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MEXICAN LEGAL NEWS

Mexico's Supreme Court of Justice confirms ruling against the recent reform of the Electricity Industry Law

Yesterday, the Second Chamber of the Supreme Court of Justice of the Nation ("**SCJN**") voted and approved a draft ruling ("**Ruling**") resolving the motion for review 164/2023 derived from an amparo filed against the Decree that amends several sections of the Electricity Industry Law published on March 9, 2021 (hereinafter, the "**Decree**").

Although the injunction was granted to the six complaining companies that filed it, the SCJN pointed out that, by only granting the benefits involved to the complaining companies, "*it could create a different distortion in that industry, because it would place the complaining companies in a position of specificity in terms of competition*", reason for which it was determined that the Ruling will have an impact on and benefit third parties in order to avoid distortions in the industry in favor of certain economic agents.

As a result, the Ruling declares unconstitutional articles 3, sections V, XII, XII bis, and XIV, 4, section VI, 26, 53, 101, 108, section VI, and 126, section II, of the Decree, i.e., the seven amended articles that most harmed private investment and sector participants ("**Unconstitutional Articles**"). This means that the Unconstitutional Articles will not apply to the complainants and third-party participants in the electricity industry, regardless of whether they have filed an amparo against the Decree or not. This results in the following:

- The order of distribution in the National Electric System (SEN) will be preserved as provided in the legislation prior to the Decree (distribution by economic merit).

- The obligation of the National Energy Center (CENACE) to give priority for the use of the National Transmission Network (RNT) and the General Distribution Networks (RGD) to the Legacy Power Plants and the Legacy External Plants with commitment of physical delivery is eliminated.

- The Legacy Contracts for Basic Supply will be executed without the commitment of physical delivery of energy.

- The obligation for Basic Service Suppliers (CFE) to enter into electricity coverage contracts exclusively through auctions is conserved.

- The issuance of Clean Energy Certificates (CELs) to power plants will depend on the ownership and date of commencement of their commercial operation.

It is important to note that the Decree was NOT declared unconstitutional in its entirety, but only the aforementioned articles. In this regard, articles 4, section I, 12, section I, 35, and 108, section V, contained in the Decree will continue to apply to industry participants, including the following:

- Access to the National Transmission Network and General Distribution Networks will be granted when "technically feasible."

- Permits for electric power will be granted, modified, revoked, transferred, extended, or terminated considering the planning criteria of the National Electric System (SEN).

As indicated in the Press Release of the SCJN No. 028/2024 dated January 31, 2024, the Second Chamber clarified that "*the alleged strengthening of state-owned companies is not a reason to disregard the constitutional framework on electric power, as it cannot be overlooked that, in certain activities such as electricity generation, CFE is just another market competitor and, indeed, the Reforming Power of the Constitution ordered to give it a structure that allows it to compete on equal terms. Therefore, the secondary legislator cannot introduce a design that hinders free competition.*" The foregoing shows that the conditions of economic competition in the Wholesale Electricity Market (MEM) will be maintained.

It is of utmost importance to mention that the specific effects of the Ruling will be confirmed once the content of the official version of the ruling is published and analyzed. In addition, there are still other motions for review derived from amparos against the LIE Reform pending before the SCJN, although it is likely that they will be resolved in similar terms and with similar scope.

The decision of the Second Chamber of the SCJN in the Ruling represents a positive step for domestic and foreign investors in Mexico, by confirming to such companies that their investments have been made under the rule of law, where the rules of the game are respected in order to allow the establishment of sustainable companies that with the trend of "nearshoring" intend to settle in Mexico, acquiring clean, safe, reliable energy from the highest bidder and under conditions of free concurrence and competition.

Considering the Ruling, as well as the outstanding results obtained by Von Wobeser y Sierra for our clients regarding the amparo lawsuits filed against the Mining Law Reform published on May 8, 2023, we are facing several positive milestones for investors in the energy and natural resources sectors in Mexico, which will allow the continuity of private investment and consequently, the sustainable development of Mexico.

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Mexico City, February 1, 2024.