



2021 – 2 Constitutional Administrative Litigation

Mexican Senate approves the Electric Industry Bill

On March 2, 2021, the Mexican Senate approved the bill to reform the Electric Industry Law. Such bill was already sent to the Mexican President for its publication on the Federal Official Gazette, which is expected to happen within the next few days.

The main changes are described below:

Priority of dispatch of power plants

The dispatch order for power plants operated by the National Energy Control Center is modified (previously there was no fixed criteria) to establish the following order: 1) Hydroelectric plants; 2) Other plants of the Federal Electricity Commission (CFE), a State-Owned enterprise; 3) Privately-owned Wind and Solar plants; 4) Privately-owned Combined Cycle plants.

With these changes, priority would be given to CFE's power plants in detriment of private power plants. This is contrary to what is mandated by the Electric Industry Law currently in effect, which provides for a balanced dispatch under conditions of efficiency, quality, reliability, continuity, safety and sustainability of the National Electric System.

Moreover, the National Energy Control Center could offer to the Legacy Power Plants and the Legacy External Power Plants with physical delivery commitment, a preferential treatment for the use of the National Transmission Network and the General Distribution Networks, which could discriminate independent and private generators from the market, consolidating the position of CFE and its power plants.

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Revoking self-supply permits

In relation to the self-supply permits granted under the former Public Electric Service Law, the bill is aimed to enable the Energy Regulatory Commission to revoke such permits through an administrative procedure, when they detect that such permits were obtained with fraudulent procedures.

National Electric System planning criteria

The bill establishes that the permits granted by the Energy Regulatory Commission under the Electricity Industry Law currently in effect will be subject to the planning criteria of the National Electric System issued by the Ministry of Energy, in order to be in line with the latter.

This could result in discrimination for private power plants, as well as the creation of new arbitrary restrictions.

Clean Energy Certificates (CEL's)

The reform allows the access to CEL's to all generators that produce energy from renewable energy sources, removing the restriction that only clean generators that had entered into commercial operation as of August 14, 2014 could access said Certificates.

This could imply an oversupply CEL's in the market, destroying the expectation of the Certificates value.

Review of the contracts entered into with Independent Power Producers

The bill orders the review of contracts subscribed with Independent Energy Producers for the commitment of electric energy generation capacity and the purchase of energy. Such review will evaluate that said contracts comply with the requirement of profitability for the Federal Government, in case they do not comply, such contracts must be renegotiated or terminated in advance.



We recommend keeping in mind the issues herein mentioned, since international disputes may be triggered under treaties executed by Mexico. Also, it is likely that affected power plants may initiate domestic legal remedies challenging the constitutionality of this reform. Moreover, it is possible that the Mexican Antitrust Commission files a constitutional controversy against this reform.

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Mexico City
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