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M. & M. BOMCHIL ABOGADOS

ARGENTINA'S PPP PROGRAM MOVES FORWARD TOWARDS ELECTRICITY TRANSMISSION

On September 14 the Secretariat of PPP published the preliminary version of the agreement for the construction, operation and maintenance of the "Extra High Voltage Line at 500 kV ET Rio Diamante – New ET Charlone, Transformer Stations and additional works at 132 kV" project (Project), under the PPP program for the "Transmission Lines Stage 1 PPP Project".

The preliminary bidding terms and conditions of the Project were published on September 24. Unlike the previous PPP "Highways and Safe Roads Network – Stage 1" project for the awarding of toll roads, in which the design, construction and operation of six toll roads was awarded under the same procedure, in the case of electricity transmission, the project has been split into 3 different stages. Therefore, only one PPP Concessionaire shall be awarded the first stage of the Project.

The execution of the PPP agreement is expected for the first quarter of 2019.

This Project is a priority for Argentina's infrastructure development since it will contribute to the supply of an area with a high demand for electricity and significant structural weaknesses within its networks. This area comprises certain portions of the provinces of Córdoba, Santa Fe, Buenos Aires, Mendoza, San Luis and La Pampa.

M. & M. Bomchil has taken on a preeminent role within the framework of the first PPP tender process in Argentina for the "Highways and Safe Roads Network – Stage 1" project, acting as legal counsel to the only consortium of companies which was awarded two out of the six toll roads up for bid. The firm, jointly with the consortium, has actively participated in the drafting of the relevant corporate, legal and financial documents for the submission of bids and the structuring of the bonds and financing as required by the tender documents.

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KEY FEATURES OF THE PPP AGREEMENT FOR STAGE 1 – ELECTRICITY TRANSMISSION

The Project

- **Main Works:** construction, operation and maintenance of the Transformer Station Charlone, a 500 kV extra high voltage line between the Transformer Station Rio Diamante and the future Transformer Station Charlone, five 132 kV lines and additional works.
- **Term:** 15 years
- **Execution of the PPP Agreement:**
 - (I) A construction stage set for the first thirty-six (36) months as from the execution of the PPP Agreement and until the granting of the Commercial Authorization by the Contracting Authority; and
 - (II) An O&M services stage, which shall begin once the Commercial Authorization has been granted and ends fifteen (15) years as from the date of the execution of the PPP Agreement.
- **Parties:**
 - *PPP Concessionaire:* the bidder acting as a PPP Independent Carrier
 - *Contracting Authority:* Integración Energética Argentina S.A. PPP Concessionaire's requirements:
 - *Technical requirements:* bidders have to demonstrate experience in (a) the construction of Extra High Voltage Transmission Lines or Transformer Stations; (b) the supply of O&M services for Extra High Voltage Transmission Lines or Transformer Stations (either by itself or by subcontractors); and (c) detailed engineering.
 - *Financial requirements:* the bidder or its controlling shareholder shall comply with a certain minimum equity amount set forth in the Bidding Terms and Conditions.
 - *Compliance and transparency requirements:* in order for their offer to be considered, (i) bidders shall not be included within the World Bank or the Inter-American Development Bank's lists of non-eligible firms and individuals; and (ii) any legal or natural persons which make up the bidder shall not have been finally convicted for carrying out any corruption conducts or practices according to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD). In addition, the awarded bidder shall demonstrate compliance with an Integrity Program pursuant to Law No. 27,401 of Corporate Criminal Liability.

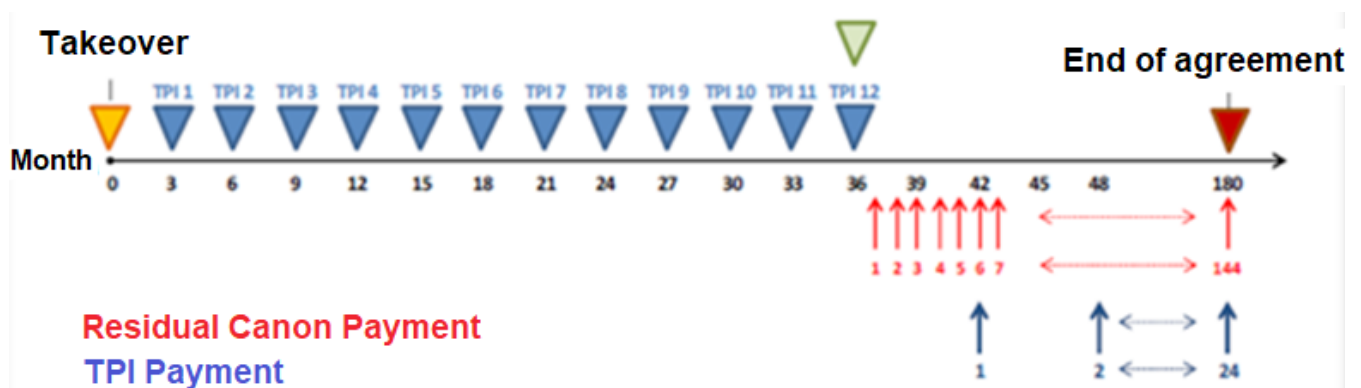
On-Demand Bonds

- At the date of the execution of the agreement, the PPP Concessionaire shall constitute and submit before the Contracting Authority the following bonds:
 - (I) Financial Close Bond, which initially shall be for an amount equal to 2% of the Total Required Amount (MTR), as defined below;
 - (II) Main Works Performance Bond, which initially shall be for an amount equal to 2.5% of the Total Required Amount (MTR); and
 - (III) Administrative Easement Busway Bond, if applicable (the constitution of the bond is subject to the PPP Concessionaire's fulfilment of certain easement's milestones).

- All bonds shall be constituted in favor of the National State as on-demand bonds, either as Bank Deposit, Bank Guarantee or SBLC.

Compensation

- **Total Required Amount (MTR):** the total compensation to be received by the PPP Concessionaire for the Project, which shall be payable through the Canon by TPI and the Residual Canon.
- **TPIs:** payable in USD, irrevocable and unconditional titles.
- **Canon by TPI (90%):** recognized during the construction stage. The investment progress made by the PPP Concessionaire shall be registered through monthly certificates referred to as Actas de Reconocimiento de Avance de Inversión (ARAIs).
- After the issuance of 3 consecutive ARAIs, a TPI shall be issued for an amount equivalent to the percentage of investment progress for such period multiplied by the Total Required Amount of Canon by TPI.
- The TPIs will be paid in 24 semi-annual installments, starting 6 months after the scheduled date of Commercial Authorization.
- **Residual Canon (10%):** recognized in the O&M Services stage. It shall be payable in monthly installments as from the Commercial Authorization date.



Electricity Transmission PPP Individual Trust

- Creation of a special purpose trust to be funded from:
 - Contributions collected by CAMMESA from the electricity users (the PPP Extension Canon); and
 - Contingent annual contributions made by the National State in accordance with the terms of the PPP Agreement.

Regulatory Issues

- **Supervision:** TRANSENER and TRANSBA (existing transmission companies) shall supervise the construction, operation and maintenance of the works in exchange of supervision fee from the PPP Concessionaire.
- **Technical License:** The Main Works shall fulfill the technical conditions set forth in the Technical License granted by the existing transmission companies.
- The amendment of the Wholesale Electricity Market administration company's (CAMMESA) procedures is foreseen in order to adapt them to the PPP regulatory framework, creating the figure of the PPP Independent Carrier.

Dispute Resolution

- Multi-tiered dispute resolution clause for all disputes of technical, interpretative or patrimonial nature, excluding the termination of the PPP Agreement for public interest reasons and its suspension or nullity for illegitimacy reasons:
 - (I) amicable negotiations;
 - (II) dispute board or ad hoc dispute board; and
 - (III) arbitration under the rules chosen by the parties or, absent parties' agreement, the UNCITRAL Rules.
- Arbitration for disputes in connection with the termination of the agreement for public interest reasons and its suspension or nullity for illegitimacy reasons.
- Resolution by the National Electricity Regulatory Commission (ENRE) for disputes arising during the O&M Services stage and fallen within the electricity regulatory framework, including Laws No. 15,336 and 24,065, as regulated by Decree No. 1,398/92.
- Sole arbitrator or three-member tribunal depending on the disputed amount.
- International seat of arbitration available in case of foreign controlling shareholders.
- The PPP Agreement shall be governed by Argentine law, including Argentina's electricity regulatory framework, as applicable.