

CENACE suspends preoperative tests and imposes limits to the transmission of solar and wind power plants, opening the door for the affected companies to initiate defense mechanisms

On April 29, 2020 the “*Resolution to guarantee the Efficiency, Quality, Reliability, Continuity and Security of the National Electric System, as a result of the recognition of the epidemic of illness from the SARS-CoV2 virus (COVID-19)*” (“**Resolution**”) issued by the National Energy Control Center (“**CENACE**”) was published in the Market Information System.

According to the Fourteenth Whereas of the Resolution, due to the reduction of the consumption of electricity nationally and in order to strengthen and guarantee the power supply, the CENACE adopted certain measures because of the pandemic caused by the SARS-CoV2 virus (“**COVID-19**”). Among the relevant aspects of the Resolution are the “*Actions and Strategies for Operative Control to Strengthen the Reliability of the National Electric System*” (“**Sole Annex**”), through which the CENACE determined:

- > To suspend the preoperative tests of solar and wind power plants in process of commercial operation and not authorize new requests for those tests;
- > To operate the transmission corridors under the limits that the remedial action strategies consider depending on the sufficiency or insufficiency of generation; and
- > To authorize “*must run*” power plants for the purpose of controlling the regulation of voltage and adding short-circuit fault currents.

Arguments can be made that the Resolution and its Sole Annex were not issued by the competent authority and are not duly grounded in law and fact. Among these arguments, are the following:

- According to Article 132 of the Electric Industry Act (“**LIE**” for its acronym in Spanish), the Ministry of Energy has the authority to issue these types of rulings and measures (Efficiency, Quality, Reliability, Continuity, Security and Sustainability in the National Electric System). This article establishes that the CENACE can only issue these types of rulings and measures when it has been authorized by the Energy Regulatory Commission (“**CRE**” for its acronym in Spanish), which according to the available information, did not happen.
- Several of the events indicated in the Considerations of the Sole Annex, related to the supposed instability of the wind and solar power plants, occurred long before the General Health Board recognized the epidemic caused by COVID-19.

- The terminology used in the Resolution and in the Sole Annex to determine the duration of the measures is not clear. This could generate uncertainty to the extent that the CENACE could maintain the measures declared in the Resolution and Sole Annex after the end of the “*health emergency*”, which is currently projected to conclude on May 30, 2020.

Therefore, depending on the particular case, the validity of diverse means for challenging them can be analyzed, in order to suspend or restrict the effects of the Resolution and its Sole Annex or to seek an indemnity for the damages and losses caused. Due to the type of measures and their potential consequences, legal remedies might be available before CENACE, administrative-law courts, district courts, investment arbitration tribunals and the Federal Antitrust Commission.

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