

Ministry of Energy imposes limits on the development of renewable energies and opens the possibility of filing defense mechanisms

On May 15, 2020, the Ministry of Energy (“SENER”) published in the afternoon edition of the Federal Official Gazette, the “Policy for Reliability, Security, Continuity and Quality in the National Electricity System” (“Reliability Policy”), which establishes the guidelines that the Members of the Electricity Industry¹, the Energy Regulatory Commission (“CRE”), the governments of the states and their municipalities, as well as any authority of the federal public administration and constitutionally autonomous bodies, must follow to guarantee the reliable supply of electricity throughout the country.

The following are among the most important aspects of the Reliability Policy:

- SENER may define strategic projects for electricity plants whose development and implementation are necessary to comply with the National Energy Policy². Those projects will enjoy a preferred priority for their interconnection in the National Transmission Networks or General Distribution Networks.
- The generation permits (modified and new), as well as the interconnection contracts (to be signed or subject to amendment for extension), must contemplate the concept of “*early termination*” if the terms and conditions established in them are not met.
- The concept of the “*interconnection viability certification*” is created, which will be issued by the National Center for Energy Control (“CENACE”) and may be considered by the CRE for the granting of generation permits, as well as by CENACE to reject the requests of interconnection studies.
- It establishes that in those cases where a Power Plant with Intermittent Clean Energy requests an interconnection study in a point, zone, region or system in which there are already congested transmission and transformation elements, the CENACE based on criteria of sufficiency, security of dispatch and economic efficiency, may reject such requests.
- The wind and solar plants interconnected to the National Electricity System are required to guarantee the control of voltage permanently.
- The incorporation of Distributed Generation with Intermittent Clean Energy³, must be through intelligent inverters with the capacity to regulate frequency and voltage, and with the necessary equipment for monitoring, communication and control from the distribution control centers of the Federal Electricity Commission (“CFE”) and CENACE.

¹ The National Energy Control Center, the Transporters, Distributors, Generators, Marketers, Suppliers and Qualified Users Participating in the Market, as well as the Importers and Exporters.

² At this time the SENER has not yet issued the National Energy Policy.

³ As in the case of Power Plants with Intermittent Clean Energy, there are no defined terms in this regard. However, on various occasions in the text of the Reliability Policy it is specified that the term refers exclusively to generation by wind and solar sources.

A series of arguments can be made that the Reliability Policy was issued in violation of the applicable law. The main arguments, are the following:

- > Article 14, sections IV, XVI and XVII, of the Energy Transition Act are violated, given that the Reliability Policy attempts to limit, under the concept of Power Plants with Intermittent Clean Energy, the development of wind and solar plants throughout the country.
- > It violates article 4 of the Electric Power Industry Act, because the modification of the conditions under which electric plants can interconnect to the national electric system, is contrary to competition and free enterprise in the generation market.
- > By limiting the interconnection of power plants through the “*certificate of viability*” and giving preferential treatment for the interconnection of projects selected by SENER, the provisions of article 33 of the Electric Power Industry Act are being violated.
- > It was issued in violation of Article 66 of the General Regulatory Improvement Law, given that no prior regulatory impact analysis was made.
- > As a result of the above listed defects in legality, the principles of equality and non-discrimination, freedom of trade, proper grounding in law and fact, legal security and free enterprise, are violated.

Therefore, depending on the particular case and with the purpose of suspending or restricting the effects of the Reliability Policy or to obtain an indemnity for the damages and losses caused, the validity of diverse means for challenging it can be analyzed. Legal remedies might be available before the Federal Administrative Court, district courts, investment arbitration tribunals, and the Federal Antitrust Commission.

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