

# Decree Reforming the Electricity Industry Law and Directive withdrawing the Reliability Policy issued by SENER

As a follow-up to our publication released on February 5, 2021<sup>1</sup>, recently various acts have been published in the Federal Official Gazette (“DOF”) with a significant impact on the Mexican electricity industry, specifically, (i) the Decree amending provisions of the Electricity Industry Law (“LIE Reform Decree”) and (ii) the Directive Withdrawing the Reliability Policy issued by the Federal Ministry of Energy (“SENER”) in May, 2020 (the “Reliability Policy Withdrawal Directive”).

## I. Decree amending provisions of the Electricity Industry Law (“LIE”)

On March 9, 2021, the LIE Reform Decree was published in the DOF, which, as we indicated in our previous publication, mainly introduces the following matters to the regulatory framework:

- Modification of the economic dispatch order for power plants, benefiting CFE's conventional generation plants (hydroelectric, nuclear, geothermal, combined cycle and thermoelectric).
- Granting of Clean Energy Certificates (“CEL's”) to clean energy generation plants, regardless of their date of entry into operation, which allows the power plants owned by CFE's subsidiary production companies to acquire CEL's.
- Removal of the obligation of CFE Basic Services Supplier to acquire energy and products through auctions of the National Energy Control Center (“CENACE”). This will generate the purchase of electric power by CFE from its own subsidiary generation companies, having an impact on the basic users electricity service fees, given the increase in the cost of purchasing the power.
- The transitory provisions of the Decree require the Energy Regulatory Commission (“CRE”) to revoke self-supply permits *“obtained through acts that constitute a fraud against the law”*. This situation would generate legal uncertainty for the permit holders, as well as for the self-supply partners, who would no longer receive the benefits of the self-supply scheme.

It is important to establish that the original proposal submitted by the President of the Republic only mentioned the *“possibility”* of revocation; nonetheless, this has been modified by the Chamber of Deputies (Camara de Diputados), establishing that such permits *“should”* be revoked after an administrative procedure.

- Review of Power Purchase Agreements executed with Power Independent Producers in order to “guarantee” profitability in favor of the Federal Government.

<sup>1</sup> [https://www.vonwobeser.com/index.php/publicacion?p\\_id=1503](https://www.vonwobeser.com/index.php/publicacion?p_id=1503)

In this regard, we consider that the LIE Reform Decree has various unlawful and unconstitutional elements and violates various international treaties which could lead to legal actions before the CRE, the Federal Administrative Justice Court, District Courts, and the Federal Economic Competition Commission, as well as investment arbitrations.

However, it is important to review each specific case, in order to establish the appropriate legal strategy that leads to the most suitable defense actions and does not prevent the possibility of submitting other defense actions such as investment arbitrations.

Likewise, it is important to bear in mind, that prior the publication of this document, temporary injunctions with general effects have been granted in diverse amparo claims filed against the LIE Reform Decree. Such temporary injunctions have temporally left without effects the Decree for all participants in the Wholesale Electrical Market and other individuals who carry out any regulated activity in the electricity sector or who are in process of entering in such sector.

Such interim stays of execution could be confirmed or revoked at the moment in which the courts study and determine the definitive stays of execution in the amparo trials. We will promptly follow up and keep you informed of any notice in this regard.

Likewise, regardless of the legality and constitutionality of the LIE Reform Decree, it is important to bear in mind, depending on the specific case, that the LIE Reform Decree may affect contractual relationships between sector participants, which will have to be reviewed case by case.

## **II. Directive Withdrawing the Reliability Policy issued by SENER**

On March 4, 2021, SENER published the Reliability Policy Withdrawal Directive in the DOF. This was the result of the ruling issued by the Second District Judge in Administrative Matters Specialized in Economic Competition, Broadcasting and Telecommunications in the amparo trial 146/2020 and its joinder 155/2020, which ordered the withdrawal of the Reliability Policy with general effects for all participants in the Wholesale Electric Market and the general population.

Therefore, all the issues associated with the Reliability Policy, including those declared as constitutional in the ruling issued by the SCJN regarding the Constitutional Controversy 89/2020, were withdrawn, reestablishing for such purposes, the Reliability Policy issued in 2017 by SENER.

However, the Second Transitory article of the LIE Reform Decree establishes that SENER, CRE and CENACE will have 180 days after publication of the Decree to make the necessary modifications and adjustments to all the agreements, resolutions, guidelines, policies, criteria, manuals, and other regulatory instruments regarding electric energy matters, in order to align them with the provisions established in the LIE Reform Decree.

In this regard, it is possible that the authorities will seek to reimplement within the secondary provisions various aspects of the Reliability Policy including (i) the participation of CFE in the planning and proposal of the Expansion and Modernization programs of the National Transmission Grid and General Distribution Grids; and the (ii) inclusion of new related services to guarantee the quality, reliability, continuity, and security of the National Electric System, especially those related to power plants with intermittent clean energy.

Therefore, we will be monitoring any amendments or modifications of the secondary provisions (regulations, administrative provisions, operating rules) and will keep you informed.

For additional information about our firm and our team, click [here](#). Also, you can contact our experts:

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