

## Mexico: SENER Releases a Policy on Reliability, Safety, Continuity and Quality for the National Electric System

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On May 15, 2020, the Ministry of Energy (“SENER”) published a *Policy on Reliability, Safety, Continuity, and Quality for the National Electric System* (the “Policy”) in the evening edition of the Federal Registry (“DOF”).

The purpose of the Policy is to promote the sustainable development of the power industry and guarantee its continuous, efficient, and safe operation for the benefit of users under the principle of Reliability.<sup>1</sup> Adherence to the Policy is mandatory at SENER, the Energy Regulatory Commission (“CRE”), and the National Center for Energy Control (“CENACE”) insofar as applicable to the Members of the Power Industry.

We believe that the Policy gives preferential treatment to power plants owned by the Federal Electricity Commission (“CFE”) over those for renewable energy. The Policy is in addition to the recent Order published by CENACE on April 29, 2020, that suspended the pre-commissioning tests of wind and solar power plants. See our [alert](#).

The Policy came into force on May 16, 2020, abrogates the Reliability Policy published by SENER on February 28, 2017, and establishes, among others, the following actions and instructions:

- **Authority and Powers of SENER.** SENER may define<sup>2</sup> strategic projects for power plants whose development and implementation are necessary to comply with the National Energy Policy and whose priority must be considered preferentially in the Interconnection in the National Transmission Network (“RNT”) or in the General Distribution Networks (“RGD”). The CFE will propose to SENER strategic infrastructure projects necessary to promote public and universal energy supply service.
- **Terms for Generation Permits and Interconnection Contracts.** The modified and new Generation Permits, and the Interconnection Contracts which are to be signed or modified due to the extension of their terms, must provide for early termination of the Permit or rescission of the Interconnection Contract, if there is a failure to comply with the deadlines for starting and completing the work and commencing commercial operations.

Additionally, in the cases in which the CRE authorizes an assignment, encumbrance, or transfer of the rights and obligations of Generation Permits, the deadlines established in the original permit for the start and completion of the work, and the date to start commercial operations, cannot be modified.

- **New Generation Permits.** The Policy grants to the CRE the authority to request from Generation Permit applicants an interconnection feasibility opinion issued by CENACE. To issue this feasibility opinion, CENACE must evaluate the requests for interconnection studies based on, among other factors, the geographical dispersion and the climatological characteristics of each point of interconnection of the power plants with renewable energy by

area, region, and system. The Policy states that the applications may be rejected for reasons of Reliability, without this representing a breach of open access or undue discriminatory treatment to the RNT and the RGD.

- **Authority of CENACE.** Regarding the allocation and dispatch of electric power generated by power plants, CENACE has the authority to effect, in situations of alert and emergency, scheduled reductions in the generation of power plants with renewable energy and even their disconnection.

CENACE is responsible for proposing and determining the requirements of the Related Services<sup>3</sup> that may be required to ensure the sufficiency and Dispatch Security due, among others, of wind and solar power plants. CENACE can also instruct, at any time, the appointment and dispatch of power plants for the provision of the Related Services required to ensure the Reliability of the National Electric System ("SEN") (which could possibly represent a direct benefit for CFE as the provider of these Related Services).

- **Power Plants Interconnected to the SEN.** The integration of Installed Capacity of renewable energy power plants in the SEN will be maintained for all such power plants that have an Interconnection Contract in effect one day prior to the publication of the Policy. The Policy also provides that, to guarantee Reliability of voltage control, solar and wind power plants interconnected to the SEN, must guarantee voltage control permanently.

- **Modification of Market Rules.** The CRE and CENACE must effect the applicable amendments to the Market Rules and other general administrative provisions, that are necessary to comply with the principles, guidelines, and provisions of the Policy.

According to its text, the Policy is an essential element to strengthen the country's energy security, considering the orderly increase in generation with Intermittent Clean Energy, which increase will be supervised by SENER.

Lastly, it states that CENACE's and CRE's interpretation of Market Rules, within the scope of their authority, must be in accordance with the Policy, such that, in the event of conflict between the provisions of the Market Rules and the Policy, the provisions of the Market Rules must be interpreted in accordance with the Policy. Furthermore, as long as the corresponding adjustments are not made, the administrative provisions in force prior to the entry into force of the Policy will be applicable, as long as these are not contrary to the Policy. SENER is responsible for resolving any questions regarding the application of a provision in case of conflict with the Policy.

Since the Policy introduces fundamental changes to the development of the electricity industry, private generators may explore the filing of national and international judicial remedies against it.

To read this article in español, see [here](#).

If you have any questions, please feel free to contact any of the lawyers listed below.

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<sup>1</sup> Understanding "Reliability" as the ability of the National Electric System to satisfy the electric power demand of End Users under conditions of sufficiency and Dispatch Security, according to the respective criteria issued by the CRE, in accordance with Article 3, Section X, of the Electricity Industry Law.

<sup>2</sup> Apparently beyond what is established in Article 11, Section XIII, of the Electricity Industry Law, with respect to the powers of SENER, among which is the preparation and coordination of the implementation of strategic infrastructure projects necessary to comply with the national energy policy, but not their definition.

<sup>3</sup> Understood as the services linked to the operation of the SEN and that are necessary to guarantee its Quality, Reliability, Continuity and safety, which may include: operational reserves, rolling reserves, frequency regulation, voltage regulation and the emergency start, among others as defined in the Market Rules, in accordance with Article 3, Section XLIII, of the Electricity Industry Law.