

# Power Transmission: Concessions and Electric Highway

**The electric highway should be a facilitator for developing transmission projects, complementing the electricity concessions which are undergoing an improvement process.**

**In both cases, the purpose is accelerating procedures that allow private initiatives to access the necessary lands to build their transmission networks; herein, the role of the State being greater when it concerns wide-ranging projects.**

Recently, the transmission system development has faced a series of difficulties, as a result of the delays in the environmental proceedings and the obtainment of concessions and electricity easements, the increasing citizen opposition to the development of transmission lines, no slacks in the system, and the consequent delays in carrying out works. The delays in the execution of transmission projects have a direct consequence on the energy prices competitiveness, thus increasing the existing high-cost condition of electric power in the country. Furthermore, there is greater concern regarding the system's capacity to fulfill the transmission needs of the energy that the country produces; this production is estimated to rise from the current 60,000 GWh to 150,000 GWh in 2030.

In view of this situation, the authority has taken some specific measures and has made announcements in electric transmission matters with the aim of unblocking its development. Particularly, in early May the Executive introduced the bill on electric concessions<sup>1</sup> delivery proceedings, which is currently in the first constitutional procedure at the Chamber of Deputies. The government also announced a bill creating the so called electric highway, which should be introduced at the Congress on next August. Both initiatives seek to solve the problems and delays that the transmission projects face today, and that are not ascribable to building technical reasons, but to delays in the obtainment of the necessary permits for electricity

concessions and the involvement of third parties seeking to delay the processes and bring them to court.

### **Bill of Electricity Concessions**

The main objective of the concessions is promptly allowing the use of land from someone else, with certain privileges and guarantees both in this usage and that of public and private spaces, and to be able to impose the easement which enables the installation of the pertinent works. Currently, the law encompasses different kinds of electricity concessions – from hydraulic plants which produce electric power, transportation lines, substations and distribution lines -, which allow imposing easements from hydroelectric works and easements to run the lines, and use the necessary lands for the transportation of electric power from the generating plant or substation to massive consumption points. Additionally, the law entitles them to impose passage easements and to pass through public- use national properties.

Although the existing law stipulates that the total proceeding term to obtain a definite concession should be 120 days (150 days with publication in the *Diario Oficial*), the truth is that obtaining definite concessions today takes approximately 700 days, as a consequence of the delay in the notification formalities (around 321 days) and negotiations and extra time needed to enter the land for building the works (approximately 257 days)<sup>2</sup>.

The effects of these delays on the obtainment of concessions includes difficulties to comply with the deadlines stated in the contract decree, problems to evaluate projects in view of the uncertainty to obtain the concession, legal actions that paralyze works while there is no concession available, higher costs of the easements that are transferred to all users through tariff increases, and a higher global cost for operating the system when congestions occur.<sup>3</sup> In other words, the result of these postponements is more uncertainty, greater deadlines and development costs that derive in higher energy costs and less service reliability.

The above certainly deserves a solution for obtaining the concessions for line passing – although it is not the only delay source –because otherwise the required transmission needs will not be able to be solved on time.

As we just indicated, in the frame of the National Energy Strategy launched by the Executive at the beginning of this year, in May the government sent to the National Congress a bill that accelerates the pertinent procedures, certainly respecting the rights of the affected owners. The bill introduces a series of improvements to the concession procedure, which are briefly described below:

**1) It simplifies the interim concession process:** currently, the requirements for an interim concession application does not differ greatly from those of a definite concession, so it is not attractive nor efficient for project developers to use this tool, even though its use, which allows entering the lands to take measurements and make preliminary surveys, could make the entire system more efficient. While protecting the rights of the owners of the affected properties, the bill decides in favor of simplifying the requirements and background data for an interim concession application, putting them more in harmony with the purposes and characteristics of the same.

**2) Modification of the proceeding deadlines:** the bill provides for general deadline modifications in the administrative concession process, involving all the parties concerned, that is, the energy regulator SEC, the applicant, and potential affected people. Publications of interim concession applications in the *Diario Oficial* are also eliminated, being replaced by publications in national and regional newspapers. On the other hand, deadlines in the claims' formulation process are shortened; at any rate, observations shall be strictly based on the non-fulfillment of any of the requirements stated in article 19 of the Law of Electric Services (restraining the filing of claims of any cause whatsoever).

**3) Accuracy of possible observations and objections:** the bill seeks to clarify the reasons for objecting a concession application, so as to protect the procedure's swiftness and avoid delays in the formalities undertaken by the SEC when it has to rule over observations and objections that are beyond its scope of competence, and which are totally unrelated to the electricity regulation. Likewise, the bill provides an accurate definition on who may present observations and objections, thus safeguarding the interests of true potential affected people, and allowing a better attention to their problems while reducing the speculation options.

**4) Improvement of the notification process:** the bill reduces the notification means to two: notarial and judicial notifications. Likewise, the bill envisages the possibility of turning to the competent Judge so

that he may order to notify by notices in case that it is certified that the SEC has exhausted the other notification means: judicial (personal or ID) and notarial. On the other side, the bill allows the concession applicant to alternatively use both notification means, bypassing the SEC's involvement.

**5) Provision of preliminary judicial proceedings:** in order to properly accelerate the concession process, it is stipulated that lawsuits legitimately introduced among parties shall be governed by the preliminary proceeding, which is shorter and more expeditious than ordinary proceedings. Thereby, the rights of potential people affected by the concession are fully safeguarded, but precautions are also taken so that the other party is not adversely affected by the sole resource of delaying the process. In this perspective, special requirements are established to grant precautionary measures.

**6) Introducing the possibility of dividing the concession application:** the bill stipulates that applications may be divided with the sole purpose of obtaining the licensee title and start building in the area that has successfully fulfilled the proceedings. The application for division of electricity concessions will have no effect on the environmental proceeding of the same project, which shall equally comply with all pertinent environmental standards.

**7) Modification of the real estate appraisal procedure:** in order to settle the conflicts, the so-called "Good Men Commission", which turned up to be slow and not very operational, has been replaced by an "Appraisal Commission", which, by means of specific changes, shall be provided with better tools to work for the benefit of all parties involved.

**8) Resolution of conflicts among different types of concession:** the bill stipulates that any conflict originated between holders of different types of concessions and an electricity licensee, shall be resolved through arbitration.

In brief, this bill goes in the right direction in the sense of facilitating formalities and shortening the setting up deadlines, with less transmission line barriers for all generation sources, which are essential for a timely development of the electricity sector.

The approval of the bill for electric concessions should have highly positive effects, since it would enable the access to lands at a fair price, avoid the transfers of wealth with no justified reasons that end

up affecting the final customers, contribute to the conflict resolution, reduce the risk of the projects, entail lesser energy costs (because it prevents congestions), and it would improve the global reliability of the system. Its prompt proceeding – notwithstanding the improvements that may be introduced during the legislative process – is crucial for guaranteeing that the transmission works are performed within the required deadlines, with the consequent positive effect on the country's economical development.

### **The Electric Highway**

Since the Short Law I of 2004, the main transmission system became *de facto* a free-access electric highway for generators and consumers, who pay a tariff to cover the investment.<sup>4</sup>

Planning of the transmission system is made jointly by the State and market agents, including consumers, based on main transmission studies (ETT, Estudios de Transmisión Troncal), which envisage a long-term period and provide for the necessary works and required slacks. The last ETT (2010) incorporated new aspects to rectify errors of the former study (2006), since it extended the planning target period from 10 to 15 years, and replaced the criterion of minimum economical cost by a more flexible one to face energy development alternative scenarios. The last study included expansion recommendations involving investments close to US\$1 billion in the short-term, which should enter into service in the middle of 2017; that is, although congestion problems are not possible to avoid in the short-term, they should be resolved by then.

Therefore, and if the bill of electric concessions favorably resolves the difficulties for obtaining line passage concessions – so as to ensure that the transmission works are built in the required deadlines –, the question is what is the contribution of the announced electric highway?

Evidence seems to reveal that the described regulatory framework is necessary but possibly insufficient. As a matter of fact, for a diversity of wide-ranging generation projects, located at a large distance from consumption centers, lines require significant land lanes and it is practically impossible to negotiate easements with thousands of owners, thus entailing a risk in the execution of these projects that is impossible to take. On the other hand, the problems regarding these easement lanes and the transmission scale economies could

suggest the convenience that the lines built on those lanes have reasonable slack degrees allowing the connection of other generation projects or loads associated to new consumption centers.

The problems of providing important lines have generated multiple questionings, first from HydroAysén and then from other actors of the energy sector, in relation to the capacity of private initiatives to operate under the current regulatory framework. If the execution of certain projects is considered desirable in social terms, it is reasonable to argue that the State should play a role to make its execution possible.

In this context, the creation of a well-designed electric highway, with reasonable slacks, could positively contribute to the country's energy development, since it would facilitate and/or accelerate the necessary investments on the transmission system and the connection to generation projects, thus becoming a complementary measure for the bill of electric concessions already described. Nevertheless, since details are not known, speculations have begun in relation to its content, with ideas that are sometimes far beyond convenience.

In our opinion, the electric highway should actually give a more active role to the State, in the sense of facilitating the development of these projects by means of land or easement lanes. The State would be responsible for the formalities associated to the concessions or access permits to the lands or, eventually, the expropriations to private sector owners – the legal instrument is still to be defined -, and then to grant concessions, through a bidding process, for the design, construction, operation and exploitation of the transmission networks, which would be private with open access, so that any project can make use of these lines.

In this manner, the State's interference would be limited to facilitating the access to the lands, with the purpose of reducing the deadlines and risks involved, with a certain degree of responsibility in the route and environmental prefeasibility studies aimed at identifying the lands subjected to easements, but leaving the responsibility for its execution and compensation to the private sector. We could also include a coordination role in wide-ranging cases, such as energy transportation based on hydric resources generated in the country's southernmost region. Furthermore, the legal initiative should pronounce itself on how to fix the price or value that the potential

grantee should pay for the easements, and also on how the slacks of these transmission facilities will be compensated.

Instead, the idea of an electric highway where the State participates in the transmission lines' design, engineering and construction does not seem reasonable. It would neither be convenient that the cost is absorbed by consumers only, nor by the generators that led to the development of such an infrastructure due to its location. In fact, an eventual socialization of the transportation costs could imply a significant income for certain generators, which, in turn, could lead to postponing the generation price regulation in each production point, and end with the competition model in the consumption points. At any rate, this does not exclude an eventual review of the compensations to the transmission system to resolve the temporary allocation of the cost associated to slacks, but always keeping the principles stipulated in the existing law.

### **Conclusions**

The electric highway should be considered as a facilitator for developing transmission projects, with reasonable slacks, which complements the process of electric concessions which are undergoing improvement. In both cases, the purpose is accelerating proceedings allowing private initiatives to access the lands needed to build its transmission networks. The State should play a greater role when dealing with wide-ranging projects whose development would not be feasible through the regular process, but it should not play the role of an entrepreneurial State under any circumstance. So, emphasis should be put on facilitating the development of private initiatives, without entailing – in the specific case of the electric highway – a tool that increases the State's interference in the private sector nor an instrument that replaces the price signals operating in the current electric system.

### In brief...

#### **IMPROVEMENTS INTRODUCED BY THE ELECTRIC CONCESSIONS' BILL:**

- Simplifies the interim concession process.
- Modification of the proceeding deadlines.
- Accuracy of possible observations and objections.
- Improvement of the notification process.
- Provision of preliminary judicial proceedings.
- Introducing the possibility of dividing the concession application.
- Modification of the real estate appraisal procedure.
- Resolution of conflicts among different types of concession.

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<sup>1</sup> Bulletin N°8270-08

<sup>2</sup> Source: Report of Jorge Bunster, Minister of Energy, before the Congress on May 16<sup>th</sup>, 2012, based on interviews made to Transelec and Tinguiririca Energía, on the occasion of the survey "*Análisis de los procedimientos de expansión de la infraestructura de transmisión en Chile*" (Analysis of the expansion procedures of the Chilean transmission infrastructure), AETS.

<sup>3</sup> Based on the report of Fernando Abara, Vice-president of Juridical Affairs of Transelec, in *XI Encuentro Energético ElecGas*, June 2012.

<sup>4</sup> In fact, the transmission regime changed since Short Law I, being qualified as a public service in main transmission and sub-transmission lines. As a result thereof, in the current scheme it is mandatory to provide service, open access, regulated tariffs, invest on extensions and expansions stipulated by the authority.