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RENEWABLE ENERGY INITIATIVES: A LOOK AT ARGENTINA AND LAW 26,190

*Kevin LaMarca**

I. INTRODUCTION

AS increased global temperatures, melting icecaps, and rising energy costs continue to dominate both political and social arenas, it is no wonder that many countries around the world now invest in renewable energy sources.¹ Latin American countries are no exception.² Specifically, Argentina's dedication to the investment and preservation of its natural resources positions it near the forefront of the renewable energy industry. By embracing its unique climate and topographical features,³ Argentina, through legislative mandates and meaningful enforcement mechanisms, seems primed to become a worldwide leader in renewable energy initiatives.

This article highlights the Argentine Republic's potential to become a serious competitor in the global renewable energies market. By examining both current and historic challenges faced by the country, a picture of Argentina's roadmap to success quickly develops. Likewise, understanding the structures through which Argentina seeks energy market reform helps provide a clear understanding of the country's legal framework as it seeks to establish both economic stability and energy independence.

II. WHAT MAKES ARGENTINA UNIQUE?

To understand the future of Argentina's energy market, it is helpful to appreciate both its environmental landscape and geographical location. Situated in the southern region of South America, Argentina spans over

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1. UN ENVIRONMENTAL PROGRAMME, GLOBAL TRENDS IN SUSTAINABLE ENERGY INVESTMENT 2010 10 (2010), *available at* http://www.unep.org/pdf/dtie/GlobalTrendsSustainableEnergy_2010.pdf.
2. *See* GLOBAL NETWORK ON ENERGY FOR SUSTAINABLE DEVELOPMENT, REGIONAL WORKSHOPS ON ELECTRICITY AND DEVELOPMENTS IN AFRICA, ASIA AND LATIN AMERICA—CONSOLIDATED REPORT 16 (2006), *available at* <http://www.gnesd.org/Downloadables/GnesdRegionalWorkshop.pdf>. (last visited July 13, 2011).
3. *See* PETER MEISEN & CATALINA RUIZ GUTIERREZ, GLOBAL ENERGY NETWORK INSTITUTE (GENI), RENEWABLE ENERGY POTENTIAL OF ARGENTINA, 3-5 (2009), <http://www.geni.org/globalenergy/research/index.shtml#renewableenergypotentialofargentina>.

1,000,000 square miles,⁴ making it larger than the state of Alaska.⁵ The western part of the country comprises the vast Andes Mountains, while the South Atlantic Ocean borders the east.⁶

The vast distinction between these two border regions makes the flat, lowland region located in the middle a perfect corridor for wind coming down over the mountains or rushing inland from the ocean.⁷ In return, this passageway creates a natural conduit for wind power generation.⁸ In 2009, for example, the Chubut Wind Power Regional Center (CREE) estimated that winds in the region could produce up to 500 gigawatts of electricity per year.⁹ This fact, coupled with the country's large land mass and comparatively small population makes it a prime candidate for wind farm development.¹⁰

Moreover, the vast amount of sunlight received each year, coupled with the ability to produce electricity from hot water sources in the Andes Mountains, also makes it a good source of geothermal energy.¹¹ Further still, Argentina's dedication to biofuel investment and expansion ensures that ethanol availability in the country will soon reach 200,000,000 liters, approximately 52,900,000 gallons, its highest level ever.¹²

III. HISTORY

Despite its current potential, however, the future of the Argentinean energy market was not always so bright. Beginning in the 1950s, local and federal Argentinean authorities controlled nearly every aspect of electricity in the country.¹³ Although most demand was met during this period, the country's energy infrastructure imploded in 1989,¹⁴ leading many to question the future of a government-run system.

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4. See *The World Factbook—Argentina*, THE CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ar.html> (last visited July 13, 2011).
 5. Alaska Quick Facts, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/02000.html> (last visited July 13, 2011).
 6. *The World Factbook—Argentina*, *supra* note 4.
 7. Meisen & Gutierrez, *supra* note 3, at 3-4.
 8. *Id.*
 9. Policy Database Details: Argentina 2009, RENEWABLE ENERGY & ENERGY EFFICIENCY PARTNERSHIP, <http://www.reeep.org/index.php?id=9353&text=policy&special=viewitem&cid=13> (last visited July 13, 2011).
 10. See *CADER Releases Wind Industry Report*, ENVIRONMENTAL QUARTERLY—LATIN AMERICAN REGION, July 2009, at 3, available at <http://www.bdlaw.com/assets/attachments/July%202009%20LAR%20Environmental%20Quarterly.pdf>.
 11. See Pablo E. Arrascaeta, *Is Argentina Ready to Promote Renewable Energies?*, 3 J. WORLD ENERGY L. & BUS. 97, 97 (2010).
 12. CAMARA ARGENTINA DE ENERGIAS RENOVABLES, STATE OF THE ARGENTINE BIOFUELS INDUSTRY: LAUNCHING OF THE DOMESTIC BIODIESEL AND ETHANOL MARKET 11 (2010), <http://www.argentinarenovables.org/archivos/ArgentineDomesticBiofuelsMarket2010.pdf>.
 13. Arrascaeta, *supra* note 11, at 97.
 14. *Id.*

A look at the country's economic situation during this period reveals serious structural flaws in the government's oversight. First, inflation rates exceeding triple-digit marks dominated the Argentinean economy for roughly ten years prior to the collapse,¹⁵ and the annual inflation rate reached nearly 5,000 percent by 1989, the year of the collapse.¹⁶ Second, the country could neither provide capable electrical services nor procure investments for its struggling energy market.¹⁷ Faced with a rioting citizenry,¹⁸ the Argentinean government recognized both the need to reform its energy market and stabilize its economy.

Thus, in 1992, the Argentinean government enacted Law 24,065.¹⁹ The law tried to revive the country's struggling energy industry in two ways. First, it sought concrete change in the administration and provision of its energy services.²⁰ Second, in a move away from a government-controlled market, it encouraged private investments into its energy sector.²¹ More specifically, Law 24,065 encouraged market growth by promoting, among other things, the operability, reliability, and independence of its system.²²

As a result, the country's energy market experienced rapid and exponential growth. Once enacted, Law 24,065 privatized nearly every sector of the country's energy market.²³ In fact, by 2001, Argentina saw triple-digit percentage increases in the number of its generation, transmission, and distribution companies.²⁴

In December 2001, however, the country saw yet another crippling economic downturn.²⁵ Although a number of factors contributed to this depression, it appeared that the very energy laws that helped bring Argentina out of its first economic crisis helped plunge it back into financial turmoil.²⁶ The privatization that Law 24,065 brought to the energy market actually increased prices for basic utilities like electricity and phone services.²⁷ In return, these high prices lead to lost business, which

15. See Miguel A. Kiguel & Pablo Andres Neumeyer, *Seigniorage and Inflation: The Case of Argentina*, 27 J. MONEY, CREDIT AND BANKING 672, 673 (2010), available at <http://profesores.utdt.edu/~paneumeyer/jmcb.pdf>.

16. Jose Enrique Arrijoja & Eliana Raszewski, *Argentina's Inflation Rate Understated, Lavagna Says (Update 1)*, BLOOMBERG, March 13, 2007, http://www.bloomberg.com/apps/news?pid=newsarchive&refer=latin_america&sid=aEA0i4nvuLJ1.

17. See Arrascaeta, *supra* note 11, at 97.

18. James Brooke, *Food Rioting Worsens and Spreads in Argentina*, N.Y. TIMES, June 1, 1989, <http://www.nytimes.com/1989/06/01/world/food-rioting-worsens-and-spreads-in-argentina.html>.

19. See Law No. 24065, Jan. 3, 1992, [27306] B.O. 30, art. 2, available at <http://infoleg.mecon.gov.ar/infolegInternet/anexos/0-4999/464/norma.htm>.

20. Arrascaeta, *supra* note 11, at 97.

21. *Id.*

22. Martin Lythgoe, *Renewable Generation in Argentina: Past Failures and a Plan for Future Success*, 31 Hous. J. INT'L L. 263, 280 (2009).

23. *Id.* at 280.

24. *Id.*

25. See Peter Katel, *Argentina's Crisis Explained*, TIME, Dec. 20, 2001, <http://www.time.com/time/world/article/0,8599,189393,00.html>.

26. See *id.*

27. *Id.*

culminated in large layoffs in the domestic work force.²⁸ As a result, Argentines again took to the streets in protest.²⁹

This time, however, the Argentine Republic faced an additional adversary not previously encountered—global warming. Widely believed to be caused by both deforestation and the burning of fossil fuels,³⁰ global warming may have dramatic effects on both the Argentinean economy and its physical landscape.³¹ In fact, in its 2004 report to the United Nations Framework Convention on Climate Change, the country acknowledged:

Argentina is potentially vulnerable to Climatic Change. . . . In addition [to agricultural and land damages], the country relies on hydropower for an important share of its electricity generation. Accordingly, various studies were carried out to characterize the impacts of current climate variability and of the climate changes that may take place in a time horizon of ten to forty years. . . . The temperature of the Andean zone of Patagonia had an increase in more than one degree, with the consequent receding of almost all the Andean glaciers. There was a centennial downward trend in the stream flows of the rivers that originate in the Andes Mountains in the provinces of San Juan, Mendoza, Rio Negro and Neuquen, which was likely caused by a reduction of winter snowfall over that mountain range. In the case of the two last provinces, where an important part of the country's hydropower is generated, this trend has already caused generation losses of up to forty percent. . . . The downward trend of snowfall in the Andes Mountains is projected to persist. Thus, the hydropower generation in the provinces of Mendoza, Rio Negro and Neuquen is expected to continue being negatively affected.³²

Simply put,

The discussion on Argentina's energy [reformation] is an urgent task that cannot be put off. A strategic, serious, and transparent debate is necessary in order to set aside strictly sectoral issues, and must necessarily involve social, environmental, and economical issues, innovation and technology, [and] risks and challenges that have not yet been discovered or solved.³³

28. *Id.*

29. See Meisen & Gutierrez, *supra* note 3, at 6.

30. *Scientific Consensus on the Basic Facts of Global Warming*, ENVIRONMENTAL DEFENSE FUND, Apr. 21, 2010, <http://www.edf.org/article.cfm?contentID=11016>.

31. Oxford Analytica Staff, *Climate Change in Argentina and Chile*, May 23, 2007, <http://www.offnews.info/verArticulo.php?contenidoID=8572>.

32. Lythgoe, *supra* note 20, at 273 (citing THE REPUBLIC OF ARGENTINA, THE SECOND NATIONAL COMMUNICATION TO THE UNITED NATIONS FRAMEWORK ON CLIMATE CHANGE, 33-34 (2004), available at <http://www.ambiente.gov.ar/archivos/web/UCC/File/Segunda%20Comunicacion%20Nacional.pdf>).

33. AMIGOS DE LA TIERRA ARGENTINA, CLIMATE CHANGE: GLOBAL AND LOCAL CHALLENGES TOWARDS CANCUN (COP16), 2 (2010), available at <http://www.greenpeace.org/raw/content/argentina/cambio-climatico/cop16-documentos-demandas-ingles.pdf>.

IV. CURRENT LEGISLATIVE ENACTMENTS

In response, the Argentinean government enacted Law 26,190 in 2006.³⁴ Also known as the National Support for the Use of Renewable Energy Sources,³⁵ the law championed the use of renewable energy sources and generation throughout Argentina.³⁶ Specifically, Law 26,190 requires that within ten years of its enactment, a minimum of eight percent of the country's electricity must come directly from renewable sources within Argentina.³⁷

This law, however, was not much different from past laws promising responsible energy reform. For example, in 1998, the Argentinean government enacted the National Wind and Solar Energy Rules,³⁸ commonly known as Law 25,019.³⁹ Under Law 25,019, the government promoted both wind and solar power via marginal tax credits.⁴⁰ Particularly, the law created a tax break, which reimbursed energy producers one Argentine peso per kilowatt/hour produced, while providing an income tax exemption for the same producers over a fifteen-year period.⁴¹ But Law 25,019 ultimately failed. First, by 2001 the law brought only minimal attention to the renewable energies market.⁴² Second, when the economic crisis struck in December 2001,⁴³ the tax credits proved worthless.⁴⁴

Thus, in a move away from past failures, Law 26,190 created new and meaningful incentives surrounded by greater flexibility.⁴⁵ For instance, while Law 25,019 only granted a one-cent per kilowatt/hour tax credit, Law 26,190 increased this amount by fifty percent.⁴⁶ The law also extended these credits beyond just solar and wind power.⁴⁷ Now, producers of renewable energy generated from hydroelectric, biomass, and geothermal sources could also receive the tax breaks.⁴⁸

But Law 26,190 shared many of the same characteristics that doomed its predecessor. Specifically, the law faced obstacles in both investment

34. See Law No. 26,190, Dec. 6, 2006, [31,064] B.O. 1, art. 3, available at <http://www.infoleg.gov.ar/infolegInternet/anexos/120000-124999/123565/norma.htm>.

35. KEN JOSEPH, U.S. DEP'T OF AGRICULTURE, GLOBAL AGRICULTURAL INFORMATION NETWORK REPORT—ARGENTINA BIOFUELS ANNUAL REPORT 4 (2010), http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Biofuels%20Annual_Buenos%20Aires_Argentina_7-6-2010.pdf (last visited, July 13, 2011).

36. See Law No. 26,190, Section 1.

37. *Id.* at Section 2.

38. CLEANTECH LAW PARTNERS, <http://www.cleantechlawpartners.com/html/central-and-south-america.html> (last visited July 13, 2011).

39. Law No. 25, 019, Oct. 19, 1998, [29008] B.O. 1, available at <http://infoleg.mecon.gov.ar/infolegInternet/anexos/50000-54999/53790/norma.htm>.

40. See *id.* at art. 5.

41. *Id.* at arts. 3, 7

42. See Lythgoe, *supra* note 22, at 294.

43. *Id.*

44. ELIZABETH LOKEY, RENEWABLE ENERGY PROJECT DEVELOPMENT UNDER THE CLEAN DEVELOPMENT MECHANISM—A GUIDE FOR LATIN AMERICA 153 (Earthscan) (2009).

45. See Law No. 26,190, art. 3.

46. See LOKEY, *supra* note 44.

47. *Id.*

48. *Id.*

and infrastructure.⁴⁹ For example, after enacting Law 26,190, the government failed to further invest in the research, development, and education of the country's renewable energy generation.⁵⁰ While worldwide investment in renewable energy more than doubled between 2004 and 2006,⁵¹ investment in the Argentinean market was non-existent. As a result, the technological advancements made in other countries hindered Argentina from making strides toward energy independence.⁵²

Second, Law 26,190 did little for infrastructure development. Although Law 26,190 promoted "new investments in enterprises [that would produce] electric power from renewable sources of energy throughout the country,"⁵³ it did little to provide an actual mechanism for bringing that energy to the Argentinean people. Because the country's energy structure revolved largely around both oil and gas, new renewable energy techniques required a substantial—and nearly impossible—change in the Argentinean delivery system.

V. DECREE 562/2009 AND CURRENT PROJECTS

In response to the concerns plaguing Law 26,190, in May 2009, the Argentinean government enacted Decree 562/2009.⁵⁴ Decree 562/2009 governs Law 26,190 and acts as a catalyst to further the development and implementation of renewable energy sources in the Argentinean market.⁵⁵ Specifically, Decree 562/2009 provides a number of procedural safeguards that help ensure Law 26,190 does not go the way of its predecessors. By holding the government accountable, extending the scope of Law 26,190, creating an entity for enforcement and regulation, and creating jobs in the Argentinean market, Decree 562/2009 sets a national agenda to promote renewable energy development and usage.⁵⁶

Decree No. 562/2009 begins by creating a mechanism for government accountability. As Article 2 requires, the Secretary of Energy for the Ministry of Federal Planning, Public Investment and Services shall provide an annual report, known as the "Report of the Electricity Sector," detailing the progress of renewable energy integration into the Argentin-

49. See Lythgoe, *supra* note 22, at 331, 334-35.

50. *Id.* at 334.

51. CHRIS GREENWOOD ET AL., GLOBAL TRENDS IN SUSTAINABLE ENERGY INVESTMENT 2007 11 (United Nations Environment Program, 2007), available at http://sefi.unep.org/fileadmin/media/sefi/docs/publications/SEFI_Investment_Report_2007.pdf.

52. See Lythgoe, *supra* note 22, at 334.

53. Law No. 26,190, art. 3.

54. Decree No. 562/2009, May 15, 2009, [31657] B.O. 1, available at <http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=153580>.

55. See Guillermo Malm Green, *Incentives to the Use of Renewable Energy Sources*, NEWSLETTER LEGAL DEVELOPMENTS IN LATIN AMERICA (ABA Section of International Law), Apr. & May 2009, at 3, available at <http://meetings.abanet.org/webupload/commupload/IC830000/newsletterpubs/LatinAmericaNewsApr-May09.pdf>.

56. See *id.*

ean market.⁵⁷ Even if the Secretary of Energy steps down or leaves of-
fice, he must provide for and find a replacement before doing so.⁵⁸
Because the Argentinean government seeks an eight percent renewable
power consumption level by 2016,⁵⁹ these annual reports will provide a
necessary checks-and-balances system for the achievement of this goal.

Second, the decree expands the breadth of the law to include a broad
range of services not previously covered. Specifically, Decree No. 562/
2009 “extends the scope of the Law to all investments in electric power
generation using renewable energy sources, not only for new power gen-
eration plants[,] but also for the extension or repowering of existing
power generation plants made with new or used equipment.”⁶⁰ Whereas,
Law 26,190 provided a limited range of use, Decree 562/2009 makes cer-
tain the law receives the widest possible reach.

Third, Article 5 of Decree 562/2009 establishes a single governmental
body responsible for enforcement and compliance with Law 26,190.⁶¹
The decree specifically appoints the Ministry of Federal Planning, Public
Investment and Services as the sole authoritative body responsible for its
implementation.⁶² Decree 562/2009 requires the Ministry of Federal
Planning perform the following responsibilities:

- a) Adopt the technical rules of fiscal and / or tax.
- b) Determine the maximum amount to provide in the national
budget available to provide promotional benefits.
- c) Implement specific penalties relating to breaches of such fiscal tax
on the part of individuals benefited by this scheme.
- d) . . . [G]ive the tax quota allocation for each project.
- e) [Provide] allowances for the annual number of promotional bene-
fits provided by Law No. 26,190 and manage its inclusion in the
Budget Law for the next fiscal year.⁶³

As a result, these enumerated responsibilities create and maintain gov-
ernment accountability, while ensuring that specific tasks and interests
are monitored and fulfilled.

Finally, Decree 562/2009 regulates the overall renewable energies in-
vestment regime in Argentina.⁶⁴ Particularly, this task carries the respon-
sibility of creating jobs while minimizing the environmental impact that
new energy projects have on the Argentinean ecosystem.⁶⁵ Since its en-
actment in 2009, Decree 562/2009 created a number of renewable energy
projects that both furthered Argentina’s energy market and created jobs
in the energy sector. For example, in May 2009, the Argentinean govern-

57. Decree No. 562/2009, art. 2.

58. *Id.*

59. *Id.*

60. Green, *supra* note 55.

61. Decree No. 562/2009, art. 5.

62. *Id.*

63. *Id.*

64. *Id.* at art. 7.

65. *Id.*

ment introduced the Genren Program, which solicited bids to provide 1,000 megawatts (mW) to Argentina's wholesale electric market.⁶⁶ The program sought bids that would diversify the renewable energies market by requesting projects that spanned a wide range of renewable energy sources. Specifically, the program expects the 1,000 mW to come from the following sources:

1. Thermal bio-combustion: 150 mW.
2. Urban waste: 120 mW.
3. Biomass: 100 mW.
4. Small scale hydroelectric energy plants: 60 mW.
5. Geothermal energy: 30 mW.
6. Solar energy: 20 mW.
7. Biogas energy: 20 mW.
8. Wind energy: 500 mW.⁶⁷

By December 2009, the Genren Program received numerous responses to the bid requests. In fact, the Argentinean government received offers to provide over 1,400 mW of renewable energy, a forty-six percent increase from the 1,000 mW originally requested.⁶⁸ As Carlos St. James, President of the Argentine Renewable Energies Chamber, explained, “[t]hese offers, considering the quality and prestige of the multinational companies making them, leaves no doubt that Argentina is on its way to developing a full-fledged renewable energies industry.”⁶⁹

VI. FROM POLICY TO ACTION

Additionally, Decree 562/2009, in conjunction with projects enacted in response to Law 26,190, ensures a future commitment to renewable energy integration into the Argentinean market. For example, after Law 26,190's enactment, Argentinean policymakers teamed with the Renewable Energy and Energy Efficiency Partnership (REEEP).⁷⁰ REEEP, a global organization specializing in reducing the barriers that limit renewable energy and energy efficient technologies,⁷¹ helped guide and mentor the Argentinean government as it began implementing new energy policies pursuant to Decree 562/2009.⁷²

66. See Arrascaeta, *supra* note 11, at 100.

67. *Id.*; Global Renewable Energy—Policies and Measures: *Renewable Energy Generation Program (GENREN)*, INTERNATIONAL ENERGY AGENCY, <http://www.iea.org/textbase/pm/?mode=re&id=4543&action=detail> (last visited July 13, 2011).

68. Press Release, Argentine Renewable Energies Chamber, Argentine Renewable Energies Chamber Celebrates Success of Government Renewables Tender (Dec. 14, 2009), available at http://www.argentinarenovables.org/ingles/prensa_detalle.php?vid=46.

69. *Id.*

70. *Project in Argentina Designs Framework for Nation's New Renewable Energy Law*, RENEWABLE ENERGY AND ENERGY EFFICIENCY PARTNERSHIP, (Nov. 12, 2007), <http://www.reeep.org/index.php?id=51&content=2663>.

71. *Executive Summary*, RENEWABLE ENERGY AND ENERGY EFFICIENCY PARTNERSHIP, <http://www.reeep.org/15344/executive-summary.htm> (last visited July 13, 2011).

72. RENEWABLE ENERGY AND ENERGY EFFICIENCY PARTNERSHIP, *supra* note 70.

As a result of this three-year partnership, REEEP improved the energy market of Argentina by acting as a consultant to instill policies that advanced renewable energy innovation, including:

1. Improvement of the level of knowledge and perception of the different actors on the status and potential of renewable energies in Argentina;
2. Extension of the renewable frame of reference;
3. Provision of a level of analysis from within the identified target set that can be duplicated in other countries;
4. Reflection of the different kinds of entries on the overall subject; and
5. Increased awareness on barriers options and potential to development renewable energy market.⁷³

Because REEEP completed this project just last year, its success may not be fully realized until some point in the near future. One thing is for certain, however: the obvious changes Law 26,190 and Decree 562/2009 brought to the Argentinean market opened the door for renewable energy investment opportunities rarely before seen in Argentina.

Indeed, with a renewable energy policy promulgated under Law 26,190 and an enforcement mechanism under Decree 562/09, an interest in market efficiency and sustainability from programs such as REEEP and the Genren Program provide a bright outlook for lasting and meaningful energy policies in Argentina.

VII. CONCLUSION

In a drastic move away from past legislation that promoted only wishful thinking with little enforcement ability, Law 26,190, in conjunction with Decree 562/09, creates a feasible opportunity for Argentina to finally achieve energy independence and sustainability. Understanding where Argentina is headed in the sustainable energy field can only be appreciated by a detailed look at where it has been. Indeed, the outlook now looks bright for the Argentine Republic. While Argentina still has five years to achieve the goals initially set out in Law 26,190—namely, an eight percent renewable energy market share—the jumpstart provided by Decree 562/2009, coupled with programs like Genren and the interest shown by organizations like REEEP, will help ensure that Argentina does, in fact, achieve what past legislation could not.

73. *Renewable Energy Prospective Study and Proposal to Remove the Technical, Economic, Regulatory, and Financial Barriers in Argentina*, RENEWABLE ENERGY AND ENERGY EFFICIENCY PARTNERSHIP, <http://www.reeep.org/showProject/16085.10604008/renewable-energy-prospective-study-and-proposal-to-remove-the-technical-economic-regulatory-and-fi.htm> (last visited July 13, 2011).

Updates

