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March 26, 2021 | Number 2866

Chile Transmission Line Mega-Project Up for Auction

The Ministry of Energy accelerated the bidding process, calling the mega-project critical infrastructure essential to the decarbonization of the national grid.

In February 2021, the Chilean Ministry of Energy published the bidding terms and conditions (the Bid Documents) for the rights to develop a mega-project to connect the Kimal and Lo Aguirre substations with a 1,500-kilometer (932 mile) high-voltage direct current transmission line (the Project). Proposals are due in August 2021, and the Project is scheduled to be awarded in October 2021.

Background

In 2016, Law No. 20,936 (the Transmission Law) created the National Electric System Independent Coordinator (*Coordinador Independiente del Sistema Eléctrico Nacional*, or CEN), a unified system operator. Strategically, CEN is tasked with publishing regular updates to its forecasts and supporting transmission grid expansion and long-term energy planning.

Originally conceived under CEN's 2017 transmission plan, the Project aims to connect the solar- and wind-energy-producing northern region of Chile with the epicenter of consumption in the country's center-south region.

After delays related to environmental and social impact field studies, the Ministry of Energy decided in September 2020 to accelerate the bidding process by declaring the Project to be essential to the decarbonization of the national grid and urgent for combating congestion on power lines.

The Project

Pursuant to the Bid Documents, the winning bidder (the Successful Bidder) will undertake the Project for the amount offered (the Investment Value) by signing a public deed of acceptance of the Ministry of Energy's decree setting forth the rights and conditions for the Project (the Decree of Award).

The Bid Documents also provide for a benchmark investment value of the Project of US\$1.48 billion (Benchmark Investment Value), used to calculate certain terms of the Project, as described below.

Scheduled Commercial Operation Date

The deadline for the Project to achieve the commercial operation date (COD) is seven years from publication of the Decree of Award. In the event that this scheduled COD is not timely achieved, the

Project must pay a daily fine of 0.055% of the Benchmark Investment Value for a maximum of 730 days. The collection of this fine does not prevent the application of other sanctions in accordance with the regulations in force, including the early termination of the Project should CEN, with the approval of the Ministry of Energy, consider such a delay to be a serious breach of the Successful Bidder's obligations.

Project Revenues

The Successful Bidder will be entitled to receive the annual transmission value (Annual Transmission Value, or VATT in Spanish) offered in its bid for 20 years from COD, with tariffs adjusted annually by an indexation formula. The Annual Transmission Value is the sum of (a) the cost of operation, maintenance, and administration (O&M Cost, or COMA in Spanish), with a benchmark value of US\$23.68 million per year, *plus* (b) the annualized Investment Value (Annual Investment Value, or AVI in Spanish). After the initial 20-year period, the Ministry of Energy will issue a decree setting new Benchmark Investment Value, Annual Investment Value, and O&M Cost figures based on prevailing market conditions and the terms of the General Electric Services Law every four years.

While calculated in US dollars, Project revenues will be denominated in Chilean pesos converted using the weighted average market rate determined by the Chilean Central Bank (*dolar observado*) for the penultimate month prior to each payment of the Annual Transmission Value.

Bidder Requirements

Bidders must provide credit support, in the form of either performance bonds (*boletas de garantia*) or guarantee policies (*seguros de garantia*) at the bidder's discretion (Performance Assurances), for each of the following bidding requirements:

- **Incorporation.** A US\$2 million Performance Assurance is required at the time the bid is submitted if the bidder is not a SAGET, i.e., a Chilean corporate entity whose sole purpose is the transmission of electricity, or if the bidder has not signed a solidarity agreement with a SAGET, to ensure that the bidder will incorporate a SAGET.
- **Bidding.** A US\$29.6 million Performance Assurance is required for all bidders, which can be drawn by CEN if the bidder abandons the process, goes bankrupt, makes a misrepresentation as part of its bid, or generally fails to comply with its obligations under the Bid Documents.
- **Development and operation.** Performance Assurances are required to be delivered in the amount of:
 1. 1.5% of the Benchmark Investment Value to ensure satisfaction of the first development milestone
 2. 7% of the Benchmark Investment Value to ensure timely achievement of COD
 3. Upon COD, 3% of the Benchmark Investment Value to ensure the proper operation of the Project during the first 36 months after COD

In addition to standard incorporation requirements, bidders must comply with generally applicable Chilean antitrust rules requiring reporting of intra-industry acquisitions. Further, Chilean law restricts energy industry actors from individually or collectively operating more than 8% and 40%, respectively, of the national grid, of which the Project will represent a significant portion. This restriction may prevent certain national players from operating the Project without divesting other assets.

Certain Material Risks

The Successful Bidder will assume most Project risks, including all construction, operation, and other material risks described below:

- **Acquisition of real estate rights.** The Successful Bidder is responsible for obtaining all real estate rights required for the Project, with no relief available for any delays or cost overruns associated with the requirement for easements. Notably, the last major Chilean transmission project suffered significant delays due to conflicts with landowners and communities affected by that project, and consequently COD was delayed by 18 months. Changes introduced by the Transmission Law, sustainable project policies for community relationships, and procurement of easements of government-owned land could help mitigate this risk for the current Project.
- **Environmental liability.** The Successful Bidder is required to carry out all works necessary to make the Project environmentally viable and to fund all costs related to the environmental works and permits required for the Project. Furthermore, environmental liability is uncapped.
- **Generation facility interconnection.** The Successful Bidder will require power generators using the Project to make changes to their own facilities to accommodate the facility interconnection. However, there is no obligation for existing generators to do so and no accommodation for the funding of these upgrades.
- **Project rating downgrade.** If the Successful Bidder is downgraded to below BB on an international scale or BBB on a national scale prior to COD and does not regain at least that minimum rating within 12 months after the applicable downgrade, CEN may terminate the Decree of Award. The Bid Documents do not contain an exception for the possibility of downgrades resulting from a downgrade of the sovereign.
- **Licenses and permits.** The Successful Bidder is responsible for all licenses and permits required for the Project, with no exceptions or carve-outs for delays as a result of governmental force majeure or any obstruction in obtaining permits.
- **Early termination by CEN.** Early termination of the bidding process will not entitle the Successful Bidder to any compensation. The Bid Documents are silent as to whether and on what grounds CEN is entitled to terminate the Project after COD.
- **Currency risk.** Because Project revenues are calculated based on amounts denominated in US dollars (i.e., Annual Investment Value and O&M Cost) but payable in Chilean pesos, any mismatch between trailing average exchange rates and current exchange rates at the time of payment may negatively impact the results of the Project. To maintain some of the real value of the Successful Bidder's investments in such an environment, the Bid Documents contemplate a foreign exchange indexation formula allowing at least an annual adjustment of the Annual Transmission Value. Transmission companies operating in Chile commonly enter into hedging arrangements to mitigate this risk.

The Bid Process

Bids consist of three sets of documents (administrative, technical, and economic). CEN will review, and either discard or advance, each bidder's Bid Documents in the following order:

1. **Administrative documents:** identify the bidder and certify its experience and solvency
2. **Technical documents:** detail the proposed technical aspects of the Project, including a project schedule, preliminary design studies, and the key project team
3. **Economic documents:** characterize the bidder's proposed remuneration for the Project, with the Project awarded to the bidder who submits the lowest Annual Transmission Value.

The key dates in the bid process are as follows:

Bid Process	Date
Purchase bid terms and conditions	Until June 18, 2021
Q&A	February 1, 2021, to April 22, 2021
Bids are due	August 2, 2021, to August 4, 2021
Award	October 29, 2021

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