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THE MEXICAN SUPREME COURT OF JUSTICE CONFIRMS THE UNCONSTITUTIONALITY OF THE 2021 AMENDMENTS TO THE ELECTRIC INDUSTRY LAW (*LEY DE LA INDUSTRIA ELÉCTRICA*)

On January 31, 2024, the Second Chamber of the Mexican Supreme Court of Justice (“SCJN”) issued a ruling (the “Ruling”), which settled the appeal (*recurso de revisión*) No. 164/2023 filed by six companies participating in the Mexican electric industry against certain rulings issued in connection with the *amparo* trials filed against the Decree reforming and supplementing various provisions to the Electric Industry Law (*Decreto por el que se reforman y adicionan diversas disposiciones de la Ley de la Industria Eléctrica*; the “Decree”) published in the Federal Official Gazette on March 9, 2021.

The Ruling confirms the unconstitutionality of the amendments provided for in Articles 3, Sections V, XII, XII Bis and XIV, 4, Section VI, 26, 53, 101, 108, Section VI, and 126, Section II of the Decree, which has the effect, among other things, of:

- maintaining the order of dispatch of power plants originally provided for in the Electric Industry Law (“LIE”) based on production costs, safety and economic efficiency, invalidating the priority dispatch of power plants operated by the Federal Electricity Commission (*Comisión Federal de Electricidad*; “CFE”) that are subject to coverage agreements with physical delivery commitments (*contratos de cobertura con compromiso de entrega física*);
- maintaining the obligation for CFE Suministrador de Servicios Básicos to enter into electricity coverage agreements exclusively through bidding processes; and
- suspending the issuance of clean energy certificates (*certificados de energías limpias*) to power plants that entered into commercial operation prior to the effective date of the LIE.

Furthermore, the Ruling confirmed the validity of other articles of the Decree, such as Article 4, Section I, which provides that access to the National Transmission Network and to the General Distribution Networks (*Red Nacional de Transmisión y Redes Generales de Distribución*) will be granted when technically feasible.

Finally, and although only six of the companies participating in the Mexican electric industry filed the appeal that resulted in the Ruling, which in principle would only benefit such companies, the SCJN determined that, since the effects of the Ruling could have repercussions on third parties and thus create disturbances in the Wholesale Electric Market, the effects of the Ruling benefit all other economic agents that participate in such market.

Should you have any questions or require any further information, our team of professionals is available to assist you. We encourage you to reach out to your ordinary Ritch Mueller contacts to seek advice.

