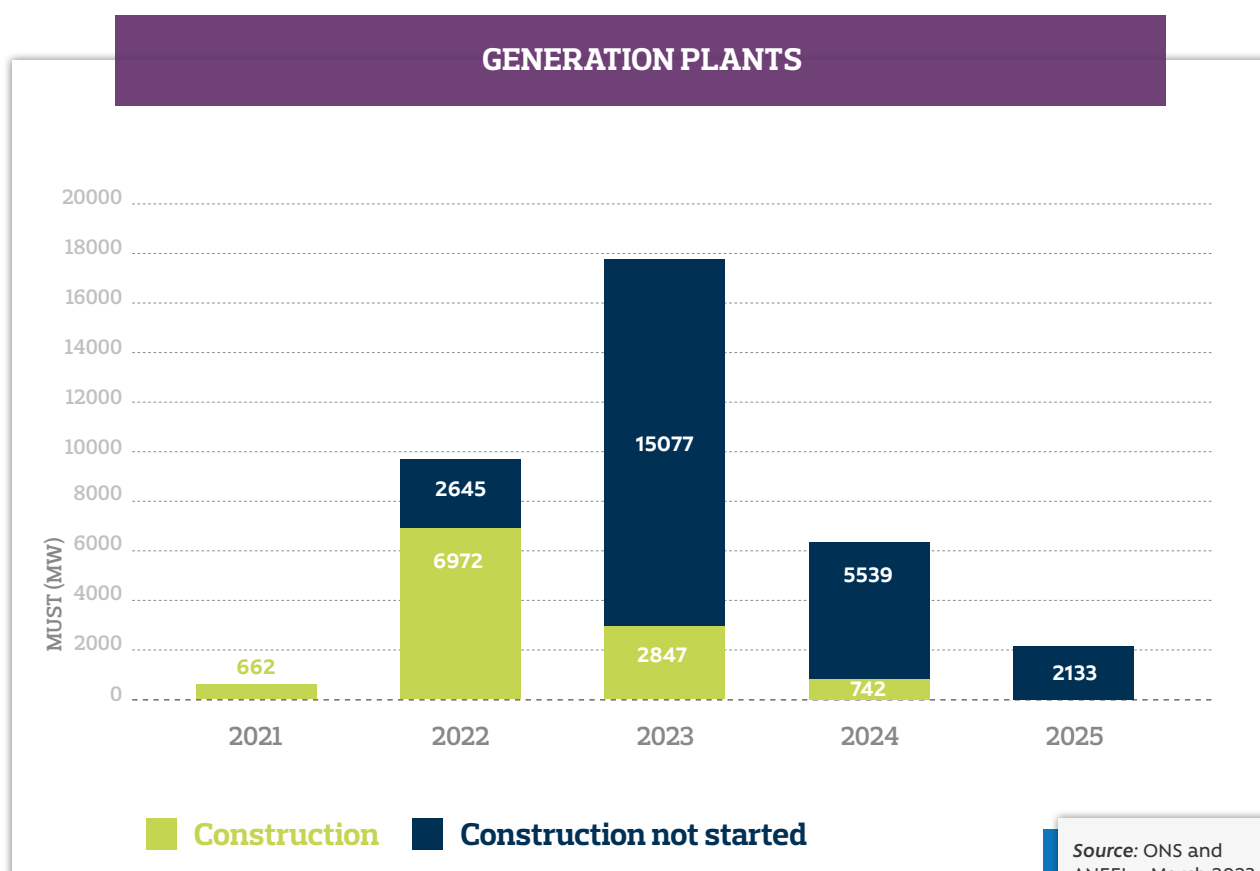
Source: SRT-SCG Technical
Note No. 2/2023

[Link](#)



This race resulted in a high number of generation plants that should start to make their respective CUST payments before their projects having even started their commercial operations.

According to ANEEL, in addition to the insufficiency of transmission outlet margins to meet all connection requests, **this race resulted in a high number of generation plants that should start to make their respective CUST payments before their projects having even started their commercial operations.** This increases the risk of CUST default and judicialization in regard to over 15 GW for generation projects that have not even started building their facilities, according to ANEEL estimates.



Source: ONS and ANEEL – March 2023

[Link](#)

Therefore, the proposal submitted by ANEEL in CP 015/2023 sought to prevent judicialization and to release transmission system outlet margins, avoiding the problems generated by the “Gold Rush.” **The proposal consisted in an exceptional mechanism for grant revocation and amicable termination of CUST executed by generation plants during the gold rush.**

For further information on the subject, please refer to the 4th volume of the Energy Insight, which includes a detailed description of the issues caused by the Gold Rush.

[Link](#)

Such exceptional mechanism was deemed so significant for the power sector that ANEEL's Board approved the possibility of adhesion of interested agents along with the opening of CP 015/2023, to anticipate this process.

The adherence was immediate. By June 6th, 2023, closing date for participation brought under CP 015/2023, the ONS had registered the intention of 292 generating plants to join the regulatory mechanism, for a total MUST of 11.78 GW to be cancelled based on this mechanism. The main interest to participate was from generating plants that had not yet started the construction of their projects.

Due to its relevance, the topic continued to be discussed by ANEEL's Board, which, on July 11th, 2023, issued Normative Resolution No. 1,065 ("REN 1,065/23").

The proposal consisted in an exceptional mechanism for grant revocation and amicable termination of CUSTs executed by generation plants during the gold rush.**

REN 1,065/23

This resolution establishes the requirements and procedures applicable to the exception mechanism for the treatment generation grants of CUST signed by generating plants.

Thus, two categories of the exceptional regulatory mechanism were created, with voluntary adhesion, as follows:



AMNESTY: Revocation of the generation grant and termination of the respective signed CUST; and



REGULARIZATION: Postponement of the implementation period foreseen in the generation grant.

Exceptional Mechanism of **AMNESTY**

Generation agents interested in participating in the mechanism of amnesty must submit to ONS, **until July 28th, 2023**:

- (i) Term of Declaration and Other Covenants (appendix to REN 1,065/23); and
- (ii) Proof of notice of termination to the applicable transmission concessionaires for termination of the respective CCTs, if any.

ATTENTION

Agents who meet these requirements will be exempted from the 12-month notice period for termination of CCTs.

The adherence to the mechanism of amnesty, according to the Term of Declaration and Other Covenants, has the following conditions, to be verified by ANEEL:

- (a) Presentation of proof of notice mentioned in item (i) above;
- (b) Proof of the generation agent's compliance with its obligations to the transmission companies (payment of EUST), accrued until July 31st, 2023;
- (c) Waiver of any discussions in any lawsuits, administrative proceedings or arbitration disputes related to the payment of EUST, fines for termination of CUST or postponement of the commercial operation date;
- (d) Proof of compliance with sector charges; and
- (e) Proof of non-existence of power purchase agreements entered in the Regulated Contracting Environment – ACR.

Systematic for the Exceptional Mechanism of **AMNESTY**

According to REN 1,065/23, after the submission and validation by ONS of the aforementioned documents, ONS will be responsible for:

1 / Assessing the usage charges related to the CUSTs for the month of July 2023, as well as determining any remaining unprocessed charges, including those that were suspended by court decision.

2 / Temporarily suspending the assessment of usage charges for CUST from the reference month of August 2023.

3 / Submitting to ANEEL, until September 14th, 2023, the list of generating plants that fully comply with the provisions of REN 1,065/23 and that are compliant with their respective Transmission System Use Charges – EUST.

ATTENTION

Generating plants not included in the list referred to in item 3, i.e., that are not properly in compliance with the payment of EUST, will have their CUST charges resumed, with retroactive effects, by ONS.

The Transmission Companies shall, within 3 business days after the due date of the invoice owed by the generating agents, inform the ONS about their compliance.

4 / After determination by SCE, which shall verify the fulfillment of the applicable regulatory requirements and, if met, it shall revoke the grants, with the return of the performance bonds, terminating the applicable CUST, without application of the termination fees.

ATTENTION

Generating plants whose grants and CUST have been terminated, under the terms of REN 1,065/23, will be exempt from any penalties already imposed as a result of ongoing inspection procedures for delay in commercial operation date.

The Superintendence of Concessions, Permissions and Authorizations of Power Services - SCE will verify the compliance of sectorial charges and non-existence of power purchase agreements in force in the ACR, regarding the agents listed in the report referred to in Item 3. In case of non-compliance with the complementary conditions referred to in the caput, the agent will have 15 consecutive days, counted from the notification by SCE, to remedy the pending issues. The ONS shall, upon notification by the SCE, resume the calculation of the CUST charges of the agents that do not resolve such pending issues by the indicated deadline, with retroactive effect.

Exception Mechanism of **REGULARIZATION**

Generation agents interested in participating in the mechanism of regularization shall submit to ONS:

- (i) Term of Declaration and Other Covenants (appendix to REN 1,065/23), **until July 28th, 2023**; and
- (ii) Financial guarantees for the compliance with the CUST, including all payments of amounts due, corresponding to 40 months of EUST, until September 1st, 2023, through a bank guarantee and effective until the commercial operation of the respective generating plant.

The adhesion to the mechanism of regularization, through the Term of Declaration and Other Covenants, has the following conditions, to be verified by ANEEL:

- (a) Presentation of the financial guarantees mentioned in item (i) above; and
- (b) Waiver of any disputes in lawsuits, administrative proceedings or arbitration litigations related to the payment of EUST, postponement of the commercial operation date not based on requests for the recognition of an exclusion of liability.

Systematic for the Exception Mechanism of **REGULARIZATION**

According to REN 1,065/23, after the submission in due time and validation by ONS of the above-mentioned documents, ONS will be responsible for:

1 / Deferring the billing of the total amount of charges due that were suspended by court decision, related to the CUST, until the commercial operation date of the respective power plant or the expiration of the implementation period postponed under the terms of REN 1,065/23, whichever occurs first;

2 / Assessing the usage fees, as established in each CUST, from the reference month of August 2023;

3 / Submitting to ANEEL, by September 14th, 2023, the list of generation plants that fully comply with the requirements of REN 1,065/23; and

The Authorization Acts of such generating plants will reflect the right to postpone the implementation period of all power units by 36 months, as of the date of publication of REN 1,065/23. Such postponement will be subject to a specific authorizing act issued by SCE.

4 / Amending the CUST of the generating plants listed on the list mentioned in Item 3 above so that they reflect the obligations provided for in REN 1,065/23.

ATTENTION

Generating plants which implementation dates have been postponed, pursuant to REN 1,065/23, (i) will be exempt from any penalties already imposed due to ongoing inspection procedures for a delay commercial operation date and (ii) may request the postponement of the execution of the CUST, under the terms of the applicable regulations.

Considering all the above, it is clear that ANEEL and ONS are concerned about the impacts generated by the "Gold Rush" and that they intend to work together with the players of the sector in order to find the best possible outcome for this situation. REN 1,065/23 is an extremely important step to minimize future impacts on the power sector, but it is only one of several measures that need to be adopted by the sector to ensure the expansion of transmission infrastructure in Brazil, allowing a greater outlet for the new generating plants that achieve operation over the next few years and, thus, contributing further to the development of the Brazilian power sector.



DAM SAFETY AND OVERSIGHT

Main powers vested in ANEEL



In May 2023, Brazil's National Agency for Electric Energy ("ANEEL") published two Normative Resolutions that consolidated the agency's legal framework and **ensured greater legal certainty for power sector agents regarding the safety and oversight of dams** under ANEEL's jurisdiction.

Both resolutions emerged in response to the publication of Decree No. 11,310 of December 26th, 2022 ("Decree 11,310/22"), which regulates provisions of Law No. 12,334 of September 20th, 2010 ("Law 12,334/10"), which established the legal framework for dam safety and the National Dam Safety Policy. However, **Law 12,334/10 was ambiguous in respect of ANEEL's jurisdiction to apply rules and procedures related to dam safety.**

In this context, based on the need for specific and clear regulations regarding the obligations of the oversight agents, Decree 11,310/22 was published – which **assigned to ANEEL (Art. 12) the responsibility to integrate in its processes, programs and actions, measures facilitating effective implementation of the National Dam Safety Policy.** Amongst such measures, ANEEL issued Normative Resolutions No. 1,063 and No. 1,064, both on May 2nd, 2023, to ensure greater legal certainty for the sector's agents. The main aspect and reflections included in such rulings are listed below.

See
Decree No. 11,310/22

[Link](#) 

See
Law No. 12,334/10

[Link](#) 



Decree 11,310/22 was published – which assigned to ANEEL (Art. 12) the responsibility to integrate in its processes, programs and actions, measures facilitating effective implementation of the National Dam Safety Policy.

Normative Resolution No. 1,064 of May 2nd, 2023 (“REN 1,064/23”)

REN 1,064/23 provides several specifications and obligations for the sector's agents, regarding topics of structure, terms, inspection procedures, actions in case of emergency, and criteria for ANEEL's oversight.

See
REN 1,064/23

[Link](#) 

Such specifications are of utmost importance for best defining ANEEL's and the sector's agents' safety parameters. Regarding its applicability, REN 1,064/23 must be observed by agents whose dams meet at least one of the following criteria:

- (i)** Embankment height, measured from the toe of the dam (the junction of the downstream slope or face of the dam with the ground surface) to the embankment crest, greater than or equal to fifteen (15) meters;
- (ii)** Total reservoir capacity greater than or equal to 3,000,000 m³;
- (iii)** Medium or high associated potential damage category, in economic, social, environmental, or loss-of-human-life terms, as established in Art. 7 of Law No. 12,334/10;
- (iv)** High risk category due to the dam's technical characteristics, construction methods, conservation status, age, and status of compliance with the Dam Safety Plan (Law No. 12,334/10, Art. 7).

In case a dam has any of these characteristics, its operator will be legally responsible for its safety and for damages resulting from its collapse, leakage, or malfunction. The operator will also be responsible for carrying out actions to ensure safety and repair damages, regardless of the existence of fault.

Dam Classification

Dams overseen by ANEEL will be classified in three (3) categories: A, B, and C, varying according to risk category, associated potential damage, and volume of the corresponding hydropower plant reservoir.

To classify the project, both operators and ANEEL must observe the requirements listed in the Resolution, as per the below:

OPERATORS' OBLIGATIONS

- (a) Provide information on the dams of their projects to ANEEL by filling out a Dam Safety Form;* and
- (b) Update the Dam Safety Form whenever there is a change in risk category, potential damage category or safety level diagnosis, as well as in the event accidents or incidents related to the dams.

ATTENTION

Operators may request classification revisions, upon technical justification accompanied by a supporting study.

* In case an operator fails to provide information about a given criterion, ANEEL may classify the relevant project as class A, i.e. high risk.

ANEEL'S PREROGATIVES

- (a) Review and revise self-declared classification information whenever necessary;
- (b) Publish annually a classification report for the overseen dams under its jurisdiction.

Safety Plan and Periodic Review

The Dam Safety Plan is an instrument of the National Dam Safety Policy which aims to gather a range of information about the operator and its project for general classification purposes and to verify the specifics of each dam. The information that must be included in the Safety Plan is provided for in Art. 8 of Law No. 12,334/10.

Preparing the plan is the sole responsibility of operators and their technical teams. The plan must be prepared within 12 months from publication of REN 1,064/23, in case of existing power plants, as well as updated within 12 months whenever there is a change in the classification of a project.

However, it must be noted that, in the case of dams classified as class A, the term for making the Safety Plan available is limited to 180 days and should be accompanied by the program and schedule for reduction of the risk category of the dam.

See Art. 8º of
Law No. 12,334/10



Regarding new power plants, the Dam Safety Plan must be made available prior to the start of the first filling of the reservoir. This is a condition for clearance for the start of the test operation of the first generator.

Additionally, every Safety Plan must include further details on the measures related to Regular and Special Safety Inspections, as per the below:

REGULAR SAFETY INSPECTION

An inspection covering all dam structures and other associated structures, which must portray the dam's safety conditions, conservation status, and operating conditions.

Term: shall be performed once every dam classification cycle and/or whenever there is a change in safety level, observing a maximum period of 18 months between inspections. For class A dams, inspections must take place every six months.

SPECIAL SAFETY INSPECTION

An inspection aiming to restore or maintain a dam's normal safety level whenever the safety level changes to alert or emergency.

Term: shall be performed within 10 days from a change in safety level or occurrence of an exceptional event.

Emergency Action Plan (“PAE”)

Another extremely important document related to dam safety is the PAE, which establishes the actions to be taken by the operator in cases of emergency situations. This document is an integral part of the Safety Plan and, therefore, it is the operators' responsibility to make it available on their respective websites and to keep it up to date on the systems of the competent authorities.

The preparation of the PAE is mandatory for all dams classified as medium or high associated potential damage, or class A or B. However, regardless of a dam's classification, ANEEL may require the document to be prepared whenever it deems it necessary, upon proper justification.

Grant extinction of revocation

In the event that an authorization grant is terminated or revoked, or upon the registry cancellation of a reduced-capacity project, the dam and its associated structures must be decommissioned and the original riverbed must be restored.

On the other hand, in case there is another use for the dam that justifies its maintenance, the operator must contact the environmental and water resources agency for the purposes of regularization of the dam, considering its new destination.





Normative Resolution No. 1,063 of May 2nd, 2023 (“REN 1,063/23”)

By means of REN 1,063/23, ANEEL amended Normative Resolution No. 846/2019 – which, in general, regulates the imposition of penalties on power sector agents – to establish new procedures and criteria for violations associated to hydro power plant dam safety.

It is worth remembering that, although REN No. 846/2019 implemented procedures and criteria for imposing penalties on powersector agents, it did not establish specific violations and penalties in relation to dam safety.



Penalties

The penalties provided in the new legal text can and must be applied to all power sector agents that may violate applicable ANEEL legislation on dam safety.

However, any administrative sanctions may only be imposed if a violator is guaranteed the right of defense, and provided that the following requirements are observed:

- (a) The relevance of the occurrence, considering the reasons for the violation and its consequences;
- (b) The violator's record; and
- (c) The violator's economic situation, in the case of penalties.

For further details on the applicable penalties and other relevant information, see the newsletter previously issued by our team about Normative Resolution 1,063/23 [here](#).

Link 

Procedures

In addition to establishing penalties, REN 1,063/23 also defines specific procedural terms for the investigation of dam safety-related violations, as follows:

- (i) 20 days from the date of acknowledgment of the violation notice for the violator to submit a defense or challenge;
- (ii) 30 days from the violation notice's date of issue for ANEEL to adjudicate the violation notice;
- (iii) 20 days for the violator to appeal from certain decision to ANEEL's higher instance; and
- (iv) 5 days from receiving the court notice for penalties payment.



NEW CCEE ARBITRATION CONVENTION

**Improvement in relation to the
previous arbitration convention**

On February 14th, 2023, the new wording of the arbitration convention of the Chamber of Commercialization of Electric Energy ("CCEE") entered into force, upon publication of Authorizing Resolution No. 3,173 of February 14th, 2023. The text is an improvement in relation to the previous arbitration convention, which dates back from 2007.



Regulations authorized the creation of CCEE and ordered CCEE trading convention to provide for arbitration as means to resolve any disputes between its members.

Prior context

It is worth noting, however, that the adoption of arbitration has been mandatory as the resolution method for disputes arising from the free power market since 2004, pursuant to Federal Law No. 10,848/2004 and Decree No. 5,177/2004.

To this effect, **both regulations authorized the creation of CCEE and ordered CCEE trading convention to provide for arbitration as means to resolve any disputes between its members.**

Regarding the use of arbitration by the free market, author José Emilio Nunes Pinto comments: "What we see in this [CCEE] market are wholesale business relations. Only agents previously qualified as provided by law and authorized by the sectoral regulatory agency – the National Agency for Electric Energy (ANEEL) – are allowed to access this market. As for consumers, this market can only be accessed by those designated as 'free consumers' and who, due to their high consumption loads and voltages, can by no means be treated as weak."

Source: PINTO, José Emilio Nunes. A arbitragem e a convenção arbitral da Câmara de Comercialização de Energia Elétrica. Revista Jus Navigandi, ISSN 1518-4862, Teresina, ano 9, n. 434, 14 set. 2004.
Available on:

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In addition, in that same period of time, the ANEEL enacted Normative Resolution No. 109/2004, instituting the CCEE trading convention, which, pursuant to the Law and Decree in question, required sectoral agents and CCEE to use arbitration to resolve their disputes involving rights that can be waived.

Currently, the wording of the trading convention in force is in line with ANEEL Normative Resolution No. 957/2021, which, similarly, foresees the use of arbitration.

The legal changes of 2004 were implemented during the effectiveness of Federal Law No. 9,307/96, ("Arbitration Law"), which the Federal Supreme Court declared to be constitutional in 2001. Since then, arbitration has been widely used in Brazil, mainly by parties involved in disputes of high complexity and/or specialization, as a conflict resolution means showing great advantages when compared with the judicial process.

It is worth noting that the legal provision does not exclude the voluntary nature inherent to arbitration. To this effect, Cesar Guimarães Pereira explains that "it is not about imposed arbitration; rather, it is about a private party's automatic adhesion to arbitration by entering the power trading system."

Justice Gilmar Mendes voted to this effect in the preliminary examination of ADI (Direct Action for Declaration of Unconstitutionality) No. 3100. In his opinion, Justice Mendes argued for the unconstitutionality of the use of arbitration as ordered by the provisional measure that later became Federal Law No. 10,848/04. The ADI was finally closed in 2022, with a decision to partially grant the lawsuit and to deny this specific part of the claim.

Source: PEREIRA, Cesar Guimarães. Arbitragem e Administração. Enciclopédia jurídica da PUC-SP. Celso Fernandes Campilongo, Alvaro de Azevedo Gonzaga e André Luiz Freire (coords.). Tomo: Direito Administrativo e Constitucional. Vidal Serrano Nunes Jr. et. al. (coord. de tomo). 1. ed. São Paulo: Pontifícia Universidade Católica de São Paulo, 2017.

Available on:

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Current context

The legal certainty brought about by the obligation to use arbitration and by the market participants' adhesion to the institute is especially important in this moment when an increasing number of companies have migrated to the free power market. Therefore, the revision of the CCEE arbitration convention has come at a good time.

In 2021, for example, the segment added a record number 5,563 new consumer units¹. The trend is that the increase in migration will become even more accentuated as of next year, with the gradual opening of the free power market to more consumers, starting with the extension of access to all high-tension power consumers. The legislation in force until 2022 only allowed large consumers, with demand exceeding 500 kW, to participate in this market².



The trend is that the increase in migration will become even more accentuated as of next year, with the gradual opening of the free power market to more consumers, starting with the extension of access to all high-tension power consumers.

¹Free Energy Market hits record of migration of consumer units in 2023. January 24, 2022.

Available on:

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²MME Ruling allows consumers to have freedom of choice and better prices. September 28, 2022.

Available on:

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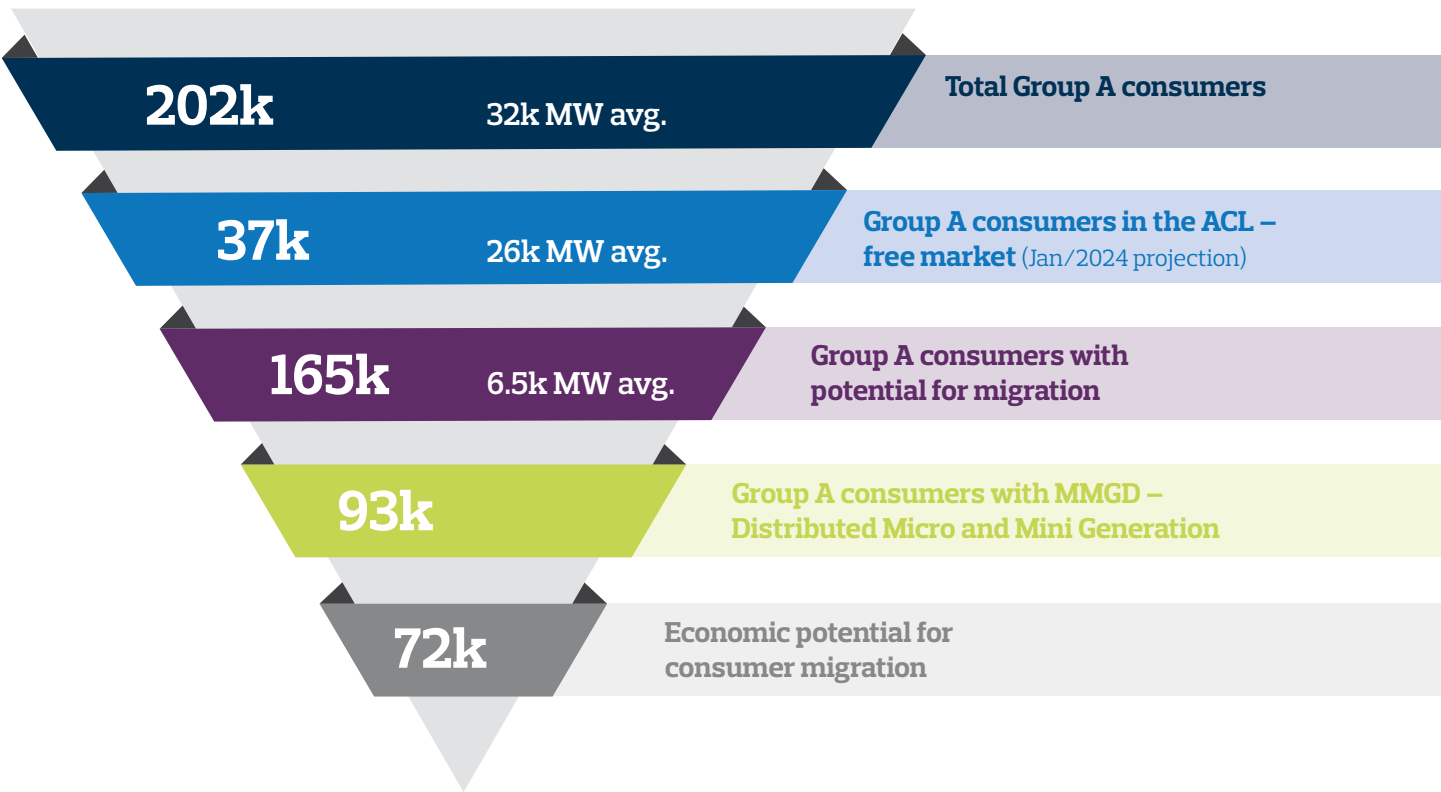


Potential opening of the free market to Group A

2022 and 2024 estimate

According to CCEE, the opening of the free market to all high-tension consumers, which should start in January 2024, will bring about an initial potential for the migration of up to 72,000 new consumer units to the environment. CCEE estimates that up to 72 thousand new consumers may migrate to the free energy market with the regulatory change in question.

One may anticipate, as a natural consequence of a higher number of agents, an increase in the number of possible disputes between them and, therefore, an increase in the number of arbitration proceedings. After all, **the greater the number of contractual relationships, the greater the number of potential disputes arising from them.**



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Regarding points to be addressed in the revision of the CCEE arbitration convention, the following ones stand out:

(i) A lack of competitiveness among arbitration chambers, given the then existing exclusivity of the FGV (*Fundação Getúlio Vargas*) Mediation and Arbitration Chamber to manage the arbitration proceedings covered by the CCEE arbitration convention;

(ii) The possible market response to arbitration decisions issued in proceedings involving bilateral matters; and

(iii) The need to consolidate the rule, already adopted by CCEE in practice, about situations in which the arbitration convention does not apply³.

³ Minutes of the sixty-eighth special meeting of the Electricity Trading Chamber – CCEE. October 19, 2021. Available on:

Link 



The greater the number of contractual relationships, the greater the number of potential disputes arising from them.



What changes with the new Resolution?

Among the main innovations implemented with the approval of the new Resolution, we highlight:

1

Application of the Arbitration Convention in the context of CCEE

The new wording solves an interpretation problem in the previous version, which, similarly to the trading convention, mentioned the applicability of the arbitration convention to cases having repercussions "on contracting agents' obligations in the scope of CCEE." The new text merely refers to dispute cases provided for in the previous rule, without quoting its contents. Also, as mentioned, the current Resolution clarifies that **the Arbitration Convention must not be applied to disputes having no repercussions within the CCEE's scope of operation**. Thus, the new wording plays an important role in preventing any amendments to the trading convention from being replicated in the scope of the arbitration convention.



2

Application of the Arbitration Convention in the context of Default

Another clarification included in the arbitration convention relates to its **non-applicability to the collection by the CCEE of amounts defaulted by agents, including penalties, which must be claimed judicially**.

3

Exclusivity

Moreover, the new wording **revokes the exclusivity of the FGV Mediation and Arbitration Chamber** to administer the arbitration proceedings covered by the CCEE arbitration convention. Pursuant to Clause 2 of the new arbitration convention, parties can now elect any of the arbitration chambers approved by CCEE. Also, CCEE has already prepared the specific procedure to approve and exclude arbitration chambers⁴.

The possibility for agents to choose from several renownedly reliable arbitration chambers not only fosters competitiveness among these organizations – which is the goal pointed out by the workgroup which proposed the amendment –, but also brings comfort to users who have greater trust in, or have had successful experiences with, a given chamber other than the FGV chamber.

⁴ This can be read on the CCEE website's arbitration page CCEE Available on:

[Link](#) 

* Mediation

It should be noted that one of the requirements for a chamber to be accredited is the availability of mediation proceedings as required by Art. 45 of the trading convention, which provides that arbitration proceedings governed by the CCEE arbitration convention must be preceded by mediation. It is the so-called escalation clause, which combines two or more forms of controversy resolution – usually, mediation followed by arbitration.

4

Requirement of Guarantees

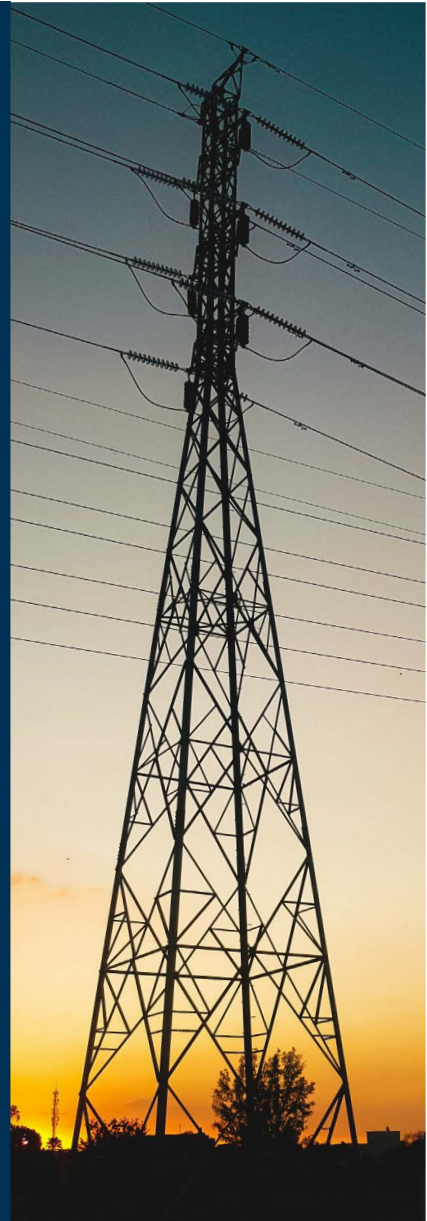
The new arbitration convention also addresses the possible effects of arbitration proceedings on the free power market. Its Clause 3 **allows CCEE to require arbitrators to oblige parties / claimants / respondents to post suitable guarantees** in cases where the operationalization of a decision may impact other agents not involved in the dispute upon the operationalization by CCEE of arbitration decisions and awards.

5

Arbitrators' Selection

Aiming to increase the availability of arbitrators in the market, the new arbitration convention also **attenuates the formerly provided impediments**. Therefore, the arbitrator disqualification criteria listed in the arbitration convention are now subject to evaluation by the parties involved. In the event that an arbitrator discloses any of the situations listed as causes for disqualification due to suspicion, the parties will decide whether to consent to the appointment of such an arbitrator.

Moreover, it is noteworthy that item XI of Clause 13 of the new arbitration convention, which addresses the situation of one of the party's former employees, former contractors and former consultants, establishes an incompatibility period of six months – instead of the two years established provided in the same item of the previous version (former Clause 12). In addition, item IV, about relatives and spouses of those involved in disputes, maintains disqualification – now due to suspicion, no longer due to impediment – only for those persons having connections with the parties and their managers, excluding any mention to relatives of managers of any CCEE agents or of CCEE itself.



The new rules do not apply to arbitration proceedings commenced prior to the effectiveness of the 2023 arbitration convention.

6

Publishing of the summary of the arbitration awards

The last amendment highlighted here is set forth in Clause 16, which requires chambers to **make available on their respective websites the summary of arbitration awards** issued in proceedings governed by the new arbitration convention, providing information about the arbitrators' opinion about the subject of each dispute. The parties' personal and business information must not be disclosed.

Although, in sensitive disputes, confidentiality is one of arbitration's greatest advantages over judicial proceedings, there is also a demand from those who submit to arbitration for the formation, to the extent possible, of arbitration precedents – similarly to what exists regarding Judicial Courts.

To this effect, the publication of the summaries of awards issued within the scope of the free power market can offer greater legal certainty and predictability to agents, by enabling them to shape their behavior according to the position taken by arbitrators in similar cases. It also contributes to reducing litigiousness, since the trend is that the number of arbitration proceedings about matters repeatedly decided along the same lines in previous proceedings will decrease.

In fact, the publication of award summaries was provided for in the revoked arbitration convention, but such provision was limited to the sending of this material to CCEE agents. In other words, there was no provision for a public summaries repository.

Finally, it is worth highlighting that the **new rules do not apply to arbitration proceedings commenced prior to the effectiveness of the 2023 arbitration convention**. Therefore, said proceedings continue to be governed by the 2007 arbitration convention.

In conclusion, the new CCEE arbitration convention has met several requests from free power market agents and resulted in a notable advance for the resolution of conflicts that unavoidably arise in their mutual relations, contributing to the sector's already strong growth. Therefore, the implementation of these rules represents but one of the many aspects of the excellent moment that the free power market is going through.



LOCAL CONTENT CERTIFICATION OF FOREIGN SUPPLIES

New ANP Regulation



On May 2, 2023, the National Agency of Petroleum Natural Gas and Biofuels ("ANP") published ANP Resolution No. 924/2023 ("RANP 924/2023")¹ **which amended the Brazilian local content regulation**, ANP Resolution No. 19/2013 ("RANP 19/2013")². The new regulation entered into force on June 1st, 2023.

It should be noted that local content commitments are assumed in contracts signed between the ANP and oil and natural gas exploration and production companies. Such clauses **establish a minimum percentage for contracting domestic goods and services companies that win O&G bid rounds**. These commitments are usually passed along the subcontracting chains that permeate the E&P activities in each field.

On its turn, RANP 19/2013 provides for rules, criteria, and procedures for local content certification in the Brazilian oil and gas industry. Certification is a proceeding that attests the Brazilian local content that has been performed for assets or services. It can only be carried out by certifying entities that are accredited with the ANP.

Annex II of RANP 19/2013 **sets the different methods to calculate local content depending on the nature of the supply under certification**. E.g., Chapter 3 of Annex II refers to local content calculation of goods; while Chapter 4 refers to temporary use goods (goods used under charter) and temporary use systems (drilling rigs, land rigs, supply vessels, and stationary production units under charter) relating to the oil and gas industry.



Clauses establish a minimum percentage for contracting domestic goods and services companies that win O&G bid rounds.

¹ Available on:

[Link](#)

² Available on:

[Link](#)

In 2020, **Annex II was amended to allow the local content certification of foreign goods, systems, work force services, and clusters.** The calculation formula is provided for under Chapter 10 of Annex II. It is based on some parameters, among which one of them was the center of long discussions between the ANP and the market – the “Y Value”. When regarding to a system, the “Y Value” consisted of the total amount of the complete system.

The original wording of Chapter 10 provided that the “Y Value” should be equal to the amount of the commercial tax transaction document of the relevant transaction. However, this **definition did not address the hypothesis of charter of rigs, vessels and stationary production units**, where there is no commercial tax transaction document.

The absence of a definition applicable to these cases led ANP to hold **rounds of public consultations to the market in the last three years, carrying out detailed studies and regulatory impact analysis on whether and how to establish a new definition.** It was finally on May 2nd, 2023 that RANP 924/2023 was published to amend RANP 19/2013, regulating this issue, among others.



Under the new wording, the “Y Value”, when referring to foreign systems with Brazilian parts without commercial tax transaction document should be equal to:

- (i) The value of the Import Declaration (“DI”), if that value is between 100% and 110% of the value of the sum of costs applied to the calculation of local content of systems (“CLs”);
- (ii) 100% of the sum of costs, if the value of the DI is less than 100% of the sum of costs; and
- (iii) 110% of the sum of costs, if the value of the DI is greater than 100% of the sum of costs.

This definition applies to the foreign systems without commercial tax transaction document which request for proposals (“RFP”) was published or submitted to the supplier after June 1st, 2023. Those which RFP was published or submitted prior to that date are subject to a different definition. In such cases, the “Y Value” should be equal to sum costs as per the calculation method Local Content of System from Chapter 6 of Annex II.

It is worth noting that, in the process of drawing up regulatory changes, the conclusions of the RIA - used as the basis for drawing up the approved resolution - and the participation of industry entities through public consultations were of great importance in this process.

We consider the new regulation is beneficial to the market since it brings clarity and legal certainty to the local content certification proceeding. This is specifically welcomed considering it allows the certification of vessels and units that are essential to the oil and gas industry.



Rounds of public consultations to the market in the last three years, carrying out detailed studies and regulatory impact analysis on whether and how to establish a new definition.

ENERGY RADAR



Discover below the 10 most important publications in the power, oil, and gas sector in Q2 2023, in chronological order:

1

PUBLIC CONSULTATION No. 52/2022 – 2nd PHASE NOTICE

SUBJECT MATTER: OAIMs to obtain input relative to Regulatory Impact Analysis Report – AIR – No. 2/2023-SRT-SRG-SCG-SFG/ANEEL, and to the drafts for amending Module 5 of the Transmission Services Rules, pursuant to Normative Resolution No. 905/2020, and Normative Resolutions No. 875/2020 and No. 876/2020.

PERIOD FOR CONTRIBUTIONS: Closed (Apr/28/2023 to Jun/27/2023).

See the full text

[Link](#)

2

NOTICE OF CALL FOR CONTRIBUTIONS No. 005/2023

SUBJECT MATTER: Aims to obtain input for amending Submodule 3.5 “CCEAR (Regulated-Environment Power Purchase Agreement) Sales Revenue” of the Trading Procedures.

PERIOD FOR CONTRIBUTIONS: Closed (Apr/28/2023 to May/31/2023).

See the Call for Contribution documents

[Link](#)

3

NORMATIVE RESOLUTION No. 1,062 OF APRIL 25th, 2023

SUBJECT MATTER: Amends ANEEL Normative Resolution No. 1,030 of July 26th, 2022, establishes, among others, procedures related to: the provision of and compensation for ancillary services by power generation plants integrated to the National Interconnected System (SIN); and the adaptation of generation facilities due to changes in the power system configuration.

See the full text

[Link](#)

4

NORMATIVE RESOLUTION No. 1,063 OF MAY 2nd, 2023

SUBJECT MATTER: Amends Normative Resolution No. 846 of June 11th, 2019, aiming to establish procedures and criteria for imposing penalties on power sector agents associated with the safety of hydro powerplants dams overseen by ANEEL, as provided by Law No. 12,334 of September 20th, 2010.

See the full text

[Link](#) 

5

NORMATIVE RESOLUTION No. 1,064 OF MAY 2nd, 2023

SUBJECT MATTER: Establishes dam safety criteria and actions in connection with hydro powerplants overseen by ANEEL, as provided by Law No. 12,334 of September 20th, 2010.

See the full text

[Link](#) 

6

PUBLIC CONSULTATION NOTICE No. 15/2023

SUBJECT MATTER: Aims to obtain inputs relative to the proposal for exceptional handling in the management of authorization grants and Use of Distribution System Agreement (CUST) executed by generation projects.

PERIOD FOR CONTRIBUTIONS: May/11/2023 to May/22/2023.

See the Public Consultation documents

[Link](#) 

7

REVISION OF NETWORK PROCEDURE SUBMODULES

SUBJECT MATTER: In this quarter, ANEEL announced two Calls for Contributions aiming to improve the proposals for revision of Network Procedure submodules due to the revision of Normative Resolution 1,030/2022. Notedly, both proceedings should improve submodules: (i) 4.2; (ii) 4.4; (iii) 4.5 (Responsibilities) and (Procedural); (iv) 4.6; (v) 4.8; and (vi) 7.2.

Normative Resolution 1,030/2022

[Link](#) 

Call for Contributions 007/2023

[Link](#) 

Call for Contributions 008/2023

[Link](#) 

8

RIO DE JANEIRO STATE LAW No. 10,028/2023

SUBJECT MATTER: On May 26th, Rio de Janeiro State Law No. 10,028/2023 was published, regulating the dismantling and recycling of vessels and offshore maritime assets, in alignment with the maritime economy of Rio de Janeiro state. The new law complements Rio de Janeiro State Law No. 9,466/2021, which, in turn, creates the state policy for fostering maritime economy. Among other provisions, the new state law establishes requirements for the recycling of vessels by shipyards and facilities in Rio de Janeiro.

State Law
No. 10,028/2023

[Link](#) 

State Law
No. 9,466/2021

[Link](#) 

9

ANTAQ RESOLUTION No. 98/2023

SUBJECT MATTER: On June 1st, 2023, ANTAQ Resolution No. 98/2023 was published, establishing administrative procedures for the resolution of conflicts among agents of the sector regulated by the National Agency for Waterway Transportation (ANTAQ). Administrative procedures before ANTAQ are aimed at assisting in the resolution of disputes between companies, users, and entities in the ports, inland waterway navigation, and maritime navigation sectors. These proceedings can examine conflicts involving waivable property rights, such as the application of contract rules, the provision of port and waterway transportation services, the chartering of domestic vessels, and the payment of port tariffs.

ANTAQ Resolution
No. 98/2023

[Link](#) 

10

INVITATION TO BID – AUCTION No. 01/2023

SUBJECT MATTER: ANEEL, by delegation of jurisdiction pursuant to Law No. 9,427 of December 26th, 1996, and Decree No. 5,163 of July 30th, 2004, and in conformance with Laws No. 8,987 of February 13th, 1995, and No. 9,074 of July 7th, 1995, publicly announces that: 1 - A bidding auction will be held for letting concessions for the provision of electricity transmission services for a 30-year term, including construction, assembly, operation, and maintenance of transmission facilities for nine (9) lots specified in Invitation to Bid No. 1/2023-ANEEL (Transmission Auction).

See the full text
of the Auction
documents

[Link](#) 

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