

ELECTRICITY TRANSMISSION, THE SECOND STEP IN ARGENTINA'S AMBITIOUS INFRASTRUCTURE PPP PLAN

The approximately \$500 million Río Diamante – Charlone electricity transmission project builds on the successful initial tender of six toll roads.

The passage of a novel Public-Private Partnership (PPP) law and its implementing regulations has boosted the deployment of President Macri's ambitious infrastructure plan for Argentina. Please see our initial briefing on Argentine PPPs [here](#). Recently, more than 25 local and international sponsors bid for six PPP toll roads requiring investments over \$6 billion. The Argentine government is now looking to expand its PPP project offering with large greenfield investments in various sectors, including electricity transmission. The Río Diamante – Charlone project requires building a 490-km (304.5 mile) 500-kV transmission line as well as a substation and certain 132-kV transmission lines in the central part of Argentina.

The Argentine government recently published a non-binding memorandum summarizing certain key structural aspects to be reflected in the bid documents for the Río Diamante – Charlone project (the "Executive Summary"). Below is a high-level description of those key aspects.

Clifford Chance directly assisted the Argentine government in the design of its transformative PPP program and its initial tender of toll road projects. Working under the institutional umbrella of the Inter-American Development Bank (IDB), we helped structure the PPP program and draft the model bid terms, PPP contract, trust agreement and other key documentation that we expect will serve as the basis for the electricity transmission projects. As a result of this experience and our current work on the financing of five of the six toll roads awarded under the PPP program, our dedicated Argentina team is prepared to discuss with you some of the key bankability and structural considerations for the Río Diamante – Charlone project.

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Project

- The construction, operation and maintenance of the Río Diamante – Charlone electricity transmission project, which will include a 500-kV transmission line as well as a substation and certain 132-kV transmission lines (the “Project”)
- Term: ~18 years
 - Construction Phase: from contract signing to the earlier of the commercial operation date (COD) and 33 months after contract signing
 - O&M Phase: 15 years from the end of the Construction Phase
- Performance bonds: on-demand bid bond, financial close bond and works performance bond in amounts to be determined
- Governing Law: Argentina
- Dispute Resolution:
 - Technical Panel and UNCITRAL arbitration
 - International seat of arbitration available for foreign sponsors

Parties

- PPP Contractor: the bidder or an SPV established by the bidder, acting as an independent transmission company
- Contracting Authority: the Energy Policy Coordination Secretariat, part of Argentina’s Ministry of Energy and Mines
- Project Supervisors: the existing regulated transmission companies, which will supervise the construction, operation and maintenance works and receive a supervision fee as compensation. These entities may participate in the bid as part of their unregulated business and the bid documents will include a mechanism to ensure fair competition for new entrants
- CAMMESA: the energy clearing house that will receive payments from energy distribution companies and large users related to the Project

Compensation

- Bidders will bid based on a USD-denominated annual payment that may not exceed a maximum amount to be previously determined at a public audience. The PPP Contractor’s total compensation will be equal to the annual payment multiplied by 15 (“Total Compensation”) and will remunerate construction, operation and maintenance works and services.
- The PPP Contractor can opt to receive the Total Compensation as follows:
 - in monthly equal payments commencing on the commercial operation date; or
 - through a combination of (a) up to 80% of the Total Compensation, TPIs (not subject to completion risk) and (b) the balance, in monthly equal payments commencing on the commercial operation date

TPIs

- Payable in USD
- Irrevocable and unconditional based on works verified through the monthly issuance of a works progress certificate
- Issued at the end of each quarter in arrears and payable semi-annually over 15 years
- The initial payment of all TPIs then-issued will be made on month 40 after contract signing, regardless of whether COD has been achieved
- If any TPI is issued after the initial scheduled payment of TPIs, on the first semi-annual payment date thereafter, the PPP Contractor will receive a lump sum payment equal to the TPI payment due on such date plus the TPI payments that it would have received until such date had the TPI been issued when expected
- Governed by Argentine law



Termination Payment

- If the PPP Contract is early terminated for any reason, a termination payment will be made in USD as follows:
 - If the PPP Contractor opted to receive TPIs as part of its compensation, the termination payment will be equal to (a) (i) the Total Compensation required by the PPP Contractor in its bid times (ii) the percentage of works progress according to the works progress certificates then issued minus (b) the aggregate amount of TPIs then issued minus (c) the aggregate monthly compensation then paid minus (d) an amount to be determined representing the value of O&M services not yet provided
 - If the PPP Contractor opted not to receive TPIs as part of its compensation, the termination payment will be equal to (a) (i) the Total Compensation required by the PPP Contractor in its bid times (ii) the percentage of works progress according to the works progress certificates then issued minus (b) the aggregate monthly compensation then paid minus (c) an amount to be determined representing the value of O&M services not yet provided

Project Trust

- Creation of a trust specifically for the Project to be funded from:
 - Collections by CAMMESA of Project-related charges to energy distribution companies and large users
 - Contingent annual contributions by the Argentine government to cover any deficiency in a 12-month reserve account to backstop the payment of the PPP Contractor's compensation
- The TPI holders will have a direct claim against Argentine government for failure to satisfy its contingent contribution obligation and a direct claim against the project trust for failure to pay

Comparing to Toll Road PPP Projects

- The Project will not contemplate the following key features from the toll road PPP projects:
 - Services performance bond
 - TPDs
 - Master trust structure
 - Liquid source of funding of Project trust prior to COD (i.e. no SISVIAL equivalent) but expected allocation of Project-related transmission tariffs to the Project Trust once COD is achieved
 - TPI groups with various payment start dates
 - Selective default protection (i.e. no pro rata payments among various transmission line projects)
- The Executive Summary does not specify whether the Project will contemplate the following key features from the toll road PPP projects:
 - Mitigation of FX fluctuations between the FX rates on the bid date and the date of issuance of each TPI
 - Mitigation of sovereign curve fluctuations against a US treasury benchmark between the spreads on the bid date and the financial close date
 - Offering of tailor-made sovereign debt instruments to mitigate negative carry
 - Termination payment to be at least equal to the financing proceeds applied to the relevant project that are not fully collateralized by TPIs
 - International seat of arbitration available for foreign TPI holders

C L I F F O R D

C H A N C E

This publication does not necessarily deal with every important topic nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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