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FEATURED Q&A

What Will Become of AMLO's Power Sector Reforms?



The Mexican Supreme Court ruled last month that President Andrés Manuel López Obrador's power sector reforms unconstitutionally privileged state-owned Comisión Federal de Electricidad. // File Photo: Mexican Government.

Mexico's Supreme Court on Jan. 31 struck down provisions of President Andrés Manuel López Obrador's landmark 2021 power sector reform. The high court sided with companies that had sought an injunction against the law, arguing that its favoring of state-owned power company, Comisión Federal de Electricidad, or CFE, over private power companies violated constitutionally protected principles of free competition. What are the implications of the ruling for the CFE and for private power providers, including ones that generate renewable energy? What does the high court's action mean for the trade dispute that the United States launched against Mexico in 2022 over the reforms? How will the ruling affect Mexico's electricity consumers?

Larry B. Pascal and Carlos Alva, members of the International Practice Group at Haynes and Boone: "The Mexican Supreme Court decision brought a rebalancing of interests to the Mexican power sector by striking down aspects of the 2021 energy reform designed to favor CFE and the fossil fuel energies it predominantly relies upon. The decision is a positive development for private renewable power generators and may prompt them to reconsider investing in Mexico, thereby advancing Mexico's energy transition goals and its Paris Agreement commitments. With respect to the related disputes between the United States and Mexico, the decision provides more clarity for foreign investors. For the U.S. government, the court decision may enable it to avoid requesting a panel to review the

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TOP NEWS

POWER SECTOR

Mexican Regulator Approves State Purchase of Iberdrola Assets

Mexico's government on Feb. 15 secured approval to purchase a majority stake in Spanish multinational electric utility company lberdrola's energy assets in Mexico.

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RENEWABLES

Brazil's Vale Seeks to Grow Industrial Battery Usage

Brazilian multinational mining corporation Vale is seeking to increase the use of industrial batteries to power mines and ports.

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POWER SECTOR

Colombia Eyes Ban on New Coal Mining Contracts

Colombia's ministry of energy and mines published a proposed bill that would ban all new coal mining. The bill's authors describe its aim as advancing Colombia's "decarbonization goals," aligning with President Gustavo Petro's energy transition policies.

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Petro // File Photo: Colombian Government.

POWER SECTOR NEWS

Colombia Eyes Ban on Future New Coal Mining Contracts

Colombia's ministry of energy and mines has published online a bill that proposes a permanent legal ban on coal mining, Bloomberg News reported Monday. The bill would ban all new coal mining contracts and any future exploration. The law is currently on the energy and mines ministry's website, where the policy is described as seeking to support the "decarbonization goals" of Colombia, Bloomberg News reported. Last Friday, Colombia's energy and mines ministry awarded major new licenses for solar electricity projects, increasing the nation's solar energy production capacity by 4,489 megawatts in 2027 and 2028 in a push to reduce reliance on fossil fuels, Reuters reported. Colombian President Gustavo Petro made environmental goals an important part of his election campaign platform and has pursued energy transition policies while in office, notably choosing to grant no new oil or coal contracts; the bill currently proposed would turn that unofficial policy into a permanent law.

Regulator Approves Mexico's Purchase of Iberdrola Assets

Mexican President Andrés Manuel López Obrador's government on Feb. 15 secured approval to purchase a majority stake in Spanish multinational electric utility company lberdrola's energy assets in Mexico, a long-held goal of his administration, Bloomberg News reported. The purchase required approval from the nation's antitrust regulator, Cofece, but the Feb. 15 ruling approved the \$6 billion deal, in which lberdrola will sell its stake in a wind farm and 12 natural gas-fired power plants to Mexican state-owned electric utility company Comisión Federal de Electricidad, thereby strengthening state control of the nation's energy industry.

The ruling also imposed some conditions including a cap on the government's stake in Iberdrola being no more than 51 percent and a requirement for an independent administrator, Bloomberg News reported. Mexico's government had originally agreed to the purchase of the power plants last April, with López Obrador hailing the move at the time as a "new nationalization" of the power sector, Reuters reported. According to the Cofece decision, the terms of the deal are designed to guarantee continued competition in the power market, with the antitrust regulator establishing rules spelled out in its statement that "force the buyers to operate the power generation plants independently in the market and avoid the exchange of sensitive or strategic information among competitors," Reuters reported.

RENEWABLES NEWS

China's BYD Plans Electric Vehicle Plant in Mexico: Executive

Chinese multinational manufacturing firm BYD Company Limited plans to construct a new electric vehicle factory in Mexico, BYD's Mexico head, Zhou Zou told Nikkei Asia in comments published Feb. 14. BYD, which surpassed Tesla as the number-one seller of electric vehicles in the world in the fourth guarter of 2023, is now positioning itself to become a major exporter to the United States. The company's sales have long been concentrated in China, but recent years have seen the firm increasingly turn toward building plants in foreign nations and increasing exports. "Overseas production is indispensable for an international brand," Zou told Nikkei. U.S. firms have raised concerns about their ability to compete with Chinese carmakers, with Tesla CEO Elon Musk last month saying that Chinese automakers would "demolish" their competition without trade barriers, Reuters reported. "The introduction of cheap Chinese autos—which are so inexpensive because they are backed with the power and funding of the Chinese government-to

NEWS BRIEFS

Petrobras Seeking to Finalize Deal With Mubadala on Refinery

Brazilian state oil firm Petrobras is seeking to finalize an agreement with Mubadala, the state-owned holding company of the Emirate of Abu Dhabi, to take back control of a refinery owned by Mubadala by the end of this year's second quarter, Petrobras' CEO, Jean Paul Prates, said last week, Reuters reported. The Landulpho Alves Mataripe Refinery, located in Bahia state in northeastern Brazil, would be part of a larger partnership between Petrobras and Mubadala for biofuels projects, Prates told Reuters.

Newave Energia, Gerdau Break Ground on New Brazilian Solar Project

Brazilian renewable energy firm Newave Energia, alongside Brazilian steel company Gerdau, have begun construction of the 420-megawatt-peak Arinos Solar Park, located in Brazil's Minas Gerais state, Renewables Now reported Feb. 16. Construction of the 1.5 billion real (\$302 million) park is planned to be completed by the year's end. When the solar farm is fully functional, 30 percent of its output will be used to power Gerdau's steel manufacturing in Brazil, the news site reported.

Trinidad & Tobago to Work With Experts to Address Oil Spill

Trinidad and Tobago's Ministry of Energy announced Tuesday it will partner with international experts to address a capsized barge and oil spill affecting the nation's eastern coastline, the Associated Press reported. The spill occurred two weeks ago, and was declared a national emergency. Two U.S.-based companies, T&T Salvage and QT Environmental, will work alongside local officials to remove the barge's wreckage and clean up the oil spill.

the American market could end up being an extinction-level event for the U.S. auto sector." the Alliance for American Manufacturing wrote in a soon-to-be released report, Reuters reported. BYD also plans to construct a new industrial complex in Brazil, investing 3 billion reais (\$620 million) in the project there.

Brazil's Vale Seeks to Expand Use of **Industrial Batteries**

Brazilian multinational mining corporation Vale is seeking to increase the use of industrial batteries to power mines and ports, the company's energy and decarbonization director, Ludmila Nascimento, told Reuters in comments published Tuesday. Since last year, Vale has used industrial batteries at its Ilha Guaiba Terminal (TIG) port, in Rio de Janeiro state, and Nascimento told Reuters the company "can replicate it to other Vale operations, not just at ports." Nascimento outlined how the use of such batteries could be implemented at mining sites as well as three other ports that Vale currently operates. The use of the batteries was aimed at cutting costs and resulted in a 40 percent reduction in energy distribution expenses at the TIG port, a reduction that should ultimately result in savings of 3 million reais, or \$605,000, according to a Vale statement, Reuters reported. The firm Micropower Energy supplied the battery at the TIG port and paid for the upfront investment; Vale will now pay the company back using the savings from reduced energy costs. Sergio Jacobsen, Micropower Energy's CEO, said that the success of the battery project at the TIG port may alleviate concerns about the reliability of the technology, Reuters reported. Jacobsen also underscored the importance of battery technology given Brazil's larger policy push toward a green energy transition, as more systems will be necessary to store wind and solar power during hours when supply outpaces demand. Brazilian company Alupar Investimento announced it has been approved to begin commercial operation of a 61.7-MWp solar power plant in the state of Ceará, Renewables Now reported Tuesday.

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2021 energy reform measures, particularly given the other pressing bilateral issue of controlling migrant crossings at the border. To this effect, the United States may elect to continue its bilateral consultations on this matter with Mexico until the energy policy is formally changed through a repeal of the law or the investments by all American companies are otherwise respected by Mexico through some other accord or measure. Although the court ruling does not directly affect household users (since CFE is the only basic service supplier), for commercial and industrial users that source their energy through clean energy generators, the ruling means that there are still opportunities for their energy supply distinct from CFE. As CFE will not have the preponderance of electricity dispatch (and therefore a monopoly) through its power plants, users will be more able to turn to clean energy generators for the supply of their electricity."

Duncan Wood, vice president for strategy and new initiatives at the Wilson Center: "The decision by Mexico's Supreme Court to declare AMLO's electricity sector reform unconstitutional gives new hope that a more reasonable approach to power generation and distribution will emerge in Mexico after the end of his presidency. For the past six years, the power sector has languished as investor confidence has been trampled by the López Obrador administration's efforts to create a truly dominant market position for the CFE. Power outages are becoming more and more common across the country and there are substantive concerns that Mexico will not be able to reach the full potential of the nearshoring phenomenon due to the lack of access to clean, affordable and reliable energy sources for manufacturing. The next president, who will take office in October, will hopefully recognize the importance of working with, rather than against the private sector in developing a viable energy strategy. However, in the short term we can expect

this Supreme Court ruling to elicit what has by now become an expected response from AMLO. In addition to harshly criticizing the Supreme Court, he will continue his efforts to reshape the court in his own image, and to pass legislation in Congress that will allow his vision of the energy sector to become reality. Time is running out for AMLO. There are only three months left until the election on June 2, and it is likely that he will push even harder now to establish the CFE as the dominant player in the sector."

David Shields, independent energy consultant based in Mexico City: "The Supreme Court's decision will restore, for now, the logical, merit-based system of dispatching power plants, based on competitive costs of generation, that existed prior to President López Obrador's intervention that was aimed at giving preference to the CFE's generators in the electricity market. It should theoretically also allay the fears that private sector developers and operators have expressed in recent trade disputes. But the way ahead for



The Supreme Court's decision will restore decision will restore. for now, the logical, merit-based system of dispatching power plants..."

- David Shields

Mexico's electricity industry and its investors remains highly uncertain. First, López Obrador threw a tantrum, vowing to put his pro-CFE reform in the constitution. He will leave office later this year, but his party, Morena, leads in the polls and seems likely to continue promoting the anticompetitive, pro-CFE policy. Also, new commissioners appointed during this administration at the energy and competition watchdogs, known

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POLITICAL NEWS

U.S. Eyes Restrictions on Asylum After Illegal Crossings

The administration of U.S. President Joe Biden is considering an order to restrict the ability of migrants to seek asylum at the country's southern border if they entered illegally, CNN reported Wednesday. The executive order would be reminiscent of hardline immigration policies during the administration of former U.S. President Donald Trump. The former president also attempted to close the U.S.-Mexico border to asylum seekers, but courts rejected the legality of that policy. The Justice Department's Office of Legal Counsel is reviewing the proposed executive order to assess whether it would stand up to legal challenges, as it employs the same authority that Trump sought for his failed border shutdown, CNN reported, citing an unnamed source familiar with the matter. Meanwhile on Wednesday, the Biden administration implemented another policy aimed at curbing migration, targeting transportation operators that facilitate migration with expanded visa restrictions, Reuters reported. The visa restrictions target "owners, executives, and senior officials of charter flight, ground, and maritime transportation companies" whose services are primarily used by migrants intending to illegally migrate to the United States, the U.S. State Department said in a statement. The United States is currently facing record-breaking levels of migration at its southern border.

Widow of Haiti's Moïse Accused in His Assassination

Martine Moïse, the widow of slain Haitian President Jovenel Moïse, was among 51 people indicted by a Haitian judge in connection with the 2021 assassination, The New York Times reported Monday. The 122-page indictment, handed down by Judge Walther Voltaire, does

ADVISOR Q&A

Why Are Concerns About Corruption So High in Peru?

Peru's corruption score worsened significantly in **Transparency International's** annual study, published Jan. 30, falling to its lowest level in a decade and seeing the Andean country fall 20 places in the group's Corruption Perceptions Index, into the bottom third of the most corrupt countries in the world. The Americas Barometer study by Vanderbilt University similarly showed that 88 percent of Peruvians believe "more than half" of all politicians are corrupt, and less than 21 percent of Peruvians said they were satisfied with democracy. What factors have led to these increased concerns about corruption in Peru? What can President Dina Boluarte's government do to bolster trust in institutions and address issues of rule of law in Peru?

Cynthia McClintock, professor of political science and international affairs at The George Washington University:

"Peruvians' worsening perceptions of corruption are closely linked to their worsening perceptions of political leaders overall.

Despite rock-bottom approval ratings of approximately 10 percent for both President Dina Boluarte and Peru's Congress, both have resisted Peruvians' year-long demand for fresh elections. These politicians' resistance, many Peruvians believe, is due to their pursuit of personal profit; indeed, numerous legislators have been charged with crimes.

Not only had all presidents elected since 1985 been charged with corruption (as of 2019), but now the 2018-2020 president, Martín Vizcarra (who claimed to be leading

an anticorruption battle) and the 2021-2022 president, Pedro Castillo, have also been charged. Worse yet, in a backlash against corruption prosecutors and investigative journalists, sectors of the legislature led by Keiko Fujimori (also charged) have sought to place their allies in the attorney general's office and the National Justice Board (which appoints judicial and electoral authorities). Concerns about the professionalism of the judiciary have mounted; in particular, while past presidents have been charged, they have not been convicted or, in the case of Pedro Pablo Kuczynski, even tried, despite years of pre-trial detention. Relatedly, although the plea bargain is an important tool for prosecutors, it can be abused, and Peru's media often showcase plea bargainers' allegations that have little evidence. An additional factor in corruption, particularly in Peru's interior, is increasing illegal economic activity, especially illegal mining. To build trust and the rule of law, electoral reforms (in particular, to ensure political legitimacy, reduce political fragmentation, and monitor campaign finance) and judicial reforms (to enforce high professional standards and provide resources for timely trials) are necessary. But none of these reforms are likely in the immediate term; to survive in Peru's presidency, Boluarte has allied with the sectors of Peru's Congress that oppose reform."

EDITOR'S NOTE: More commentary on this topic appears in the Q&A of Wednesday's issue of the Latin America Advisor.

not accuse Martine Moïse of planning the killing, nor does it present evidence of her

involvement. However, it does say that she and others provided statements that other witness-

NEWS BRIEFS

Trial of Ex-Honduran President Hernández Begins in New York

Former Honduran President Juan Orlando
Hernández appeared in a New York federal
court on Tuesday for the start of his trial, in
which he stands accused of drug trafficking
and weapons charges, BBC News reported.
Hernández was once a close U.S. ally, but nearly two years ago he was arrested and extradited to the United States, only weeks after leaving office. Prosecutors allege that Hernández
ran Honduras like a "narco-state," accepting
bribes from drug traffickers in exchange for
protection and assistance. Hernández has
pleaded not guilty and has denied wrongdoing.

Ecuador Seeks an Additional \$214 Million in Security Spending

Ecuador's government late Tuesday published a budget proposal that includes an additional \$214 million in security spending for 2024, Reuters reported. President Daniel Noboa last month declared a state of emergency to combat spiraling gang violence, saying Ecuador was in a state of "internal armed conflict." The government's security budget would total \$3.52 billion if approved by the legislature.

Bolivian Government Unveils Measures to Encourage Investment

Bolivia's government on Tuesday unveiled a package of economic initiatives designed to raise investment and exports, Reuters reported. President Luis Arce's government said it agreed on the plan with businesses and that it would reduce bureaucracy for exports, boost investment in the production of grains, make it easier to export diesel and allow larger trucks on Bolivia's roads. The country is facing a worsening scarcity of dollars and shortages of some basic goods.

es contradicted, suggesting their complicity in the case. The New York Times reported. After assailants burst into the couple's bedroom in the early morning hours of July 7, 2021 and fatally shot the president, his widow said she hid under the bed to shield herself from the attackers, according to the indictment, which was provided to the newspaper. However, the indictment adds that the gap between the bed and floor was just 14 to 18 inches, raising questions about Martine Moïse's credibility. Paul Turner, a lawyer for Martine Moïse, did not immediately respond to a request for comment by The New York Times. However, Turner previously denied accusations against the former first lady that were lodged in a criminal complaint. "She was a victim, just like her children that were there, and her husband," Turner told The New York Times. He added that Martine Moïse was in hiding, with her whereabouts known to just a few people. Martine Moïse has repeatedly criticized investigators, saying they have been uninterested in identifying the people behind the killing. The president was killed when a group of Colombian commandos who had been hired by a Florida-based security company, broke into the Moïses' home and killed the president, according to a Haitian investigation. Also indicted on Monday in connection with the assassination were former Haitian Prime Minister Claude Joseph and the former chief of Haiti's National Police. Léon Charles, the Associated Press reported. The AP was unable to reach Charles for comment, and Joseph did not respond to the wire service's request for comment.

Brazil Calls for U.N. Reforms as G20 Meeting Opens in Rio

Brazilian Foreign Minister Mauro Vieira on Wednesday called for reforms of the United Nations as foreign ministers from G20 countries opened their two-day meeting in Rio de Janeiro, the Associated Press reported. Vieira said the institution needs to be reformed as the U.N. Security Council has failed to prevent or stop wars such as the ones in Ukraine and the Gaza Strip. "Multilateral institutions are not

adequately equipped to deal with current challenges, as demonstrated by the unacceptable paralysis of the Security Council in relation to ongoing conflicts," said Vieira, the AP reported. Brazilian President Luiz Inácio Lula da Silva has previously said that he wants developing nations to have a greater role in international organizations such as the United Nations, the World Trade Organization and multilateral banks. "We need to add more people and end the right of veto in the U.N., because it is not possible for a country alone to be able to veto the approval of something approved by all members," Lula said on Sunday.

ECONOMIC NEWS

China Shipping Through Mexico to Avoid Tariffs: Report

China is circumventing U.S.-imposed tariffs on its goods by shipping an increasing number of them through Mexico, according to an analysis of data conducted by the Financial Times and reported Wednesday. The tariffs were originally imposed by former President Donald Trump and aimed at reducing U.S. dependence on the Chinese supply chain. The administration of President Joe Biden has maintained the tariffs. In the years since Trump imposed the tariffs, exports from China to the United States have fallen, while exports from Mexico have risen, with Mexico surpassing China to become the top exporter of goods to the United States in 2023. "Reducing reliance on China is an easy soundbite for politicians, but the reality is very different," said Erik Devetak, chief product and data officer at Xeneta, a logistics research firm that has examined the trends and dynamics of Chinese shipments passing through Mexico, the Financial Times reported. Data analyzed by Xeneta shows that the change may be in part due to a sharp increase in shipments from China arriving through Mexico instead: in the first three quarters of 2023, 881,000 20-foot containers were shipped from China to Mexico, as opposed to 689,000 in the same period last year, the Financial Times reported.

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as CRE and Cofece, have already shown an inclination to favor state-run companies over private-sector players. So, in practice, it will be the upcoming presidential and congressional elections in June that will decide the future direction of the nation and of the power industry in particular."

Adrián Ortiz de Elguea, associate at Holland & Knight: "As the 2014 electricity industry law will enter into full effect again, state-owned power company CFE will continue to lead in certain areas within the electricity sector, without being granted a privilege over private investors. The Mexican Supreme Court resolution reveals itself as a strong judicial guiding tool in Mexico, above the political interests of any political party. Additionally, the Supreme Court resolution grants investors in Mexico a guarantee for legal certainty and observance of the rule of law. Finally, competition within the generation sector maintains its balance, encouraging and improving investment in clean energy sources. President López Obrador's amendments to the electricity industry law, introduced in 2021, triggered discussions about certain violations under the USMCA, as they were incompatible with some agreed-upon articles and chapters in the energy sector among Mexico, the United States and Canada. Now, with the Supreme Court decision, it's anticipated that the pressure stemming from the legal actions filed by foreign companies will decrease. In terms of the commercial relationship between the United States and Mexico, a major increase of investments in Mexico is foreseen. However, a new Mexican president will be elected in June, and this will also influence investments in this sector in the coming years. The resolution of the Supreme Court does not negatively affect consumers. On the contrary, it enables the introduction of more efficient energy generation sources to consumers, which will be reflected in the long term in more competitive tariffs, as well as in incentives for the generation of clean energy."

Ricardo Falcón, research man-

ager at Wood Mackenzie: "The Supreme Court's ruling is not transformative in itself. Rather, it confirms the inapplicability of the amended electricity industry law that the López Obrador administration fast-tracked nearly two years ago and which it had to suspend soon, following a judicial order. This last move reaffirms key aspects of the 2013 energy reform package. The power grid's plant dispatch logic will remain shielded against the non-cost-driven prioritization of CFE hydroand fossil fuel-based units. If made effective, this change would have compromised the dispatchability of critical components of the supply stack, such as combined-cycle and utility-scale wind and solar assets. With its version of the electricity industry law, the administration was broadening the eligibility of power-generating technologies in the clean energy certificate market, presumably in favor of aging CFE assets. If implemented, this measure would have reduced the intrinsic value and the purpose of these instruments. In addition, it would have meant more discretionary capabilities for CFE to purchase energy for basic service, potentially to the detriment of price discovery and competitiveness. This ruling does not have a direct, immediate impact on Mexico's electricity consumers. But by further reducing legal uncertainties around the electricity industry law, it does alleviate the investment climate in a pivotal year-a whole new scene may emerge after the presidential elections that Mexico and the United States will have this year. Moreover, it relieves pressure on the intergovernmental energy talks under the USMCA's framework, reducing the chances of a worst-case scenario."

The Advisor welcomes comments on its Q&A section. Readers can write editor Gene Kuleta.

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