

Thesis of Jurisprudence 1a./J.83/2022 (11a.) – modification of the terms and conditions of electric power generation permits

Mexico City, July 1st, 2022

This past June 17, the Thesis of Jurisprudence number 1a./J.83/2022 (11a.) (the “Thesis”) was published in the Mexican Federal Judicial Weekly.

The Thesis establishes that the conditions pertaining to the generation permits issued by the Energy Regulatory Commission (“CRE”) can be modified due to legislative reforms, without it implying a violation of the principle of non-retroactivity of the law.

In order to understand the reasoning and justification of the First Chamber of the Supreme Court of Justice (“SCJN”) to issue this criterion, it will be necessary to elaborate on the facts of the specific case.

The Thesis derives from an *amparo* proceeding in which the plaintiff argued that it had acquired rights with respect to the applicability of the Energy Transition Law (*Ley de Transición Energética*), which imposes an obligation on the energy generators with fossil fuels to gradually replace their generation facilities when said facilities exceed certain limits established by the Ministry of Environment and Natural Resources in order to comply with the regulations on polluting emissions.

Pursuant to the foregoing, the SCJN advised that, neither in the resolution by which the power generation permit was granted to the plaintiff nor in the title of said permit, which contains the respective conditions, a right was established to maintain the facilities in the conditions they had at the time when the power generation permit was granted; even, the SCJN pointed out that, in the power generation permit, the plaintiff was required to comply with the applicable regulations and best practices in relation to the infrastructure and equipment. Based on the foregoing, the SCJN concluded that the plaintiff did not have an acquired right related to the infrastructure that its facilities must have, but that the permit granted to generate electricity conditioned its effectiveness to compliance with the applicable regulations related to said

infrastructure, which, like any legal system, are subject to eventual reforms and modifications, as required by public interest.

It should be noted that the Thesis does not ignore the right to generate energy pursuant to the terms established in the permit, but rather it recognizes that there are applicable regulatory conditions that can change in favor of public interest.

Notwithstanding the Thesis, the criterion adopted by the SCJN is unfortunate due to its generality, because although it is true that there are technical and regulatory conditions that must be updated during the validity of a permit, these must always be proportional and not nullify the possibility that a permit holder carries out the authorized activity established in the permit. However, from a reading of the Thesis, it seems that the SCJN is unaware of any prerogative generated by a generation permit; however, this is not what is reflected in the litis that generated the precedent.

Although the criterion of the SCJN established in the Thesis is mandatory since June 20, it must be analyzed from the context of the facts of the case under which the precedent was generated.

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