

The CRE imposes restrictions on modifying Self-Supply and Cogeneration Permits

On October 7, 2020, the Energy Regulatory Commission (“CRE”) published in the Official Federal Gazette the “*Resolution of the Energy Regulatory Commission (“Resolution”) amending general administrative provisions (“Provisions”) that establish the terms for requesting authorization for the modification or transfer of power generation or electricity supply permits, contained in resolution number RES/390/2017.*”

The Resolution attempts to establish various restrictions on the holders of permits for primarily self-supply and cogeneration power generation projects, to restrict the inclusion of new beneficiaries (self-supply partners) and load centers under those schemes. The changes consist of the following:

- A section IV and a last paragraph are added to the Sixth provision of the Provisions in order to establish that no change can be made to the generation permits in case of registering load centers that have executed a basic supply agreement under the Electric Industry Law (“LIE”).
- The Ninth provision of the Provisions, referring to the requests for modification of permits granted under the Electric Power Public Service Law (“LSPEE”) is amended with respect to the following:
 - > The possibility of modifying the self-supply or cogeneration permits to include new persons, different from those authorized previously in the permit, that have not been included in the expansion plans of the generation permits, is eliminated.
 - > The load centers are required to provide the information required by CRE to evidence they have not executed a power supply contract under the LIE.
 - > The load centers that have executed a supply contract under the LIE, and those load centers that were already required to be in the Qualified Users Registry (“RUC”), may not be included in self-supply or cogeneration permits granted in terms of the LSPEE.
 - > Finally, it is established that partners already approved or that are in the expansion plans, that have been merged or spun-off, must evidence they are partners or beneficiaries of the electric energy, provided new load centers are not included in terms of the Provisions.

As a result of the above, we consider that there are arguments to conclude that the Resolution was issued in violation of the applicable regulatory framework, which include the following:

- > The Second, Tenth and Twelfth transitory articles of the LIE, in relation to the rights held by holders of generation permits granted in terms of the LSPEE, are breached, particularly regarding the obligation to respect the terms and conditions under which those permits were granted.
- > The provisions of the LIE and LSPEE are breached, since it is attempted through administrative provisions to impose limitations on rights not contemplated in those laws.
- > Article 66 of the General Regulatory Improvement Law is breached, given that a regulatory impact analysis was not done. In addition to the above, an exemption from the regulatory impact analysis that is contradictory to the terms of the General Regulatory Improvement Law was presented.
- > Furthermore, the violation of constitutional principles of legal certainty could be considered, in the aspects of preclusion of arbitrariness; equality and non-discrimination; free enterprise; due process; and free competition.

Based on the above, depending on the particular case, the validity of various challenges could be analyzed in order to stay or restrict the effects of the Resolution or to seek an indemnity for the damages and losses caused. Considering the type of measures and their potential consequences, legal actions before the CRE, the Federal Administrative Justice Court, district courts, investment arbitration tribunals and the Federal Economic Competition Commission could be appropriate.

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