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COFECE issues recommendations in relation to CENACE's Official Communication

On May 6, 2020, the Federal Commission of Economic Competition ("COFECE") issued recommendations regarding the official communication issued by the National Energy Control Center ("CENACE") on April 29, 2020, aimed at guaranteeing the efficiency, quality, reliability, continuity and safety of the National Electrical System ("SEN"), in light of the SARS-CoV2 virus pandemic (COVID-19) (the "Official Communication").

Through the Official Communication, CENACE indicates that due to the COVID-19 pandemic and related preventive measures adopted for its mitigation and control, there has been a reduction in electricity consumption, which has prompted the need to strengthen electricity supply reliability to final users generally, including those performing essential activities.

The Official Communication establishes certain technical and operational actions to guarantee a reliable electricity supply, including (i) designation of "must run" units in some of the regions of the SEN and (ii) suspension of pre-operational tests in respect of intermittent wind and photovoltaic power plants in the process of entering into commercial operations.

One of the main points emphasized by COFECE in its recommendations has to do with pointing out the ambiguity of the actions established in the Official Communication.

COFECE makes reference to the fact that some of the actions established in the Official Communication could constitute barriers to free access and competition and prompt discriminatory treatment and, ultimately, could result in an increase in electricity prices and subsidies by the Federal Government to the detriment of consumers.

In its recommendations, COFECE highlighted that the implementation of the actions established in the Official Communication could:

- a) prevent for an indefinite period of time the participation in the market of new wind or photovoltaic power plants by suspending the pre-operational tests necessary to the start of their operations;
- b) generate uncertainty as to the dispatching of wind and photovoltaic power plants already in operation, which typically have lower running costs than conventional power plants; and
- c) end up displacing efficient generators without the actions being established in the Official Communication being adequately supported by technical criteria.

In its analysis of the actions established in the Official Communication, COFECE considers that such actions could result in discriminatory dispatching practices and unfair treatment of market participants.

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In this respect, COFECE recommends that:

- a) the actions taken by CENACE be based on strict technical criteria linked to the reliability, continuity and stability of the SEN and that these criteria be made public;
- b) no discriminatory treatment be given among power plants;
- c) the criteria to suspend the actions established in the Official Communication be defined under clear, transparent and third-party measurable parameters, in particular for the return of pre-operational testing of wind and photovoltaic power plants; and
- d) the actions established in the Official Communication be implemented only to the extent necessary to ensure the stability of the SEN during the COVID-19 pandemic.

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