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## Amendments to the Electric Industry Law are enacted

On March 9, 2021, a decree amending and adding several provisions of the Electric Industry Law ("LIE") was published in the Federal Official Gazette (the "Decree"). The Decree becomes effective the day after its publication.

The terms of the Decree are essentially the same as those proposed by the President of Mexico to the Mexican Congress on January 29, 2021, through certain initiative to reform the LIE (the "Initiative").<sup>1</sup>

The Decree amends some of the provisions of the LIE, including, mainly, those indicated below so as to:

- modify the dispatch criteria of the National Energy Control Center (*Centro Nacional de Control de Energía*, the "CENACE") in order to favor the electric energy generated by the Federal Electricity Commission (the "CFE");
- eliminate the requirement for Basic Services Suppliers to enter into Electric Coverage Agreements exclusively through public auctions, which had shown a significant reduction in the price at which CFE Basic Supply could acquire products in the wholesale electricity market;
- require CENACE to grant priority to CFE-owned and controlled Power Plants having physical power delivery commitments, and in the use of the National Transmission Network and the General Distribution Networks;
- allow open and not unduly discriminatory access to the National Transmission and General Distribution Networks only "*when technically feasible*", without providing objective criteria to qualify said technical feasibility;
- provide that the Wholesale Electricity Market shall guarantee, in the first instance, the new Electric Coverage Agreements with Physical Power Delivery Commitments, which may only be entered into by Basic Services Suppliers, and, secondly, the supply provided by clean power generators;
- require that Clean Energy Certificates be issued to any Generator producing power from Clean Energy sources, regardless of the date of commercial operation of the relevant facility, which puts at risk the value of such products in the market considering the additional volume of Clean Energy Certificates that may be granted to power plants owned by CFE.

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<sup>1</sup> See "*Newsflash – Office of the President files an Initiative to Reform the Electric Industry Law*", published by Ritch Mueller on February 3, 2021. <https://ritch.com.mx/en/read/538/newsflash-office-of-the-president-files-an-initiative-to-reform-the-electric-industry-law>

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Furthermore, it is important to mention that the Transitory Articles of the Decree provide that:

- i. provisions that oppose the Decree are repealed,
- ii. grandfathered self-supply (*autoabastecimiento*) permits governed by the prior Electric Energy Public Service Law (the “LSPPE”), which were obtained against the spirit of the law, must be revoked by the Energy Regulatory Commission (*Comisión Reguladora de Energía*) (“CRE”) through the corresponding administrative revocation procedure, and
- iii. grandfathered Agreements for Capacity Commitment and Purchase of Associated Electric Power entered into with independent power producers pursuant to the repealed LSPEE are to be reviewed in order to ensure their legality and profitability to the Mexican government and, if applicable, must be renegotiated or terminated.

It should be noted that the Initiative was met with strong opposition from a number of market participants, industry bodies, autonomous government agencies such as the Mexican Competition Commission (*Comisión Federal de Competencia Económica*) and several opposition political parties. The main legal arguments relating to such opposition had to do with the unconstitutional nature of a number of provisions of the Initiative and the anti-competitive effects that may result from their implementation. In addition, concerns were voiced as to the non-conformity of the Initiative with environmental law, international commitments of Mexico in relation to the reduction of carbon emissions and obligations of Mexico arising from free trade and investment protection treaties binding on Mexico, such as the United States-Mexico-Canada Agreement (USMCA).

Because the Initiative was enacted without major changes, the Decree will continue to be met with strong opposition. As such, constitutional legal challenges against the Decree should be expected. Such legal challenges may be filed by any group of legislators, Senators or Representatives, conforming at least a third of the total legislators in the relevant Chamber of Congress. Legal challenges against the Decree may also be filed by private parties seeking protection from its provisions and by the Mexican Competition Commission (*Comisión Federal de Competencia Económica*) and other autonomous government bodies. Such legal challenges by private parties must be filed within 30 business days following the enactment of the Decree, when seeking protection from provisions of the Decree not requiring further administrative implementation action to be fully effective.

As recently as last week, the Ministry of Energy (*Secretaría de Energía*) (“SENER”), in compliance with a federal court resolution, declared ineffective the reliability policy<sup>2</sup> issued during May of 2020 that sought to implement measures similar in nature to those contained in the Decree. The court resolution requiring SENER to revoke its administrative decree was based on legal arguments that can equally be expected to be raised to challenge the Decree, considering their similar nature and effects.

It should be noted that the Decree requires SENER, CRE and CENACE to issue additional implementing regulations within 180 days after the Decree becomes effective. Such implementing regulations may include revisions to the Rules of the Mexican Electric Market (*Bases del Mercado Eléctrico*) and other related provisions, in order to amend the current dispatch model, and the issuance of other administrative rules required to fully implement the provisions of the Decree.

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<sup>2</sup> See “Newsflash – SENER issues policy on reliability, safety, continuity and quality of the National Electrical System” published by Ritch Mueller on May 20, 2020. <https://ritch.com.mx/en/read/503/newsflash-sener-issues-a-policy-on-reliability-safety-continuity-and-quality-of-the-national-electrical-system>

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Additional legal challenges may also be brought by affected parties against such additional implementing regulations that may be viewed as unconstitutional and anti-competitive, as and when they are issued and become effective.

We invite you to reach out to your usual contacts at Ritch Mueller to discuss any particular situation regarding the Decree, its specific consequences and potential defensive strategies in relation to any such consequences. Alternatively you may contact us at [contacto@ritch.com.mx](mailto:contacto@ritch.com.mx) so that we may direct your concerns to the appropriate members of our team.

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