

OFFICIAL VERSION IN SPANISH

LEGISLATIVE ASSEMBLY

LAW No. 45

(Of August 4, 2004)

That establishes a regime of incentives for the promotion of hydroelectric generation systems and other new, renewable and clean resources, and other dispositions are dictated

THE LEGISLATIVE ASSEMBLY

DECREES:

Chapter I

Objectives and Definitions

Article 1. Objectives. The object of the present Law is to offer suitable incentives for the construction and development of minihydroelectric power station systems, hydroelectric power station systems, geothermoelectric power station systems, particular power stations of new, renewable and clean resources and other power stations of new, renewable and clean resources.

In addition, it intends to contribute to the development of the country by generating employment and new work sources; promote investment and development in depressed rural areas; utilize and optimize natural resources; protect and diminish adverse environmental effects; help with the national coverage of electrical energy supply; diminish the dependency of the country on traditional fuels and diversify energy resources.

Article 2. Definitions. For the effects of this Law, the following terms are defined as follows:

1. *Certificate of emissions reduction.* Constancy that establishes the environmental benefits of the reduction or displacement of greenhouse gas emissions that are referred to by the Convention of the United Nations for Climate Change and the Kyoto Protocol, approved by means of Law 88 of 1998, properly certified as tones of carbon dioxide (CO₂) equivalent per year, by organizations authorized and qualified for their monitoring and verification.
2. *Particular power stations of new, renewable and clean resources.* Electrical generation plants of up to 500 kW of installed capacity that use resources coming from new, renewable and clean resources, and that are used for the generation of particular and nonpublic electrical energy use.
3. *Direct transaction.* Act by means of which the distribution companies can realize contracts for energy and/or power, with electrical generating companies, without the requirement of going through a bidding process in accordance with article 8 of this Law.
4. *New, renewable and clean resources.* Resources coming from hydraulic, geothermal, solar, wind, biomass and other renewable and clean sources, that are used for the generation of electrical energy.

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5. *Hydroelectric generation.* Generation of electrical energy by using the natural hydraulic resources located anywhere in the territory of the Republic of Panama.
6. *Mini hydroelectric power station systems.* Power generation stations or sets of power generation stations with an installed capacity of up to 10 MW, as well as all the lines, substations and distribution and/or transmission systems necessary for the proper connection to the distribution system and/or to the transmission system.
7. *Other new, renewable and clean sources power station systems.* Power stations of electrical generation that use resources from solar, wind, biomass sources, as well as all the lines, substations and distribution and/or transmission systems necessary for the proper connection to the distribution system or to the transmission system.
8. *Geothermoelectric power station systems.* Power generation stations that use resources from geothermal sources, as well as all the lines, substations and distribution and/or transmission systems necessary for the proper connection to the distribution system or to the transmission system.
9. *Hydroelectric power station systems.* Power generation stations or sets of power generation stations with an installed capacity greater than 20 MW, as well as all the lines, substations and necessary transmission systems for the proper connection to the transmission system.
10. *Small hydroelectric power station systems.* Power generation stations or set of power generation stations with an installed capacity greater than 10 MW and up to 20 MW, as well as all the lines, substations and distribution and/or transmission systems necessary for the proper connection to the distribution and/or transmission system.

Chapter II

Concessions and Licenses

Article 3. The last paragraph of Article 55 of Law 6 of 1997 remains as:

Article 55. Granting. ...

Starting on the sixth year after the entrance into effect of this Law, the granting of concessions relative to hydroelectric generation will not be subject to the bidding requirement. These concessions will be granted by means of a motivated resolution by the Regulator Entity (“Ente Regulador”), in which the terms and conditions under which the concession in each particular case is granted are consigned, previous to the fulfillment of the requirements demanded in the current legislation with regard to environmental protection, safety and industrial hygiene and operation of industrial facilities. Granted the concession, the holder will remain subject to the norms for the provision of the services that are established in this Law and its regulations. The Regulator Entity will establish the rules and regulations, by means of a motivated resolution, and the terms for the presentation of the contract documents, the compliance guarantee, and will pronounce itself with regard to the water use concessions for hydroelectric and geothermoelectric generation in order to avoid the sub utilization of the resource.

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Article 4. Concessions and licenses. For the effects of taking advantage of the benefits established in this Law, those who are interested in the construction and operation of mini hydroelectric power station systems, small hydroelectric power station systems, hydroelectric power station systems, geothermoelectric power station systems and other new, renewable and clean sources power station systems, will have to maintain a concession or license in force under Law 6 of 1997, with the exception of particular power stations of new, renewable and clean resources that do not require concessions nor licenses. It is specifically understood that the persons or companies that have applied for concessions or licenses prior to the entrance into effect of this Law and have not initiated the construction, will be able to take advantage of its benefits.

Article 5. Concession for water use for generation of hydroelectric energy. The water concession contracts, granted by the National Environmental Authority (“Autoridad Nacional del Ambiente”) for the development of mini hydroelectric power station systems, small hydroelectric power station systems and hydroelectric power station systems, will have to be issued for the same period of time that the concessions or licenses that the Regulator Entity has granted for those purposes. Thus, the Regulator Entity, before the National Environmental Authority grants a concession for water use, will inform the periods of the concession or license granted for the use of the hydraulic resource for electrical energy generation. For the development of particular power stations of new, renewable and clean resources, that use water for the generation of electrical energy, they will have to request the respective water concession from the National Environmental Authority.

Article 6. Concession for water use for generation of geothermoelectric energy. The National Environmental Authority is hereby authorized to grant water concessions for the operation of geothermal sources. The water concession contracts for geothermal power stations granted by the National Environmental Authority for the exploitation of geothermoelectric power station systems, will have to be issued for the same period that the concessions or licenses granted by the Regulator Entity for those purposes. Thus, the Regulator Entity, before the National Environmental Authority grants a concession for the use of the geothermal resource, will inform the periods of the concession or license granted for the use of the geothermal resource for electrical energy generation.

Article 7. Expiration of water use concessions. The water concessions granted by the National Environmental Authority for mini hydroelectric power stations, small hydroelectric power station systems, hydroelectric power station systems and geothermoelectric power station systems will expire when the concession granted by the Public Services Regulator Entity (“Ente Regulador de los Servicios Públicos”) expires, previous authorization by the National Environmental Authority. This disposition applies for projects that are already built and to be constructed.

Chapter III
Benefits

Article 8. Direct contract transaction. Independently of its location, mini hydroelectric power station systems and other new, renewable and clean sources power station systems with an installed capacity of up to 10MW, will be able to contract directly with the distribution companies, whenever the contracting capacity of the distributor exists in agreement with its obligation to contract and that the sum of it's own generation and the direct purchases here authorized do not exceed the limit of fifteen percent (15%) of the maximum generation demand in the area of concession of the respective distributor that purchases. The technical and commercial criteria of these direct purchases will be determined by the Public Services Regulator Entity.

The mini hydroelectric power station systems, geothermoelectric power station systems and other new, renewable and clean sources power station systems with an installed capacity of up to 10 MW, will not be subject to any distribution nor transmission charge when they sell directly or they sell in the occasional (spot) market. In no case, the distribution and the transmission costs will be transferred to the end users.

Article 9. Benefits for power stations of more than 10 MW up to 20 MW. The small hydroelectric power station systems, geothermoelectric power station systems and other new, renewable and clean sources power station systems of more than 10 MW up to 20 MW of installed capacity, will not be subject to any distribution nor transmission charge for the first 10 MW of installed capacity during the first ten years of commercial operation. In no case, distribution and the transmission costs will be transferred to the end users.

Article 10. Fiscal benefits. Natural persons or legal persons who develop mini hydroelectric power station systems, small hydroelectric power station systems, hydroelectric power station systems, geothermoelectric power station systems, particular power stations of new, renewable and clean resources and other new, renewable and clean sources power station systems will enjoy the following fiscal benefits:

1. Exoneration of Import Tax, customs duties, contributions and burdens, as well as the Transfer of Movable Goods and Rendered Services Tax [“Impuesto de Transferencia de Bienes corporales Muebles y prestación de Servicios (ITBMS)”], that could be caused due to the import of equipment, machines, materials, spare parts and others that are necessary for the construction, operation and maintenance of particular power stations of new, renewable and clean resources of up to 500 kW of installed capacity, mini hydroelectric power station systems, small hydroelectric power station systems, hydroelectric power station systems, geothermoelectric power station systems and other new, renewable and clean sources power station systems as well as for the increase in power and/or energy of existing power stations. This disposition will also apply to particular power stations of new, renewable and clean resources of up to 500 kW of installed capacity, mini hydroelectric power station systems, small hydroelectric power station systems, hydroelectric power station systems, geothermoelectric power station systems and other new, renewable and clean sources power station systems that, at the time the present Law enters into effect, are in the construction

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phase, which will have a term of six months from the promulgation of this Law, in order to request the recognition of the exoneration from the Revenue General Directorate (“Dirección General de Ingresos”).

2. The company that develops new projects or that increases the energy production capacity of mini hydroelectric power station systems, geothermoelectric power station systems and other new, renewable and clean sources power station systems of up to 10 MW of installed power capacity, that initiates its construction after the present Law enters into effect, will be able to opt to acquire from the State an equivalent fiscal incentive of up to the twenty-five percent (25%) of the direct investment cost in the respective project, based upon the reduction of tons of equivalent carbon dioxide (CO₂) emissions per year, calculated through the term of the concession or license, which could only be applied as payment of the Income Tax derived in the activity, per fiscal period, during the first ten years counted from the entrance into commercial operation of the project, whenever they do not enjoy other incentives, exonerations, exemptions and fiscal credits established in other laws.
3. The company that develops new projects or that increases the energy production capacity of small hydroelectric power station systems, hydroelectric power station systems, geothermoelectric power station systems and other new, renewable and clean sources power stations of more than 10 MW of installed power capacity, that initiates its construction after the present Law enters into effect, will be able to choose to acquire from the State an equivalent fiscal incentive of up to the twenty-five percent (25%) of the direct investment cost in the respective project, based upon the reduction of tons of equivalent carbon dioxide (CO₂) emissions per year calculated through the term of the concession or license, which could only be applied as payment of up to fifty percent (50%) of the Income Tax derived from the activity, per fiscal period, during the first ten years counted from the entrance into commercial operation of the project, whenever they do not enjoy other incentives, exonerations, exemptions and fiscal credits established in other laws.
4. For the effects of determining the total amount of the fiscal incentive of which numerals 2 and 3 of this article refer to, a reference price per ton per year of carbon dioxide (CO₂) equivalent will be used and a base line in metric tons per MW-hour of carbon dioxide (CO₂) equivalent to be applied to the totality of MW-hours estimated to be generated during the concession or license period calculated for each project by the Public Services Regulator Entity, in coordination with the Economy and Finance Ministry and the National Environmental Authority.
5. The company that develops new projects or that increases the energy production capacity of mini hydroelectric power station systems, small hydroelectric power station systems, hydroelectric power station systems, geothermoelectric power station systems and other new, renewable and clean source power stations that manages to sell their per year equivalent carbon dioxide (CO₂) emissions reduction certificates before or after taking advantage of the benefits established in this Law, will have to report the sale of the referred certificates to the General Revenue Directorate of the Economy and Finance Ministry so that the amount of the referred certificate sales can be deducted from the balance of the fiscal incentive of up to twenty-five percent (25%) of the respective project direct investment cost.

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6. The fiscal incentive to which numerals 2 and 3 of this article refer to may not be transferred, yielded nor compensated. The tax payers, who take advantage of the fiscal credit benefit indicated in these numerals and apply depreciation to susceptible goods, will not be able to deduct the same as depreciation cost in the same proportion as the fiscal credit, for the determination of taxable income.
7. Granting of a fiscal credit applicable to the Income Tax derived from the activity in a specific fiscal period, of a maximum of five percent (5%) of the total direct investment value for civil works, that after the construction of mini hydroelectric power station systems, small hydroelectric power station systems, hydroelectric power station systems, geothermoelectric power station systems and other new, renewable and clean sources power stations, that initiate construction after the present Law enters into effect, become infrastructure for public use, like highways, roads, bridges, sewage systems, schools, health centers and others of similar nature, previous to an evaluation by the public entity that receives the corresponding work, in coordination with the Economy and Finance Ministry. The referred credit cannot be the subject of compensation, cession or transferal.
8. The fiscal incentives will be applied solely to the natural persons or legal persons who develop the projects directly and only for the part corresponding to the project. The incentives will not be applied to the other activities.

Article 11. Application of the benefits. This Law is of special character and, with the exception of what has been established in article 10, the incentives here established with their limits and reach, are applied in an exclusive way to mini hydroelectric power station systems, small hydroelectric power station systems, geothermoelectric power station systems and other new, renewable and clean sources power stations up to a limit of 20 MW of installed capacity; therefore, these benefits will not be extended to other generators, by virtue of what has been established in the first paragraph of article 68 of Law 6 of 1997.

Chapter IV
Final Dispositions

Article 12. Obligations of the beneficiaries of this Law. The companies that become beneficiaries of the dispositions of the present Law, will have the following obligations:

1. To collaborate with the official improvement and conservation programs and plans of the river basins or respective areas of influence, including, but not limited, to the works of reforestation or efforts against erosion and desert degeneration, for the purpose of conserving the natural resources of the country for future generations.
2. The developers of projects that are realized on behalf of this Law will have to respect the rights of those affected and contemplate the suitable mitigation of social aspects as an indispensable means to attain harmony among the population, the environment and the requirements for national development.

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3. The generators will cover the investments to adapt the existing distributor's grids, should it be required for the connection and delivery of energy, besides covering the distribution losses in case they increase due to the referred connection. In no case, the costs of distribution losses will be transferred to the end users.
4. The generators that deliver at high voltage levels must provide a medium voltage level connection to make possible grid extensions for rural electrification.

Article 13. Tariff during customer claims. In case of claims, the users of the public service controlled by the Public Services Regulator Entity, will continue paying the tariff that is in effect immediately previous to the period that is subject to claim, and the distribution company will not be able to suspend the provision of the public service for any reason, until the Public Services Regulator Entity does not emit its decision.

Article 14. The present Law modifies the last paragraph of article 55 of Law 6 of February 3, 1997.

Article 15. This Law will enter into effect on the date of its promulgation.

COMUNICATE AND ABIDE BY IT

Approved on the third debate, at the "Palacio Justo Arosemena", Panama city, on the 30th day of the month of June of the year two thousand and four.

The President,
JACOBO L. SALAS DIAZ

In Charge General Secretary,
JORGE RICARDO FABREGA

NATIONAL EXECUTIVE ORGAN.- PRESIDENCY OF THE REPUBLIC.- PANAMA,
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MIREYA MOSCOSO
President of the Republic

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Economy and Finance Minister

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