

# District Court grants permanent injunction against amendment to the Electricity Industry Law

Energy– March 19<sup>th</sup>, 2021

On March 19, 2021, the Second District Court in Administrative Matters Specialized in Antitrust, Broadcasting and Telecommunications granted the first permanent injunction regarding the "Decree whereby several provisions of the Electricity Industry Law are reformed and supplemented" (the "Reform"), in an *amparo* lawsuit (constitutional review) filed by several companies of the electricity sector. Such permanent injunction follows the temporary injunction granted on March 10, 2021 under the same judicial proceeding. Several other temporary injunctions have been granted by the same court, as well as by the First District Court in Administrative Matters Specialized in Antitrust, Broadcasting and Telecommunications under diverse *amparo* proceedings, and it is expected that they are ratified through the issuance of the corresponding permanent injunctions.

The injunction is a type of precautionary measure or stay that seeks to maintain things in the state in which they are (and, therefore, that the challenged act is not enforced), until the merits of the controversy are analyzed and ruled on, so that such controversy is not devoid of its subject matter.

The definitive injunction is effective from its issuance date (March 19, 2021), and will remain in force until the corresponding *amparo* proceeding is concluded and a final ruling is issued, unless it is revoked by a second instance court (Collegiate Circuit Court) derived from a motion of appeal filed by any party in the *amparo* proceeding.

In the case at hand, the definitive injunction was granted for the effect of ceasing all consequences derived from the Reform in a general manner. Although only two companies act as plaintiffs in this particular *amparo* proceeding, the District Court determined that the permanent injunction must have general effects (i.e., apply for the benefit of all participants in the electricity sector). This, since otherwise, a competitive advantage would be granted to the companies filing the *amparo* lawsuit against the rest of the electricity sector participants, in addition to the fact that distortions could be caused in the electricity market, affecting competition.

Likewise, as part of the permanent injunction, the Court ordered that all authorities tasked with enforcing the Electricity Industry Law, including the Ministry of Energy, the Energy Regulatory Commission, the National Energy Control Center (ISO) and the Federal Commission of Electricity (state utility), refrain from implementing the provisions of the Reform.

In the grant of the permanent injunction, the District Court considered that the implementation of the Reform could hinder competition in the electricity sector, the principle of sustainability and the environmental protection, and could also jeopardize the fulfillment by Mexico of its international commitments assumed regarding climate change and environmental protection.

For context, the Reform, among other things: (a) modifies the order of priority of dispatch in the National Electric System; (b) establishes that the granting of the permits referred to in the Electricity Industry Law must be subject to the planning criteria of the Ministry of Energy and restricts the interconnection of new projects; (c) provides that any clean energy power plants will be entitled to the granting of Clean Energy Certificates, regardless of when they started operating; (d) eliminates the restriction for *CFE Suministrador de Servicios Básicos* to enter into electric coverage agreements only through auctions; (e) empowers the Energy Regulatory Commission to revoke self-supply permits granted under the Public Electric Energy Service Law, in the event that they have been obtained through acts that constitute “fraud against the law”; and (f) empowers the Federal Government to review the power generation capacity commitment and power purchase and sale agreements entered into by the Federal Electricity Commission with legacy independent power producers.

You can read the client alert with our analysis of the Reform [here](#).

For any additional information, do not hesitate to contact our expert team, who can be of assistance:

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