

Mexican Supreme Court declares the amendments to the Power Industry Law unconstitutional

Mexico City, February 1st, 2024

As per our September 12 and October 10 updates, yesterday, the Second Chamber of the Mexican Supreme Court of Justice ("SCJN") finally resolved amparo appeal number 164/2023 and declared several amendments to the Power Industry Law published in the Federal Official Gazette on March 9, 2021 (the "LIE Reform") unconstitutional.

The SCJN determined that the order of priority in the power dispatch and the obligation imposed on the National Energy Control Center to grant priority access to the grid to entities that have entered into Power Hedging Agreements with Physical Delivery Commitment (meaning CFE and power plants associated with it) introduced by the LIE Reform violate the free market and antitrust principles established in article 28 of the Mexican Constitution. The SCJN also resolved that the elimination of the Basic Service Suppliers' obligation to purchase electric energy and associated products exclusively through public bids (*subastas*) violates competition principles, by creating a differentiated and privileged treatment.

Additionally, the SCJN stated that the LIE Reform breaches the constitutionally recognized principle of sustainable development in the power industry. The SCJN confirmed that by authorizing the granting of clean energy certificates to all power plants that produce clean energy (regardless of their date of entry into commercial operation), the LIE Reform would cause said instruments to increase exponentially and lose their value, discouraging thus the effective development of new clean energy projects.

For the SCJN, the Constitution and its fundamental rights and principles cannot be ignored in order to strengthen state-run entities. The Constitution clearly states that CFE is merely another market competitor in the wholesale electricity market.

Regarding the ruling's effects, the SCJN stated that even if the amparo judgment may only benefit the plaintiffs in the specific case, the fact that the LIE Reform no longer applies to them and the fact that the first-instance judge determined that the previous regime should continue to apply, will necessarily benefit the rest of the entities that participate in the wholesale electricity

market. If that were not the case, different entities in the same market would have different applicable rules.

Should you have any additional questions or comments, we are at your service.

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