

Proposed Amendments to the Electricity Industry Law

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On February 1, 2021, President Andrés Manuel López Obrador presented to the Chamber of Deputies his proposed “Initiative to amend certain dispositions of the Electricity Industry Law” (the “Initiative”). The Initiative is subject to discussion and approval from both Chambers of the Congress before its publication and entry into force.

The purpose of the Initiative is to amend the current Electricity Industry Law (“EIL”) in various ways – in significant part summarized below:

1. The Initiative changes the current EIL dispatch rules by giving priority to power generated from the following sources: first, to hydroelectric plants owned by the Federal Electricity Commission (“CFE”); second, to the other CFE power plants (nuclear, geothermal, combined-cycle and thermoelectric); third, to private sector wind and solar private power plants; and last, to private sector combined-cycle power plants. Under the Initiative, the National Energy Control Center (“CENACE”) must prioritize the dispatch of power generated by Legacy Power Plants¹ and External Power Plants that have a “Physical Delivery Commitment” to the National Electric System (“SEN”), relegating to third place the dispatch of renewable energy and combined cycles of private power plants. In addition, only Basic Services Providers can execute the new “Electricity Coverage Agreements with Physical Delivery Commitment”²; currently, the CFE is the only Basic Service Provider in the Mexican market.
2. By deleting the first paragraph of Article 4 of the EIL, the Initiative appears to eliminate free competition in power generation and commercialization. Further to the same effect, the first section of Article 4 is modified to establish that CENACE will consider the technical feasibility to grant open and non-discriminatory access to the National Transmission Networks and the General Distribution Networks.
3. The Initiative provides that, in granting generation and commercialization permits, the Energy Regulatory Commission (“CRE”) must consider the planification criteria for the SEN provided by the Ministry of Energy. In this sense, the permits for generation and commercialization are restricted to the planning criteria established by the Ministry of Energy.³
4. Under the Initiative, the granting of Clean Energy Certificates will not depend on the ownership or the date on which the power plant started commercial operations. This provision is not consistent with the provisions of the “Guidelines that establish the criteria for the granting of Clean Energy Certificates and the requirements for their acquisition”⁴ published in the Federal Gazette on October 31, 2014 and its modification from October 28, 2019.
5. The transitory articles of the Initiative grant authority to the CRE to revoke self-supply generation permits granted under the previous Electricity Public Service Law (the “LSPEE”)⁵ and, per the statement of reasons for this article, the inclusion of new members or partners to the self-supply corporate scheme is to be considered as a “fraud to the law.”

Further, agreements for the Purchase of Capacity and Electric Power entered into with independent power producers⁶ and executed under the LSPEE must be revised to guarantee their compliance with the requirements of profitability and, if applicable, such agreements must be renegotiated or be subjected to early termination.

The Ministry of Energy, CRE and CENACE will have a period of six months from the date of approval of the amendments to make conforming changes to all related regulations.

The proposed Initiative, if approved, will have a significant impact in new and current renewable energy projects in Mexico with private investment.

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¹ A Legacy Power Plant is a power plant that, at the entry into force of the EIL, was not subject to a permit to generate electricity under the modality of self-supply, cogeneration, small production, or self-use, and (a) is owned and operated by State agencies or entities (CFE), or (b) whose construction and delivery has been included in the Expenditure Budget of the Federation under the modality of direct investment.

² The Initiative seeks to include Article 3, section XII Bis to define these contracts as agreements between a Basic Service Provider and a Generator for the purchase and sale of electricity or associated products on a determined hour or future date with the compromise of the physical delivery of electricity.

³ National Electric System (“SEN”) Development Program 2020-2034 (“PRODESEN”).

⁴ In accordance with these Guidelines, Clean generators have the right to receive CEL for a period of 20 years when they represent the (i) Clean Power Plants that started operations after August 11, 2014; (ii) Legacy Power Plants that produced clean energy and began operations before August 11, 2014; and (iii) Clean Power Plants that own capacity and have been included in an Interconnection Agreement in compliance with the provisions of the EIL.

⁵ Abrogated by the EIL on 2014.

⁶ These are Independent Production Agreements executed between private producers and the CFE or its subsidiary companies under the LSPEE.