

The Renewable Energy Sector Fights for Survival in Mexico



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After the implementation of the long-awaited reform of Mexico's energy sector in 2013-14, which opened the door to private investment and created a wholesale electricity market, the country's renewable energy sector experienced a period of significant growth. Investment interest, however, almost came to a halt in late 2018 following Andrés Manuel López Obrador's victory in Mexico's presidential election. The new administration immediately started taking steps (such as the cancellation of a clean energy auction within days of taking office) to slow down—or even reverse—the liberalization of the energy sector. Regulatory activity against the sector intensified throughout 2020, leading to a large number of legal challenges brought not only by affected industry participants, but also by non-governmental organizations concerned with the effects of Mexico's energy policies on the environment.

The latest round of attacks against renewable energy generation started on April 29, 2020 with the issuance of a resolution by the National Center of Energy Control (*Centro Nacional de Control de Energía* or CENACE) in response to the COVID-19 pandemic. The CENACE resolution included a suspension of commissioning tests for new wind and solar power plants (restricting the access of new generators to the power grid) and proposed to give conventional (non-intermittent) generation resources priority of access to the power grid over renewable (intermittent) generation resources. While the proposed measures were presented as a contingency plan to maintain the stability of the electricity supply



during the pandemic, the CENACE resolution did not include a termination date or even clarify that the rules were intended to be applied temporarily. The CENACE resolution was followed on May 15, 2020 by the publication

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by the Ministry of Energy (*Secretaría de Energía* or SENER) of a new policy regarding power grid reliability, safety, continuity and quality, which included multiple measures disadvantaging renewable energy generation sources.

The CENACE resolution and the SENER policy were promptly challenged in court both on procedural and substantive grounds, and their implementation is currently precluded by nationwide injunctions. The first ruling on the merits with respect to the SENER policy was issued in November 2020, resulting in a general revocation of the policy that is currently being appealed by SENER.

On May 28, 2020, the Energy Regulatory Commission (*Comisión Reguladora de Energía* or CRE) issued a resolution increasing the transmission charges applicable to certain renewable energy projects that entered into transmission contracts prior to the reform of the energy sector. The new charges, which would in effect override binding contractual provisions, represent a percentage increase that ranges between 400% and almost 800%. Numerous affected generators have filed *amparo* complaints to dispute the validity of the new charges and it has been reported that a majority of them have been able to obtain injunctions preventing the application of the new charges while the resolution on the merits of each case is still pending.

More recently, on October 7, 2020 CRE published a new resolution restricting amendments to generation or

supply permits issued prior to, and expressly recognized and preserved as part of, the energy sector reform. The new restrictions would eliminate the generator's ability to replace load points for existing offtakers and, more significantly, to replace an offtaker under the generation permit. While this latest CRE resolution might not immediately affect renewable energy generators that currently benefit from long-term offtake contracts, the new restrictions imposed on such "grandfathered" generation permits are expected to reduce meaningfully the residual investment value in those generators. Numerous legal challenges to this latest action by CRE are already ongoing or expected to be raised.

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latory actions, there is no clear end in sight. Ordinarily, a resolution of an

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amparo complaint on the merits takes between 4 and 6 months and appeals tend to be resolved 3 to 5 months later. In this instance, however, the process is expected to be protracted. Some

delays have been caused by governmental responses to the COVID-19 pandemic, and in addition, given the large number of cases by similarly situated aggrieved parties raising similar issues, some courts seem reluctant to move quickly while expecting a potential ruling by a higher court in any of the cases, which could ensure consistent results in other outstanding cases.

Beyond the immediate direct effects on renewable energy generators, what is perhaps more important is the near-term uncertainty given that there are 4 years remaining in the term of Mr. López Obrador's administration, and the long-term chilling effect on private investment, which may have severe consequences on the future of the renewable energy sector in Mexico.

