

PRESS RELEASE ENEL DISTRIBUCIÓN CHILE

ENEL DISTRIBUCIÓN APPEALS TO THE CONSTITUTIONAL COURT FOR LAW THAT PREVENTS INTERRUPTING SUPPLY TO CUSTOMERS WHO CAN PAY

- *According to our company, applying the Essential Services Law instructed by a SEC Official Letter violates fairness before the law and equal distribution of public resources, property rights, and the principle of rule that restrict fundamental freedoms.*
- *The Constitutional Court accepted the request to process the request.*

Santiago, September 13, 2021. Enel Distribución filed before the Constitutional Court (TC) an appeal of unconstitutionality against the precepts of the law of essential services that prevent the suspension of supply. Therefore they cannot be applied in the lawsuit in which it has complained about the Ordinary Official Letter No. 9,472 of June 22, 2021, of the Superintendence of Electricity and Fuels (SEC), pending before the Court of Appeals of Santiago. Through this official notice, the SEC ordered Enel Distribución to restore electricity service to a group of its customers with high consumption, who had their electric supply disconnected for being in default despite their evident ability to pay.

In its official communication, the SEC extended this benefit contained in the Basic Services Law No. 21,249, which, in its spirit, was conceived to help vulnerable households in the context of the social and economic crisis derived from the Covid 19 pandemic. The law's application without any distinction based on the customers' ability to pay violates the constitutional guarantee of equality before the law. Since "the legal rules must be the same for all persons in the same circumstances and, consequently, different for those in different situations," according to the appeal filed by Enel Distribución. In this case, it does not make such a crucial distinction for this regulation, as the payment capacity of individuals. It does not observe equality before the law by introducing arbitrary discrimination in the exercise of Enel Distribución's fundamental contractual right, such as receiving timely payment in exchange for electric supply delivered based on the same contract. The latter also contradicts the right of the State and its agencies not to discriminate in economic matters arbitrarily.

"Since the beginning of the pandemic, we have focused our efforts on helping customers most affected by the consequences of this crisis. However, there is no justification for granting a benefit to someone who does not need it. Moreover, we have seen how the law meant to help our most vulnerable customers has benefited customers with high consumption during this time. Customers who do not request agreements or repay their debts," explained **Ramón Castañeda**, Enel Distribución's General Manager.

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Our TC-accepted request also argues that the measure violates the constitutional guarantee of equal distribution of public means. Since it makes the company assume costs of an action in favor of a large part of the community, a matter that, as a general rule, should be considered by the State and, in exceptional cases, using very well-founded specific levies. None of this is given by establishing an obligation to continue providing services and preventing the suspension of supply to users who choose not to comply with their payment obligation, despite having the capacity to do so, according to the public records gathered.

All of the above is a violation of Enel Distribución's property rights since it deprives our company of the most significant incentive available to encourage payment, such as service suspension. Therefore, our company may not settle its financial balance, as it is prevented from covering its operating costs for electric supply to its customers with the highest consumption who remain in default, despite its evident ability to pay.

Finally, the injunction adds that the indiscriminate application of the basic services law also violates the principle of proportionality implicit in the Constitution of the Republic, which must be followed by all regulations that restrict fundamental rights. In this regard, it points out that the law does not comply with basic standards of the principle of proportionality, such as the "suitability" of the measure, i.e., that it is adequate to achieve the legitimate purpose for which it is intended. In this case, people who cannot pay their electricity bills due to the current economic and health crisis caused by the pandemic can continue receiving essential services despite unpaid debts with the respective companies. This condition is no longer fulfilled when the benefit is delivered indiscriminately, without nuances, including people with the ability to pay. The same applies to the "necessity" standard. It is clear it does not need to be universally applicable to achieve its purpose, and even less so that individuals should bear it. It is customary for a measure that benefits a large part of the community to be financed by the State with taxes. Not for the State to impose a levy on a group of individuals for this purpose.

In the letter, Enel Distribución points out that there is no justification for granting a benefit to someone who does not need it or for the cost of this measure to be borne by a private party, in this case, the distribution concessionaire. On the contrary, it emphasizes that the challenged norm constitutes an exception among the emergency measures adopted by the State to face the social and economic crisis derived from the pandemic. He cites examples such as the delivery of the Emergency Family Income (IFE), the extension for employment subsidies, tax benefits to public buses, small and medium-sized companies, and the granting of the "Bono Pymes," the costs of which have been assumed in their entirety by the State.