

DISTRIBUTED GENERATION (NET METERING) ACT

LAW Nº 14.300/2022

R. AMARAL
A D V O G A D O S

Huland
Castro Alves
Linhares
Barros Leal

01 WHAT IS IT?

The distributed generation act institutes a federal legislation about the generation of electric energy, promoted by consumers, local or remotely, independently from the chosen energy source. This process is usually referred to as Net metering.

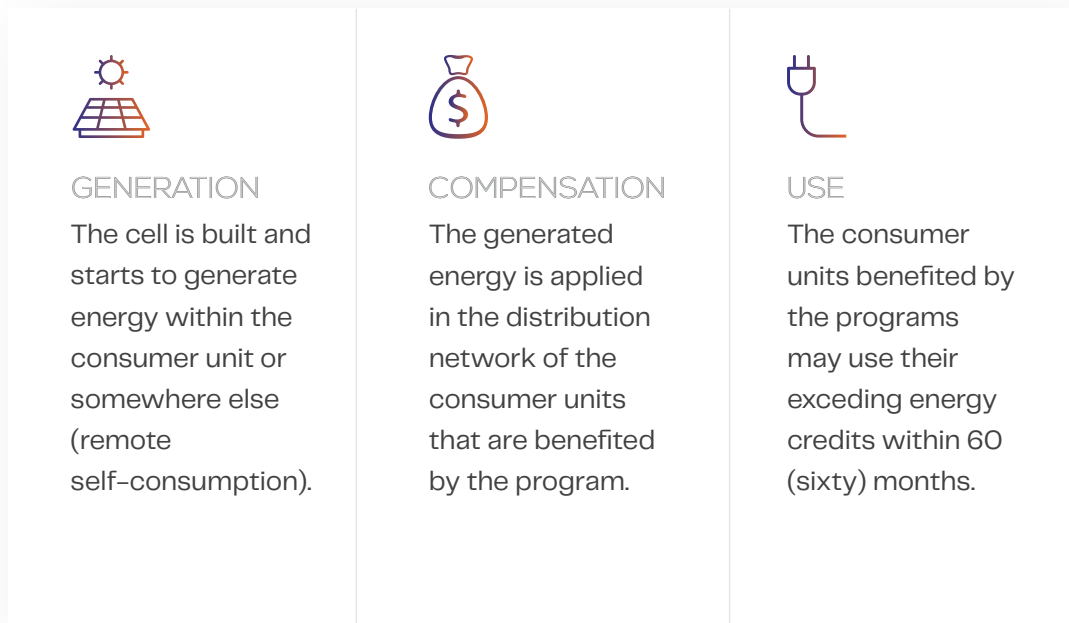
02 WHAT IS NET METERING?

With the objective of developing the electric energy market and meeting the demand for its services, the resolution nº 482/2012 from the Electric Energy National Agency (ANEEL, in the Portuguese initials) just made it possible for private companies and individuals to explore net metering through companies with multiple consumer units. Such a possibility extends itself to local self-consumption, remote self-consumption, and shared-consumption generation.

Through the **Net Metering System** – after its “production” by consumers, the energy generated is directly applied to the distributing network, making it possible for consumers to enjoy discounts on their electric bill or to “store” credits in favor of those who generate such energy. The guidelines that rules the operationalization of this process are thoroughly explained by the law nº 14.300/2022.

“Section. 1º (...) XIV – Net Metering: system in which the active energy is applied by a consumer unit with microgeneration and minigeneration distributed in the local in the local distribution network, which is given as a free loan and later compensated with the consumption of active electric energy or counted as energy credit for consumer units which participate in the program. (...)”.

In other words, Net Metering works in the following way:



03 BUT WHY IS A **LEGAL ACT** NEEDED?

ANEEL's normative resolution was not a law. That means that the norm did not possess the same legal certainty as a law and it would be easier to change it, creating a scenario of uncertainty for investors and consumers. Therefore, the distributed micro and minigeneration act had as an objective to create a more secure legal base that enables the safe and sustainable growth of net metering in general, giving the market a new level of foreseeability and attracting new investments.

Furthermore, the objective of diversifying the energy sources is a vital point for Brazil's chances of keeping itself as an integral part of a global agenda that has as its primal objective the reduction of the environmental impacts involved in the generation of energy.

04 BUT WAS THE CONCEPT OF **DISTRIBUTED MICRO** AND **MINIGENERATION** MODIFIED?

When talking about the theme, the **new law continues to target the decentralized production of electric energy with economic and environmental benefits** for the energy generators and their communities.

The **Microgeneration** keeps the limits previously established in the market, that is, corresponding to the energy generation central with installed power, in alternated current, smaller or equal to 75kW (seventy-five quilowatts).

However, the concept of minigeneration was amplified: now, the minigeneration is classified as being “(...) renewable electric energy central generating unit or the qualified cogeneration that is not classified as distributed microgeneration and that possesses installed power, in an alternated current, greater than 75 kW (seventy-five quilowatts), smaller or equal to 5MW (five megawatts) for dispatchable sources and smaller or equal to 3 MW (three megawatts) for the non-dispatchable sources, according to the regulament from ANEEL, connected to the electric energy distribution network through the installation of consuming units; (...)”.

Note that, there was a reduction in the limit of the power for solar micro and Minigeneration from 5 MW (five megawatts) to 3 MW (three megawatts)

It is worth mentioning that non-dispatchable sources are those referred to solar photovoltaic and wind-driven energy, for example, in which there is no possibility of control by the National System Operator – NSO. Therefore, its production is directly applied to the network, considering its availability.

WHAT ARE THE CURRENT REGULATORY INCENTIVES FOR THE MICRO AND MINIGENERATORS AND HOW WILL THE TRANSITION OF REGULATORY INCENTIVES BE TAKEN FORWARD?

The energy that is applied in the network of the distributor becomes energy credit, to be discounted in the energy consumed by the unit of the generator. In that way, the Net Metering system currently allows the discount in 100% (one hundred percent) in relation to the tariff; that is, for every 1 kw (one kilowatt) generated, 1 kw (one kilowatt) can be discounted on the consumption registered by the unit.

However, in favor of Net Metering's sustainability, that was reformulated. The law n° 14.300/2022 establishes the following rules:



Projects in operation or that protocol the solicitation of access within 12 months.



Projects with the access solicitation between the 13° and the 18° months, counted from the publication of the law.



Projects with the access solicitation protocolled after the 18° month, counted from the publication of the law.

The plant **that are already in operation or those that the protocol of the carry out the access solicitation is done to the power distributed companies access protocol within 12 (twelve) months after the publication of the Act (January 6th, 2023)**, will remain classified as minigeneration with installed power greater than 75 kw, smaller or equal to 5MW. This device is important because it guarantees a minimum amount of safety for those that have already carried out investments considering the current “game” rules.

Regarding Net Metering, the new law guarantees the maintenance of the current revenue rules until the **31st of December of 2045** to the generating-consumers that already have generating plants in operation or those that the protocol network access solicitations to the distribution network are to be done until the 6th of January of 2023. Those will keep paying all of the components of the tariff only on top of the difference – in case that is positive – between the consumed value and the amount of energy compensated by Net Metering. However, to guarantee the benefit – maintenance of the current revenue rules until the **31st of December of 2045** – it is necessary that the energy application in the network observe the following deadlines:

- Microgenerators: **120 days**;
- Minigenerator (solar source): **12 months**;
- Minigenerators (other sources): **30 months**.

The new energy generators plants, that is, those that do not protocol the access in the 12 (twelve) months following the law's publication, will pay the costs associated to the tariff components **concerning to the remuneration of the active resources and the distribution services, the operation and maintenance costs of the distribution service (TUSD line B)**, in a gradual manner:

- 15% from 2023;
- 30% from 2024;
- 45% from 2025;
- 60% from 2026;
- 75% from 2027;
- 90% from 2028;
- The new tariffary rules from ANEEL from **2029**.

For those energy generators, that installed power is higher to 500 kw (five hundred quillowatts) in the modality remote self-consumption or shared generation, in which a only consumer possesses at least 25% (twenty five percent) of the participation in the generation surplus, the charge will be taken forward in the following way until **2028**:

- 100% of the distribution cost (TUSD line B);
- 40% of the transmission cost (TUSD line A);
- 100% of the Research and Development costs (R&D) and energetic efficiency (EE) and the Electric Energy Service Oversight (TFSEE in Portuguese).
- The new ANEEL tariffary rules starting from **2029**.

However, there is an exception. The generators that apply for access at the distributor between the 13th (thirteenth) and the 18th (eighteenth) month from the date of publication of the Law, that is, between **January 7, 2023 and July 6, 2023**, the tariff rules to be published by ANEEL will only apply from 2031 (instead of 2029)

Once the transition period is over, the consumer units will be billed by the incidence of all the tariff components not associated with the cost of energy on the energy consumed from the grid. and on the use of demand, and all the benefits of the generating units to the electric system must be deducted, as per regulations to be defined by ANEEL.

BEYOND THAT, WHAT HAS CHANGED FROM ANEEL'S RESOLUTION 482/2012?

✔ SOCIAL RENEWABLE ENERGY

The new law creates the Social Renewable Energy Program – (PERS, in Portuguese) which enables the financing of photovoltaic generation plants and other renewable sources for low-income consumers through resources originating from the Energy Efficiency Program – (PEE, in Portuguese).

✔ INCLUSION OF THE CONCEPT OF LOCAL SELF-CONSUMPTION

Extending the legal concepts already known by the market, the new law ended up bringing the legal definition of local self-consumption of energy (formerly "consumption behind the meter"), establishing that this corresponds to "(...) modality of microgeneration or minigeneration distributed electrically close to the load, participant of the Net Metering (SCEE), in which the surplus of electric energy generated by a consumer-generator plant, natural or legal person, is compensated or credited by the same consumer unit (...)".

✔ SALE OF ACCESS REPORTS

The sale of access reports made by the power distribution company was expressly PROHIBITED. However, the new norm ends up allowing the transfer of this instrument, whether before or after the connection of the generating plant, clarifying previous positions already maintained by ANEEL.

✔ GUARANTEE REQUIREMENT

Now, those interested in developing Net Metering projects must present financial guarantees, in the following amounts:

Projects with installed power capacity greater than 500 kW and less than 1,000 kW	Guarantee: 2.5% on the value of the project.
Projects with installed power equal to or greater than 1,000 kW.	Guarantee: 5% over the project value.

Projects with installed capacity greater than 500 kW (five hundred kilowatts) and that have a valid Access Certificate on the date the law is published must meet the new requirement within **90 (ninety) days** to offer the guarantee, unless within this period the Distribution System Use Agreement – (CUSD, in Portuguese) is signed. Consortia, cooperatives and multiple consumer unit plants are exempt from this requirement.

ANEEL must regulate this issue by means of a Resolution and the amounts presented as a guarantee will be refunded when the project is concluded or executed and reverted to the consumers' tariff moderation.

SALE OF CREDITS

If the ANEEL Resolution 482/2012 prohibited the sale of energy credits by consumers – so that the credits were taken by the utilities as a free 'loan' – the Law 14,300/2022 allows distributors to purchase credits not cleared by consumer-generators, as regulated by ANEEL, to be published in the coming months.

TRANSFER OF CREDITS

The SCEE allows the transfer of credits to other consumer units of the same holder, including a group of companies and branches, as long as they are served by the same distribution company.

✔ TRANSFER OF THE GENERATING PLANT

By the new law, it is established that the transfer of ownership and/or corporate control of the holder of the micro/minigenerating unit, indicated in the Access Certificate, is prohibited until an **inspection request is made**.

✔ CONTRACTING CONSUMER-GENERATORS

Law n°. 14,300/2022 also determines that the distribution companies may contract the provision of ancillary services – services aimed at maintaining control of voltage and frequency limits, necessary for maintaining good operating conditions of the grid – to be provided by consumer-generators, by means of a public call, in a manner to be regulated by ANEEL.

✔ NEW BUSINESS MODELS

Previously, shared energy generation was only allowed through the creation of consortiums and/or energy cooperatives. With the publication of Law No. 14,300/2022, the possibilities have been expanded: now, in addition to the models already consolidated in the market, consumers can come together through a voluntary civil or building condominium or any other form of civil association, provided it is established for the purpose of energy generation.

✔ RESPONSE FROM THE CONCESSIONARY

The forms and documents required to request access to the grid must be standardized by ANEEL, and the energy power distribution companies may not require any additional data beyond those listed by the Agency. In addition, if there are any pending issues in the documentation presented, the consumer-generator must be notified to remedy the problem within 30 (thirty) days, being possible that it might be necessary to establish a different deadline, according to an agreement between the parties.

 DELAYS IN REINFORCEMENT WORKS

ANEEL Resolution No. 482/2012 allowed the consumer-generator to perform, at its own expense, the necessary works for grid connection. Thus, in the event of delays in the works, the Distribution System Use Contract – (CUSD, in Portuguese) could be billed normally, even before the plant's connection to the grid network. However, with the new law, the deadline for the conclusion of the works and payments resulting from the CUSD may be postponed, upon proof of the progress of the environmental licensing procedure or of the power plant implementation works.

 DEADLINES FOR REGULATING AND ADAPTING TO THE NEW LAW

Even though the new legislation is quite complete, it still requires the regulation of the following points:

RESPONSIBLE	MATTER	DEADLINE
CNPE	Establish guidelines for valuation of the costs and benefits of microgeneration and minigeneration.	180 days
ANEEL	Define the tariff rules for consumer units participating in the SCEE that will not benefit from the transition rules of the new law, based on the guidelines established by the CNPE.	18 months
	Standardize the application for access requests with the concessionaires.	180 days
	To regulate the procedures related to the presentation of guarantees of faithful compliance of the distributed minigeneration projects and to the calculation of the financial participation of the distributor and of the accessing party for the connection works.	
	Establish conditions for consumer units with local generation to be billed as a low-voltage unit.	

ANEEL	Regulate the procedures for public calls to be carried out by the distributors for accreditation of those interested in selling surplus generation, as well as the remuneration for the contracting of ancillary services by the distributors.	180 days
	Establish the rules for the development of the Social Renewable Energy Program – PERS.	
	Establish requirements for public lighting installations to participate in the Net Metering program.	
Energy power distributed companies	Adaptation to the procedures of Law nº. 14,300/2022	180 days

SECURITY DEADLINE FOR CONCESSIONARY COMPANIES

It was established, for legal security purposes, that any new rule applicable to distributed generation or to consumer units participating in the SECS by the energy concessionaries must be published with a minimum period of ninety (90) days before its effective requirement.

EDITORIAL

CONTENTISTS

ADRIANO HULAND
PARTNER
REGULATORY LAW
AND ENERGIES

+55 85 99969-3506
adriano.huland@ramaral.com

LORENNABARROS
REGULATORY LAW
AND ENERGIES

+55 85 98548-2850
lorenna.barros@ramaral.com

DAVI CHAVES
REGULATORY LAW
AND ENERGIES

+55 85 99698-8919
davi.chaves@ramaral.com

R. AMARAL

A D V O G A D O S

Huland
Castro Alves
Linhares
Barros Leal

Avenida Santos Dumont, 2456 • 16th and 17th Floors • Aldeota
Fortaleza – Ceará • Postal Code: 60.150-162
Phone: +55 85 3311-9199

ramaral.com    

