Happy New Year and welcome to the first 2015-2016 Committee newsletter, which brings you coverage of recent activities, informative news from around the world, featured articles, announcements about members, and important dates to put on your calendar.

In October, a number of Committee members gathered at the Section of International Law’s Fall Meeting in Montreal. We found this Meeting to be an overwhelming and rewarding experience for us as Co-Chairs and as international lawyers and hopefully it was likewise for the other Committee members who were in Montreal with us. IENRC co-sponsored a number of panels at the Meeting, and sponsored the panel, “Balancing Aboriginal Rights with the Regulatory State: Are We Closer to Never Land or Just Confusing Everybody?”, on its first day immediately following the plenary sessions. This panel was well attended and we received excellent feedback from attendees. Also well attended were the IENRC networking events: the Wednesday breakfast table, Thursday lunch table and the Committee’s dinner at Le Serpent Restaurant in Old Montreal. The restaurant was “pretty darn cool!”. Its name comes from the snakelike ventilation system on the roof and visible inside, but more important than the appearance and the great food was the wonderful atmosphere that generated great discussion and a fun time for the 14 diners from the Committee. As a result of the Montreal Meeting, we believe that IENRC picked up new members and a number of new ideas for future programs and projects.

We sincerely hope that the Montreal Meeting and the Committee’s recent monthly calls will fuel a new momentum and serve to make this coming year a great one for the IENRC. We anticipate a wide range of IENRC activities in 2016, including our conference calls with Hot Topics (see inside for more information on our January 7 Hot Topic presentation), programs at the Section’s Meetings in New York and Tokyo, program proposals for the Tokyo Meeting and the 2017 Regional Forums, this Newsletter, the Year in Review for which articles have been submitted, collaborative efforts with other ABA entities (even the possibility of creating a Section-supported teaching opportunity for interested Committee members with a Kenyan law school in negotiating exploration and production petroleum contracts), the Section’s partnership with the World Bank, outreach to other organizations, such as AIPN, and many more.

If you interested in shaping the topics, activities, and direction of the Committee, then we encourage you to join our monthly planning calls, which are usually held on the second Thursday of each month. Look for the conference call announcements on the Committee website or via emails through the IENRC’s listserv. In the meantime, please “save an hour” for our first call of 2016, which, due to scheduling, will occur this coming Thursday, January 7, at 11am EST.

We look forward to hearing from you and to working with you in the year ahead.

Belle Toren and Mariana Ardizzone
Co-Chairs
International Energy & Natural Resources Committee
Committee News

Section of International Law Fall Meeting 2015 in Montreal

As Belle and Mariana mentioned, members of the Committee had a great time at the Section’s annual Fall Meeting in Montreal. There were interesting panels across the board as well as some unique and typically Canadian social events for the entire Section. Of course, our Committee also had various breakfast, lunch and dinner meetings and it is always so nice to be able to put faces with the names of your fellow IENRC colleagues and to welcome new members to our group.

Our Wednesday morning breakfast meeting was very productive as we went through the Committee’s Business Plan for the year. This also gave us an opportunity to fine-tune plans for the new “Hot Topics” conference call series that we hope will prove to be a very attractive benefit from your Committee membership.

(L-R: Georgi Gouginiski, Belle Toren, Mariana Ardizzone, Gulnara Bekieva, Jens Suhrbier, Rony Zimmerman and Markus Zwicky)

The Committee’s Wednesday morning program focused on the delicate balance between protecting aboriginal and tribal rights and the Canadian government’s efforts to control corruption, while trying to actively encourage investments and operations in the extractive industries. The panel was quite informative and very well-received, with a lively question and answer session at the end. Thanks again to Belle Toren (IENRC Co-Chair, International Petroleum Consultant and Barrister and Solicitor from Canmore, Alberta, Canada); Christine Silverberg (accomplished Barrister and Solicitor in the area of white collar crime in Calgary, Alberta, Canada and the former Chief of the Calgary Police Service); Thomas Isaac (nationally recognized authority in the area of Aboriginal Law, with Osler, Hoskins & Harcourt in Calgary,
Alberta); Mark Morrison (a leading white collar crime lawyer with Blake, Cassels & Graydon in Calgary, Alberta); Bonnie MacLaughlin (in-house counsel with Trans Canada in Calgary, Alberta and former attorney with Canada’s Federal Department of Justice); and Eduardo Paredes (federal public defender in Brazil, whose work focuses on human rights issues) for doing such a great job!

After a full day of other great panels and the Section reception featuring Canadian and Quebecois specialties, fourteen of us gathered at Le Serpent restaurant in the Old Town area of Montreal for a thoroughly enjoyable evening of getting to know each other much better over wonderful food and drink. Thanks to Pascal de Guise and Sylvie Bouvette and their law office, Borden Ladner Gervais LLP in Montreal, for arranging such a great restaurant choice for our dinner! The socializing continued well into the night and morning as some intrepid Committee members and program panelists closed down first the hotel bar and then a nearby hockey pub as well.

On Thursday, the Committee came together again for a very full table at the networking lunch, which was a great success as we welcomed many new members who we hope will become good new friends and active participants in future IENRC activities. Later that afternoon, we co-sponsored another excellent program presented by the International Tax Committee, focusing on different approaches to using tax incentives to promote renewable energy in various nations around the world. Then, we all gathered with the entire Section one more time for a truly different type of reception, held at the headquarter studios of Cirque Eloize. Once again, we enjoyed a great meal and beverages while being entranced by the acrobatics performed on 3 separate stages in our midst. For the Meeting’s closing reception, we gathered on Friday evening at The Belvedere at the Montreal Science Centre, a stunning venue on the St. Lawrence River, and were dazzled by multiple buffet tables overflowing with hors d’oeuvres and desserts that captivated both the eye and taste buds. For those of you who have not attended a Section meeting previously, rest assured that it is well worth the effort in terms of great education, unique reception venues and the continual opportunities to meet and network with old and new friends alike.
Section of International Law Spring Meeting 2016 in New York

Your next opportunity to join us at a Section meeting is only a few months away. Soon, you will be receiving detailed information on the annual Spring Meeting, to be held April 12-16 at the Grand Hyatt Hotel in New York City. Ben Kirchner and Mariana Ardiizzone have put together a very timely IENRC program that is sure to be of interest to everyone entitled “BOOM or BUST: How it is Shaping the Future of the Oil and Gas Industries in the Americas”. The panel is expected to focus on recent developments in the oil and gas industries in the US and Canada and how other nations such as Mexico and Argentina are attempting to open their sectors as well. It will also explore how the boom to bust cycle caused by depressed worldwide oil prices can impact those efforts. More details on both this program as well as the full lineup of panels and social events for the New York meeting will follow in our next issue.

Section of International Law Fall Meeting 2016 in Tokyo

It is also not too early to start making your plans for the upcoming fall Section meeting that will take place in Tokyo next October 18-22, 2016 at the Tokyo Hilton Hotel. We will provide more details in the coming months, but this conference will be an exciting change of pace and provide an opportunity for new contacts with our colleagues in Asia. The IENRC plans to be very active in this Meeting, and later this month expects to make at least 3 program proposal submissions to the Section for this Meeting.

Americas Forum 2016 in Miami

We also encourage all of our Committee members to come to Miami on February 28-March 1, 2016 for the upcoming Americas Forum, to be held at the Mandarin Oriental Hotel in Miami. This will be a great chance to beat the winter blahs and reconnect with fellow Section members in an always favorite destination. A program of key interest to our membership will be presented on “Energy, Natural Resources, Development and Sustainability: Irreconcilable Differences?” IENRC member Lelia Mooney will be co-chairing and moderating this panel, which will address how the social, human rights and environmental needs of local communities may be affected by efforts in many Latin American nations to expand foreign investors and private sector activity in areas rich with natural resources. To learn more, please visit www.americanbar.org/groups/international_law.html.

Africa Regional Forum in 2017

Planning is also underway for a proposed regional forum to be held in Africa at some point in 2017. Possible locations include Egypt, Morocco, Ghana and South Africa. The coordinators of this forum have asked our Committee to be actively involved with program ideas and other general planning. Please let Belle (belle@belletoren.com), Melina Juarez-Segura (melina.juarez@sotorisolve.com) or Markus Zwicky (m.zwicky@zwlawyers.com) know if you have ideas and/or would like to help.

Monthly Conference Calls and Hot Topics Series

In between our Section meetings and forums, the Committee also holds regular monthly conference calls, which are open to everyone. Usually, these calls are held on the second Thursday of each month at 11:00 in the morning (Eastern time in the States). Look for invite messages with an agenda of topics and dial-in information, to be sent via the IENRC Listserv a few days before each call date. If you are not on the
Listserv (or think you are but have not been receiving these messages lately), please check your profile on the ABA website and confirm that you are officially shown as a member of IENRC, or go to the Committee website and join (or rejoin) its Listserv so that you can be sure to receive the latest information. In 2016, in addition to the usual Committee business, we also plan to offer special presentations of “Hot Topics” during which IENRC members or invited guests will educate us with brief 10-15 minute presentations on current developments of interest, with opportunities for interactive discussion afterwards.

Our first Hot Topic of 2016 will be on “The Impact of New Emergency Arbitrator Powers on Provisional Protective Measures for Disputes Involving International Natural Resources and Energy Projects”, and will be presented by Mark Kantor (see Mark’s impressive bio below). Because of scheduling, please note that the January conference call and Hot Topics presentation will take place on Thursday January 7, 2016 at 11:00 am EST. Call in details are 1.866.646.6488; Conf Code 928818997#. Then, beginning in February, we will resume the normal schedule of holding our conference calls on the second Thursday of each month. If you have ideas for future Hot Topics that would be of interest to our Committee, please contact Belle (belle@belletoren.com) or Mariana (mariana@ardizzone.com.ar) with your thoughts.

MARK KANTOR

Until he retired from Milbank, Tweed, Hadley & McCloy, Mark Kantor was a partner in the Corporate and Project Finance Groups of the Firm. He currently serves as an arbitrator and mediator. He teaches as an Adjunct Professor at the Georgetown University Law Center (Recipient, Fahy Award for Outstanding Adjunct Professor). Additionally, Mr. Kantor is Editor-in-Chief of the online journal Transnational Dispute Management.

Mr. Kantor is a member of the Board of Directors of the American Arbitration Association, Chair of the DC Bar International Investment Committee and former Chair and Vice Chair of the DC Bar International Dispute Resolution Committee, and a Chartered Arbitrator of The Chartered Institute of Arbitrators. He is honored in Who’s Who in America; Who’s Who in the World; Who’s Who in American Law; International Who’s Who, Commercial Arbitration; Chambers USA, International Arbitrators; Best Lawyers in America (International Arbitration; Washington, D.C.); Superlawyers; U.S. News & World Report, Tier 1 International Arbitration; Best Lawyers 2013 Washington DC International Arbitration - Governmental "Lawyer of the Year.” Recipient, ArbitralWomen Honorable Man Award (2011).

Mr. Kantor is also a member of the Editorial Board of Global Arbitration Review, the Board of Editors of the Journal of World Energy Law and Business, the Board of Editors of the Journal of Damages in International Arbitration, the Editorial Board of the Journal of Technology in International Arbitration and the ADR Advisory Board of the International Law Institute. Among other publications, Mr. Kantor is the author of Valuation for Arbitration: Compensation Standards, Valuation Methods and Expert Evidence (Kluwer 2008), named Best Book of 2008 in the OGEIMD Awards, and “A Code of Conduct for Party-Appointed Experts in International Arbitration – Can One be Found?” 26 Arbitration International 323 (2010), named Best International Dispute Resolution Article of 2010 in the OGEIMD Awards. Additional information at www.mark-kantor.com.

Subcommittee on Hydraulic Fracturing

IENRC Members interested in hydraulic fracturing are invited to join a newly formed Subcommittee on Hydraulic Fracturing. The goal of the Subcommittee is to serve as a resource for the exchange of information on fracking and to collaborate on creating a webinar or short publication. The group may collaborate with other ABA entities on this project. Please let Ben Kirchner (benedict.kirchner@steptoe-johnson.com) know if you would like to be involved.
Year In Review

Many thanks to our dedicated Year In Review Editor, Kristin Drecktrah, for doing the very hard work of collecting, editing and submitting another impressive chapter on behalf of our Committee to the Section’s annual Year In Review publication. Our Committee membership came through again with articles covering fourteen nations: Angola, Argentina, Bolivia, Brazil, Canada, Cape Verde, Democratic Republic of the Congo, Ecuador, Gabon, Germany, Kazakhstan, Mozambique, Russia, and Ukraine. Thanks also to our individual authors for their contributions, including Kristin Drecktrah, Ricardo Silva, Sara Frazao, Mauricio Becerra de la Roca Denoso, Jjoao Otavio Pinheiro Oliverio, Jehmal T. Hudson, Leonardo Sempertegui and Ariel Cohen!

Industry News
Contributed by Mark A. Gould, Jr.

UNITED STATES

Supporters of renewable energy project activity in the US were relieved when extensions of both the federal Production Tax Credit (PTC) and federal Investment Tax Credit (ITC) were included in the omnibus budget package approved by the US Congress on December 18, 2015. These tax incentives, which have been of significant help to the recent expansion of solar and wind energy projects in the US, had been set to expire and had been the potential victims of budgetary stalemates between the Republican and Democratic parties in Congress. Recent efforts on both sides of the political aisle to come to a compromise this year, however, yielded good results and renewable energy advocates were happy to see the extensions of the PTC and ITC included as part of the overall bill.

Key elements of the legislation include retaining the ITC for solar energy projects at the maximum 30% level for any solar projects for which construction begins prior to January 1, 2020, with a phased reduction of the ITC down to 26% for projects begun during 2020, 21% for projects begun during 2021 and 10% thereafter. Both the PTC and the ITC are also extended for wind energy projects, although with an earlier phase-out schedule. The full credit would be available for any wind energy projects for which construction begins during 2016. Starting in 2017, the available credit would be reduced by 20% each year through December 31, 2019—after which time the PTC would no longer be available under the current law.

Also of note is that separate legislation extended the “bonus depreciation” rules that provide additional construction and operating budget support to the development of renewable energy projects in the US. The Department of the Treasury will likely issue future bulletins and rulings explaining and clarifying some of the rules for taking advantage of the credits in more detail, including more specific guidance on what constitutes “commencement of construction”. In any event, the continued availability of the credits should serve to help further expand the renewable energy market in the States.

SENEGAL

At press time, the Senegalese parliament was expected to pass new legislation implementing reforms to the nation’s mining code. Many observers hope that the new bill will be friendly to foreign investors and provide a modernized and attractive investment climate for mining projects. Although fees and taxes are likely to be increased, along with stronger protections on social and environmental issues, the new
legislation is expected to reduce barriers to direct foreign investment and simplify the types of available mining permits and concessions, which have been a source of confusion in the past. Assuming the new code is approved, please look for a more detailed discussion of the law in the next issue of this newsletter.

Featured Articles

Licensing and Tariff Regulations in Ghana and Tanzania
By Petra Stewart (petra.stewart@gmail.com)

There has been quite a bit of discussion in the last several years by a range of organizations and individuals about energy access in sub-Saharan Africa. The Sustainable Energy for All Initiative; the Africa Electrification Initiative and the Power Africa Initiative; the World Bank’s guide, From The Bottom Up: How Small Power Producers and Mini-Grids Can Deliver Electrification and Renewable Energy in Africa; a range of books, articles, white papers and discussion pieces; and national electrification strategies developed by several sub-Saharan African governments all address the topic. Many, if not most, of the proposed approaches to increasing energy access in sub-Saharan Africa focus on or include the private entrepreneur as an energy services provider.

This article provides an overview of the energy sector and a discussion of regulations, specifically licensing and tariff regulations, in two sub-Saharan African countries: Ghana and Tanzania. The licensing and tariff regulations are considered with a particular type of power provider in mind, which will be referred to throughout the article as an isolated off-grid small power provider (IOSPP). The IOSPP generates and distributes electricity locally on a small scale in rural areas, is not connected to a national or regional grid and does not sell electricity to a national or regional grid. Although not necessarily, it is likely that the IOSPP uses renewable energy and may be arranged in one of several ways as a business. The article concludes that licensing and tariff regulations in Ghana are less favourable to the emergence and growth of IOSPPs while licensing and tariff regulations in Tanzania are more favourable for this type of power provider.

Broadly speaking, a regulatory environment is considered less favourable for IOSPPs if either or both of the following are features of the environment:

- a multi-step licensing process and/or
- maximum tariffs that are below operational and capital costs.

Conversely, a regulatory environment is considered more favourable for IOSPPs if either or both of the following are features of the environment:

- a streamlined licensing process or exemption from licensing requirements and/or

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1 There are incentives for power providers to use renewable energy sources, including solar energy, to generate electricity. Ghana’s Renewable Energy Act, for example, established the Renewable Energy Fund, which provides capital subsidies, production subsidies and other financial incentives for off-grid renewable power systems in remote areas. Other sub-Saharan African governments have developed renewable energy policies and initiatives and have enacted renewable energy laws. Also, certain renewable energy technology, such as solar photovoltaic panels, has come down in price significantly.

2 The focus on this type of power provider comes from a pragmatic view that in remote rural areas that do not have national or regional grid access and where such access may not be feasible for some time given economic conditions, the IOSPP may be the most viable option in the short and medium terms for rural electrification.
• exemption from national uniform tariffs and/or maximum tariffs that are cost-reflective.\(^3\)

A range of technical, commercial and procedural regulations have an impact on IOSPPs; however, given that licensing determines the ability to legally operate and tariffs determine or largely determine whether an IOSPP will be commercially viable, including its ability to attract investors, regulations in these two areas make up the discussion of the regulatory environments in Ghana and Tanzania that follow below.

Ghana

Overview

The regulatory bodies are the Energy Commission (EC) and the Public Utilities and Regulatory Commission (PURC). The EC grants licences to transmit, supply wholesale, distribute and sell electricity, whereas the PURC sets tariffs and safety standards.

The Volta River Authority (VRA), a state owned company, generates the vast majority of electricity generated in Ghana. The Bui Power Authority, also state owned, generates electricity as well. The Ghana Grid Company (GridCo), another state owned entity, exclusively transmits electricity. The Northern Electricity Distribution Company (NEDCo), a subsidiary of VRA, and the Electricity Company of Ghana (ECG), a state owned company, distribute electricity in the southern and northern regions of Ghana respectively. Independent power producers engage in electricity generation, but account for a limited amount of the total electricity that is generated.

Licensing

Under Section 11(a) of the Energy Commission Act, any person seeking to transmit, supply wholesale or distribute and sell electricity must obtain a licence from the EC. With respect to renewable energy in particular, section 8(1) of the Renewable Energy Act requires a person to obtain a licence from the EC in order to produce electricity obtained from renewable sources, install and maintain renewable energy facilities or engage in other commercial activities in the renewable energy industry as set forth in section 8(1). Where applicable, licensees under the Energy Commission Act must comply with the Renewable Energy Act.

With the exception of the transmission licence, which is only granted to one entity at a time, licences for commercial activity such as electricity distribution may be granted to a number of power providers, including independent power providers. Depending on the licence that is sought, potential power providers may go through the following licensing process: (i) obtain a provisional licence; (ii) obtain a siting clearance and construction permit; and (iii) obtain an operational licence.

Exemptions from licensing requirements may be granted by the EC for regulated activities falling under the Energy Commission Act and the Renewable Energy Act. However, the Licence Application Manual for the

\(^3\) Cost reflective tariffs allow power providers to cover operating costs, depreciation, debt payments and taxes as well as obtain a reasonable return on investment.
Electricity Supply Industry, revised by the EC in 2012, specifically states that exemption from licensing requirements would require exceptional circumstances.

**Tariffs**

A licensee’s tariffs must be approved by the PURC. Pursuant to section 20 of the Public Utilities and Regulatory Commission Act, the PURC may set national uniform tariffs and traditionally has done so. Tariffs are published in the Gazette and are available online on the PURC’s website. Retail customers are charged a tariff based on their level of consumption, falling into either one of four sub-categories if residential (including a lifeline rate for very low consumption) or one of three sub-categories if non-residential. Retail customers that are special load tariffs are categorized as low voltage, medium voltage, high voltage or high voltage mines and are charged tariffs based on energy consumed and capacity. Additionally, all retail customers pay a service charge.

Pursuant to section 16(3) of the Public Utilities and Regulatory Commission Act, the PURC is required to consider investor interest, the cost of production, the financial integrity of a service provider and consumer interest when determining rates. Also, charges for generation, transmission and distribution charges are all determined based on the revenue requirement method, and retail tariffs are a sum of these charges. Retail tariffs, by consequence, should be cost-reflective.

Tariffs are subject to major tariff reviews periodically as well as quarterly automatic adjustments based on the PURC’s automatic adjustment formula, which takes into account changes in fuel costs among other variables. The last major tariff review in 2013 resulted in an increase in rates for retail customers of approximately 80%. Since that time, adjustments to tariffs have been made according to the PURC’s automatic adjustment formula. Nonetheless, retail tariffs are below the cost of energy production.

**Implications for IOSPPs**

Ghana’s licensing and tariff regulations create a less favourable environment for IOSPPs and potential investors in these power providers. An IOSSP is subject to licensing requirements in Ghana and would need to go through a multi-step licensing process unless it demonstrates exceptional circumstances required to obtain an exemption. IOSPPs will incur costs in this process.

Despite an increase in tariffs in 2013 and automatic adjustments, the national uniform tariffs for retail customers in Ghana remain below the cost of energy production. This is not commercially sustainable for IOSPPs. There may be incentive, nonetheless, for IOSPPs and investors to enter the electricity market depending on the availability of subsidies. One such subsidy may come from the Renewable Energy Fund, established by the Renewable Energy Act, which provides subsidies and grants for off-grid renewable energy projects in remote areas. This subsidy may be applied to capital and operational costs. However, barring an IOSPP’s eligibility for subsidies, the ability of subsidies to off-set the difference between retail tariffs and energy production costs, and the relative certainty that subsidies will be obtained, below cost national uniform tariffs, as exist in Ghana, result in IOSPPs that are not commercially viable and that would, by consequence, have difficulty attracting private investment.
Tanzania

Overview


The Energy and Water Utilities Regulatory Authority (EWURA), is responsible for technical and economic regulations and its functions include granting licences and setting tariffs. The Rural Energy Agency (REA), established by the Rural Energy Agency Act, is responsible for promoting rural electrification. In this role, the REA, although not strictly speaking a regulatory body, issues subsidies and grants for rural energy projects.

The Tanzania Electric Supply Company Limited (TANESCO), the dominant player in the electricity services industry, is a state owned company that generates, transmits, distributes and sells electricity. Other than TANESCO, eight power providers, falling into the categories of Independent Power Producers, Small Power Producers and Emergency Power Producers\textsuperscript{5}, also generate electricity while essentially one other power provider distributes and supplies electricity. TANESCO is the only company that transmits electricity.

Licensing

Under the Electricity Act, a person is required to obtain a licence from EWURA to generate, transmit, distribute and/or supply electricity, among other commercial activities in the energy industry, unless the person or the activity is exempt from licensing requirements.

An energy provider may apply for a provisional licence, requiring it to submit certain information and documents to meet administrative and technical requirements. The provisional licence is not mandatory; however, during its term the licensee may conduct assessments to obtain the additional information and documents needed to meet the administrative and technical requirements for a permanent licence. Section 18(1) of the Electricity Act provides that EWURA may exempt any person from licensing requirements. Also, power providers in rural areas that generate electricity at an installed generation capacity of less than 1 megawatt and off-grid electricity distributors and suppliers in rural areas where demand on the system is less than 1 megawatt are both exempt from licensing requirements pursuant to sections 18(3) and (4) of the Electricity Act.\textsuperscript{6}

Tariffs

EWURA may set maximum tariffs or tariff formulas pursuant to Section 23(4) of the Electricity Act, and both licensees and persons exempt from licensing requirements are subject to these maximums or formulas. Tariff categories for retail customers include: a domestic low use category for low consumption residential consumers; a general use category for residential, small commercial and light industrial use; a

\textsuperscript{4} The Ministry's 2015 Draft National Energy Policy was recently published. The Policy’s specific objectives include: promoting participation by the private sector and rural electrification.

\textsuperscript{5} As articulated in its June 2014 Electricity Supply Industry Reform Strategy and Roadmap, the Ministry of Energy and Minerals intends to phase out Emergency Power Producers as contracts with these power providers expire.

\textsuperscript{6} The Electricity (Development of Small Power Projects) Rules, 2014 required SPPs that were exempt from licensing requirements to register with EWURA. The current Electricity Rules do not have a corresponding rule.
low voltage maximum demand category for industrial consumers; and a high voltage maximum demand category for industrial consumers.

Potential power providers apply to EWURA for approval of their proposed tariffs and tariff structure. Tariffs are reviewed every three years and automatic adjustments occur when applicable in the interim. EWURA uses the revenue requirement method to set tariffs. Also, pursuant to section 23(2) of the Electricity Act, EWURA is required to take into account cost-reflective considerations. Based on these considerations and the tariff setting methodology, tariffs should be cost-reflective. This is not the case, however, as retail tariffs are below the cost of energy production in Tanzania.

Tanzania has a specific framework intended for small renewable energy projects between 100 kilowatts and up to 10 megawatts. Under this framework and pursuant to Rule 29(1) of the Electricity Rules, Small Power Producers (SPPs)7 are required to apply to EWURA for retail tariff approval. The Electricity Rules set a maximum retail tariff for SPPs at the sum of: operating costs, depreciation, debt, emergency reserves for repairs, taxes and a reasonable return on capital. SPPs may propose a tariff structure based on energy, power, a flat rate or a combination of these options. SPPs may propose to use the national uniform tariff but must be able to show that the project would be commercially viable at that rate. A power provider operating a Very Small Power Project (VSPP)8 that sells electricity to retail customers is not required to apply to EWURA for tariff approval. These tariffs, however, are subject to review in the event of complaints by 15% or more of the consumers served by the VSPP.

**Implications for IOSPPs**

Licensing and tariff regulations in Tanzania create a more favourable environment for IOSSPs and potential investors. If an IOSPP has an installed generation capacity of 1 megawatt or more, it is subject to licensing requirements. If an IOSPP has an installed generation capacity of less than 1 megawatt, its electricity generation falls in the category of activity in Tanzania that does not require the IOSPP to obtain a licence, which reduces costs for the IOSPP.

With respect to tariffs, if an IOSPP falls into the SPP category, it must obtain approval for its retail tariffs. However, tariff maximums are not determined by the national uniform tariff but by the tariff that is determined to be cost-reflective for the IOSPP. If the IOSPP’s plant falls into the VSPP category, it does not need to obtain approval for its retail tariffs. Therefore, under the small power project framework, IOSPPs can seek approval from EWURA for retail tariffs that allow the business to be commercially sustainable if they are SPPs or simply charge customers commercially sustainable tariffs without seeking approval if its installed generation capacity qualifies it as a VSPP. This should allow the IOSPP to attract private investment.

IOSPPs and investors may have additional incentive to enter the electricity generation and distribution market in Tanzania because of the availability of subsidies. The REA Act established the Rural Energy Fund, which largely provides grants to developers to cover initial capital costs for rural energy projects. If IOSPPs are eligible for grants from the Rural Energy Fund or other grants or subsidies then potential cost reductions would factor favourably in the decision whether to develop or invest in an IOSPP in Tanzania.

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7 energy producers generating electricity between 100 kilowatts and up to 10 megawatts
8 energy generator with an installed capacity of 100 kilowatts or less
Conclusion

Currently, Ghana’s energy regulations with respect to licensing and retail tariffs are less favourable to the emergence and growth of IOSPPs given a multi-step licensing process and the presence of a uniform national tariff that is below energy production costs. This means more costs for the IOSPP in Ghana and the possibility of a business that is not commercially sustainable. On the other hand, Tanzania’s licensing and tariff regulations are more favourable to the emergence and growth of IOSPPs. IOSPPs are exempt from licensing requirements if they have less than 1 megawatt of installed generation capacity. IOSPPs that generate between 100 kilowatts up to 10 megawatts of electricity are not limited by national uniform tariffs but may apply for approval of cost reflective retail tariffs. Furthermore, if the particular plant has an installed generation capacity of less than 100 kilowatts, the IOSPP is exempt from seeking approval for retail tariffs. For IOSPPs, this means the possibility of less costs and a commercially viable business in Tanzania.

Although beyond the scope of this article, a range of variables such as population distribution, electricity access rates, the financial strength of national utilities, and economic growth, among others, should shed light on Ghana and Tanzania’s respective choices to develop particular energy policies, regulations and reforms. These variables may speak to why Ghana has not developed more favourable regulations for IOSPPs as Tanzania has done.

A potential IOSPP—a small scale rural energy generator that sells at retail to local customers—interested in either Ghana or Tanzania would need to contend with the licensing and tariff regulations discussed above. Based on the conclusion in this article, one would expect to see the emergence of more IOSPPs in Tanzania playing a greater role in rural electrification than would be the case in Ghana if regulations in the respective countries, taking into account reforms, continue along the same lines in the future.

Substantive Amendment to the National Hydrocarbons Law Enacted in Argentina

By Mariana Ardizzone, Ardizzone Abogados, Buenos Aires, Argentina (mariana@ardizzone.com.ar)

On October 29th 2014, the Argentine National Congress enacted Law 27,007, whereby a substantive amendment to National Hydrocarbons Law 17,319 was introduced. The primary aim of the amendment was to build the legal roads to allow the mining and monetization of the huge unconventional hydrocarbon resources identified in Argentina. National Hydrocarbons Law 17,319 had been enacted in 1967 and served the country since then through different economic and political scenarios. Recognized for its versatility, National Hydrocarbons Law 17,319 provided for the co-existence of government and private investment in the field, including royalty-concessions, service contracts and joint ventures, all of which reached a starring role at different times in Argentine history.

Law 17,319 was amended for the first time in December, 2006 by Law 26,197, pursuant to which the national government conveyed to provincial governments granting powers and jurisdiction over hydrocarbons as provided in the 1994 Amendment to the National Constitution. That constitutional amendment had established that provincial states were vested with eminent domain over the natural resources lying within their territories. Placing these powers within the Provincial States, however, was not without its problems. Their limited enforcement capacity, weak fiscal situation, uncoordinated practices and policies and parochial tenders cast shadows over the initial 10 years of provincial exercise of domain and powers over hydrocarbons.
In 2011, the U.S. Energy Information Administration ranked Argentina 3rd in the world, after China and the United States, in the size of its technically recoverable shale gas resources. The realization of the vast size of the shale resources existing in Argentina prompted the National Government to take measures to adapt the hydrocarbons legal framework to fit the needs and demands of the industry. Also, improving and harmonizing provincial state practices became timely so as to position Argentina to be better positioned to take advantage of the opportunities for the nation.

Regarding exploration bids, Law 27,007 provides that the National Secretary of Energy and all provincial hydrocarbons enforcement authorities shall draft and agree on model competitive bidding terms to be followed by all provincial governments in future bidding rounds. Blocks shall be awarded to the bidders offering the highest investments or exploration activities. Moreover, provincial governments may not reserve additional open acreage for their state-owned companies. Such companies may set up joint ventures with private investors, but they are bound to bear their respective participating interests in all project development costs (i.e. state owned companies will not enjoy carried interests, considered too burdensome on the economics of unconventional projects).

Law No. 27,007 also incorporates and regulates unconventional hydrocarbon concessions. These were initially introduced by National Decree 929/2013 on July 15, 2013, but were upgraded to a statutory level only by Law 27,007. Unconventional exploitation of hydrocarbons was defined as lifting liquid and/or gaseous hydrocarbons through unconventional stimulation techniques applied in reservoirs located in shale rock formations (shale gas or shale oil), tight sands (tight sands, tight gas, tight oil), coal layers (coal bed methane) and/or characterized generally by the presence of low permeability rocks.

Without prejudice to the validity of existing exploitation concessions, concessionaires may (i) request the grant of a new unconventional hydrocarbon exploitation concession over the area of their preexisting concession(s) (ii) or subdivide the area of their existing concession(s), with new concessions granted on new areas of exploitation of unconventional hydrocarbons. Preexisting concessions will remain in effect under the previously existing conditions and term. Finally, unconventional hydrocarbon exploitation concessionaires with a preexisting concession adjacent to a new concession may apply for the unification of both areas as one unconventional exploitation concession as long as the two areas are proven contiguous. The granting authority may set the boundaries of these adjacent areas.

A key aspect of unconventional hydrocarbon exploitation concessions is that the length of these contracts is 35 years—10 years longer than the 25-year term applicable to conventional hydrocarbons, and 5 years longer than the 30-year term applicable to offshore projects.

In connection with offshore hydrocarbons, National Hydrocarbons Law 17,319 provided that: (i) all open acreage offshore exploration permits and exploitation concessions were conveyed to the National Secretary of Energy; and (ii) all existing joint venture agreements entered into by ENARSA with private investors were conveyed by ENARSA to YPF.
Last but not least, Law No. 27,007 instructed the national government to incorporate to the promotional regime created by Decree 929/2013 the following incentives: (a) at times when the domestic market is fully satisfied, the right to export freely a percentage of the hydrocarbons production from such projects (being 20% in the case of onshore conventional and unconventional projects or 60% in the case of offshore projects) without any export duty, coupled with a right to freely dispose of all foreign currency proceeds obtained from those exports; and (b) at times when national hydrocarbon production is insufficient to meet domestic demand, the right to receive for the same percentage of the hydrocarbons production from such projects a price in Argentine pesos no lower than the reference export price (before export duties) coupled with access to the foreign exchange market to convert the said proceeds to foreign currency.

**Upcoming Events**

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<th>Event</th>
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<tr>
<td><strong>Americas Regional Forum (Miami, Florida)</strong></td>
<td>February 28-March 1, 2016</td>
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<td><strong>Section of International Law Spring Meeting (New York, NY)</strong></td>
<td>April 12-18, 2016</td>
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<tr>
<td><strong>AIPN International Petroleum Summit (Woodlands, Texas)</strong></td>
<td>May 9-12, 2016</td>
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<td><strong>AIPN International Model Contracts Workshop (Banff, Canada)</strong></td>
<td>June 28-July 1, 2016</td>
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<td><strong>ABA Annual Meeting (San Francisco, California)</strong></td>
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<td><strong>Section of International Law Fall Meeting (Tokyo, Japan)</strong></td>
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<td><strong>Proposed Africa Regional Forum</strong></td>
<td>2017</td>
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**Listserv and LinkedIn**

**Listserv**

Joining the Committee listserv is free for any member of the Section of International Law. To join, visit the IENRC webpage and click on “join.” [https://apps.americanbar.org/dch/committee.cfm?com=IC742000](https://apps.americanbar.org/dch/committee.cfm?com=IC742000)

**LinkedIn**

IENRC has its own subgroup of the ABA Section of International Law II LinkedIn group. Be sure to join if you are a LinkedIn participant, and then use the subgroup to discuss substantive issues of interest in our subject area. You can find the Committee on LinkedIn at: [http://www.linkedin.com/groups?gid=5174728](http://www.linkedin.com/groups?gid=5174728)

**How to Contribute Newsletter Articles and Announcements**

We are dedicated to making this Newsletter a useful and productive benefit of your ABA membership. To do that, we need your feedback, suggestions and, especially, your contributions. We want to try to make this publication an informal and practical way in which to keep up with what is going on around the world in the area of energy and natural resources. As you can see from the content in this issue, articles and submissions cover a wide range of topics and can be short and to the point. Please send your ideas and suggestions to the Committee at: IENRC.Committee@gmail.com.
submissions to the Co-Chairs and the Editor, Mark Gould, at mark.gould@agg.com. We look forward to hearing from you in the near future!

We also would like to begin using this space to highlight both professional and personal news about the members of the Committee. It is a good way for everyone to get to know each other better and to learn more about the diversity of practice areas and geographical membership in IENRC. So, please send Mark any career changes, awards, weddings, births or simply other items of business or personal interest that you would to share with your colleagues.

About the Newsletter

The International Energy & Natural Resources Committee Newsletter of the ABA Section of International Law serves as a forum for the exchange of information concerning issues affecting the international practice of law in the energy and natural resources sectors. The content of this Newsletter is for informational purposes only and is not the practice of law by any author, contributor or editorial board member. Accordingly, readers should consult an attorney licensed in the appropriate jurisdiction for advice concerning any specific matter that requires a legal opinion.

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