

Mexico Energy Alert: Mexican Supreme Court Declares the 2021 Electric Power Reform as Contrary to the Constitution

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The Mexican Supreme Court (“SCJN”) declared as unconstitutional the provisions in the Reform to the Electricity Industry Law, which were proposed by the Federal Executive in 2021. This occurred on Jan. 31, 2024, and the principal effect of the Reform was to benefit the State Productive Entity, CFE, in the order of dispatch of power generated by it over private generators (including renewables).

The unconstitutionality of the Reform derived from several constitutional challenges (“amparo”) filed by private companies in the energy sector against the Reform, which were favorably resolved by a District Judge. In response to such resolution, appeals for their review were filed, which were attracted by the SCJN for their resolution.

With three votes in favor, the Second Chamber of the SCJN resolved that the Reform breaches the principles of free competition, since it seeks to prioritize the dispatch of CFE's power plants or the plants associated with them, which may generate an alteration in the electric power market by modifying free competition. Likewise, the SCJN resolved that in power generation, the CFE must be considered as another competitor in the market under equal circumstances.

Another relevant point included in the resolution of the SCJN was the acquisition of Clean Energy Certificates (CEL's), which the Reform intended that not only market participants under the new regime (generators of clean energy) would acquire CEL's for the production of clean energy, but also the participants of the old regime (legacy regime), resulting in a disincentive for the production of clean energy.

Finally, the SCJN established that their decision regarding the Reform will apply generally over all participants of the Wholesale Electricity Market (“MEM”), including the Energy Control Center (“CENACE”) as operator of the MEM and the National Electric System (“SEN”).

To read en español, [click here](#).

For more information, please contact any of the attorneys listed below.