

ENERGY

JUL 25

HIGHLIGHT OF THE MONTH

Last month, ANEEL continued the debate on the regulation of energy storage systems, consolidating the analysis of the contributions received as part of the Public Hearing dedicated to the subject.

In addition, the agency approved the A-5 New Energy Auction notice, which registered a record number of projects for hydroelectric power generation. Still on the subject of hydroelectric plants, ANEEL's agenda at ordinary meetings included relevant clarifications on the hydrological risk Auction that took place at the beginning of August, as well as approving regulatory improvements to the rules on dam safety.

Finally, climate change was the subject of ANEEL's monitoring of contingency plans for emergency services and power supply failures maintained by electricity distributors.



NEWS

POWER TRANSMISSION

ANEEL OPENS PUBLIC HEARING TO DISCUSS IMPROVING REGULATIONS ON THE RELIABILITY OF TRANSMISSION FACILITIES

On July 1, ANEEL authorized the opening of Public Hearing No. 27/2025 to discuss the Regulatory Impact Analysis report (AIR No. 3/2022-SRT-SRG-SCT-SFE/ANEEL), which deals with improving the regulations associated with the reliability of transmission facilities.

The AIR report took into account the results of Subsidy Call No. 21/2021, which was set up to assess the need for regulatory intervention to improve the reliability criteria for transmission facilities, with the aim of guaranteeing the safe operation of the National Interconnected System (SIN). The report highlighted the mismatch between the current reliability criteria and the dynamics of the Basic Grid as a problem, and proposed making the reliability criteria more flexible to incorporate new technologies and methodologies.

The relevance of the discussion for improving regulation is due to the current scenario of the expansion of the Brazilian generation by intermittent sources, such as wind and photovoltaic, as well as restrictions on the flow of energy due to excess inflexible supply (without stock capacity) or supply without modulation capacity, both of which lead to a surplus in relation to immediate demand and/or the transmission capacity of the electricity system.

In this context, the aim of this public consultation is to obtain input from agents in the sector and consumers in order to identify and improve relevant aspects of the matter, as well as to validate and revise the assumptions and proposals contained in the RIA.

ANEEL PUBLISHES ANALYSIS OF CONTRIBUTIONS RECEIVED IN PUBLIC HEARING TO REGULATE ENERGY STORAGE

On August 5, ANEEL published a technical note presenting the assessment of the contributions received in the second phase of Public Consultation (CP) No. 39/2023, which deals with the regulation of Energy Storage Systems (SAE).

The technical note consolidates the first stage of the regulatory process for energy storage, focusing on characterizing storage resources and defining the services that can be provided. The main results of the regulatory proposal - submitted to the Board of Directors - include:

- (i) treatment of SAE as a user of the electricity grid, establishing criteria for its access, and definition of the rules necessary for the signing of Contracts for the Use of Transmission and Distribution Systems (CUST/CUSD), and the applicable usage tariff.
- (ii) Flexibility in contracting the Amount of Use of Systems (MUST/MUSD) in the case of generating plants that choose to install collocated SAEs.
- (iii) The possibility of installing the SAE together with the generating plant either through colocation - with a single grant covering the generating plant and the SAE - or through association, in which the generating plant and the SAE have independent grants.
- (iv) treatment of Reversible Hydroelectric Plants (UHR), proposing a specific procedure for the granting of closed-cycle units, and also allowing their inclusion in existing projects by means of a process to alter their technical characteristics.
- (v) Regulatory signaling for the provision of ancillary services by the SAEs, with normative provision for revenue stacking, expanding the possibilities for monetizing the services provided to the system by the SAEs.
- (vi) definition of the rules for dealing with sectoral charges applicable to SAEs.
- (vii) guidelines on the need for agents holding SAEs to contract ballast.

ANEEL has divided the regulatory study on energy storage into 3 cycles. In the next cycle, it will address the specificities of Reversible Hydroelectric Plants, the insertion of storage systems in transmission, distribution and consumption, new business models such as storage applications for the mitigation of curtailment and constrained-off of generation plants and the possibility of developing Sandboxes.

ANEEL APPROVES TECHNICAL CLARIFICATIONS ON THE HYDROLOGICAL RISK AUCTION HELD ON AUGUST 1

On August 5, ANEEL approved technical clarifications related to the competitive mechanism for negotiating outstanding debts in the Short-Term Market - MCP and associated with lawsuits discussing the Generation Scaling Factor (“GSF”), which became known as the “GSF Auction”, as provided for in Provisional Measure No. 1,300/2025 and held on August 1, 2025.

The auction allows the purchaser of the credits to be compensated by extending the concession period of the project participating in the Energy Reallocation Mechanism (MRE).

During its meeting on July 29, ANEEL’s board of directors deliberated on regulatory points linked to the Competitive Mechanism, namely:

- (i) Tariff discounts (TUST/TUSD): ANEEL decided that the discounts granted in the original concession should be maintained during the extension period, as long as they are linked to participation in the Competitive Mechanism.
- (ii) Extension period: The seven-year limit set out in Law 13.203/2015 applies exclusively to extensions obtained through the Competitive Mechanism of Provisional Measure 1,300/2025, without deductions for other legal or regulatory extensions.
- (iii) Legal regime of quota power plants: The possibility of freely disposing of the energy generated during the extension of the grant does not alter the legal regime of quota power plants. The portion of the physical guarantee and power allocated to distribution companies must follow the rules of the concession contract.

The following week, on August 5, director Mosna presented a vote questioning the legality of MME Ordinance No. 112/2025, responsible for defining the guidelines for the Competitive Mechanism and for stipulating a discount rate (“WACC”) applicable to the bidding process of 10.94%.

According to Mosna, the rate contradicts MP 1,300/2025, which determines the use of ANEEL’s previous parameters (WACC of 9.63%), and the difference could lead to undue extensions of concessions, impacting the grant calculation.

However, the proposal was not approved by the majority of the board.

In addition, on August 6, the Public Prosecutor’s Office filed a request for a precautionary measure with the Federal Audit Court (TCU) to suspend the financial settlement of the auction. At the time, the TCU ruled that there was no risk to the public interest, since almost all the winning bids had discount rates lower than the 9.63% applied in the 2015 and 2020 GSF renegotiations. TCU has not issued a final decision on the subject up to this moment.

ANEEL APPROVES 2025 “A-5” NEW ENERGY AUCTION NOTICE

On July 22, ANEEL approved the public notice for the “A-5” New Energy Auction, aimed at contracting electricity from new hydroelectric power generation projects, consolidated after evaluating the contributions submitted in Public Hearing No. 12/2025.

The public session of the auction is scheduled for August 22, 2025, with contracts in the quantity modality, providing for a 20-year supply starting on January 1, 2030. The participating projects will have to negotiate at least 30% of the qualified energy.

A total of 241 hydroelectric projects were registered with the Energy Research Company (EPE) to participate in the auction, totaling 2,999 MW of power, which represents an all-time record for auctions of this nature. Of this total, there were 50 hydroelectric power plant projects with 138 MW, 184 small hydroelectric power plant projects totaling 2,592 MW, and 7 hydroelectric power plants of up to 50 MW, with 269 MW. This volume is nearly double that registered in the 2022 A-5 Auction, which saw 90 projects registered with a total capacity of 1,516 MW.

ANEEL UPDATES DAM SAFETY RULES FOR HYDROELECTRIC PLANTS

On July 1, 2025, ANEEL published REN 1,129 to redefine the safety criteria for dams linked to hydroelectric plants. The measure stems from Public Hearing No. 19/2025, which gathered 138 contributions from 13 entities in the electricity sector.

In addition, the revision complies with Resolution No. 241/2024 of the National Water Resources Council (“CNRH”), which introduced new classification criteria based on risk, potential damage and dam volume.

The new standard:

- a. Introduces concepts such as “flood area” and “dam age”;
- b. Replaces the previous classification matrix based on CNRH criteria;
- c. Defines risk indicators (general, percolation, overtopping and management), with three levels: High, Medium and Low;
- d. Establishes technical and operational criteria for assessing potential damage and the risk category;
- e. Maintains the reclassification deadline for the 2026 cycle, with disclosure scheduled for 2027 via the FSB/ANEEL system.

The resolution comes into force on September 10, 2025 and must undergo a Regulatory Outcome Assessment within five years.

POWER DISTRIBUTION

ANEEL DEFINES RULES FOR REFUNDING TAX CREDITS TO CONSUMERS

On July 22, ANEEL approved regulations for refunding tax credits to consumers' energy bills. The measure deals with the amounts overpaid by electricity distribution companies, relating to ICMS unduly included in the PIS/PASEP and COFINS calculation base.

The decision ends a long-standing tax deadlock and establishes a definitive methodology for passing on the credits obtained by distributors who have won lawsuits on the subject. As a result, the credits will be refunded on a diffuse basis, i.e. through discounts on electricity tariffs, with no direct link to the amount paid by each consumer.

According to ANEEL, the tax credits will now be considered as a reduction factor in the annual calculation of tariffs. The distribution concessionaires will have to inform the Agency, at least 45 days before the tariff review, of the following data:

- i. how much ICMS they paid in the previous 12 months;
- ii. how much they have stopped paying as a result of judicial withdrawals and enforcement actions with the Granting Authority;
- iii. the taxes levied on the amounts overcharged to consumers;
- iv. the amounts passed on directly to consumers as a result of administrative or judicial decisions.

For distribution companies that had already refunded credits, ANEEL determined that they should identify possible duplicates and make the necessary adjustments to their invoices, highlighting the amounts received in a diffuse manner.

The regulation takes into account the contributions received in Public Hearing No. 5/2021 and is in line with Law No. 14.385/2022, which deals with the return of unduly paid taxes. Since 2021, ANEEL had been applying a provisional procedure to deal with the issue, through Order No. 361/2021.

PUBLIC CONSULTATION

ANEEL:

Nº 27/2025

SUBJECT:

To obtain input on the Regulatory Impact Analysis (RIA) report which deals with improving the regulations associated with the reliability of transmission facilities.

Contribution period: From 07/03/2025 to 09/12/2025

Link: Public Consultations - ANEEL

MME:

Nº 192/2025

SUBJECT:

Regulation of the responsibilities and obligations of the parties involved in the use of Permanent Preservation Areas and the edge of hydroelectric power generation reservoirs for aquaculture purposes.

Contribution period: From 08/08/2025 to 09/08/2025

Link: Public Consultations

Nº 191/2025

SUBJECT:

Proposed methodology for selecting areas to be offered in concession procedures, with a view to developing offshore wind projects in Brazil's marine space.

Contribution period: From 07/14/2025 to 09/01/2025

Link: Public Consultations

CONTACT US

Our newsletter aims to keep our clients up to date with the latest news and regulatory changes in the electricity sector. For detailed legal advice, please contact our team of energy law specialists:

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