

District Court grants provisional injunction of the Decree to Reform the Electricity Industry Law

Energy– March 12th, 2021

On March 10, 2021, the Second District Court in Administrative Matters Specialized in Antitrust, Broadcasting and Telecommunications granted the provisional injunction with general effects of the "Decree whereby several provisions of the Electricity Industry Law are reformed and added" (the "Reform"), in an *amparo* lawsuit filed by several companies of the electricity sector.

For context, the Reform, among other things: (a) modifies the order of priority of dispatch to the National Electric System; (b) establishes that the granting of the permits referred to in the Electricity Industry Law (the "LIE") must be subject to the planning criteria of the National Electric System; (c) provides that any power plants that generate through Clean Energy will be entitled to the granting of Clean Energy Certificates, regardless of their ownership or their commercial operation date; (d) eliminates the obligation of *CFE Suministrador de Servicios Básicos* to purchase electricity through auctions; (e) empowers the Energy Regulatory Commission ("CRE") to revoke self-supply permits granted under the Public Electric Energy Service Law (the "LSPEE"), 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 ("CFE") with independent power producers under the LSPEE. You can read our note on the Reform [here](#).

The injunction is a type of precautionary measure or stay, applicable in *amparo* proceedings, to maintain things in the state in which they currently are (and, therefore, that the challenged act remains without effect), until the merits of the controversy raised in the *amparo* proceeding are analyzed and resolved, so that the latter does not remain without subject matter. If deemed admissible, the provisional injunction may be declared immediately after the filing of the *amparo* lawsuit. Such injunction remains in effect until it is analyzed and determined in an incidental hearing whether or not the provisional injunction will have definitive effects, that is, whether it will remain in effect during the entire *amparo* lawsuit process.

In the case at hand, the provisional injunction was granted for the effect of suspending all consequences derived from the Reform. Although the precautionary measure was only requested by two companies in the electricity sector, the District Court determined that the provisional injunction must have general effects (i.e., apply to 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 provisional injunction, it was established that all authorities subject to applying the LIE, including the Ministry of Energy, CRE, the National Energy Control Center and CFE, must refrain from executing the provisions of the Reform.

In the grant of the provisional injunction, the District Court considered that the implementation of the Reform could harm competition in the electricity sector, in addition to causing damage to the environment and jeopardizing compliance with international commitments assumed by Mexico regarding climate change and environmental protection.

The provisional injunction will remain in effect from the date on which it was granted, until the date in which the responsible authorities are notified of the incidental hearing's resolution on the granting of the definitive injunction, which, if approved, will remain in effect during the entire *amparo* lawsuit process. Pursuant to the ruling of the District Court, such incidental hearing will take place on March 18, 2021.

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