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SENER issues a policy on reliability, safety, continuity and quality of the National Electrical System

On May 15, 2020 the Ministry of Energy ("SENER") published the "*Official Communication that issues the Policy on Reliability, Safety, Continuity and Quality of the National Electrical System*" (the "Official Communication")¹, which entered into force on May 16, 2020.

The purpose of the Official Communication is to issue a reliability policy for a rational and comprehensive planning and operation of National Electrical System ("SEN"), in line with certain national objectives, which include the following:

- (a) a sovereign energy transition and orderly integration of clean energy and distributed generation;
- (b) establish an enhanced process for the granting of generation permits and power plant interconnection contracts that takes into account the planning of the SEN and the reliability policy; and
- (c) strengthen the strategic planning of *Comisión Federal de Electricidad* and its state-owned productive companies, affiliates and subsidiaries.

To that end, the Official Communication broadens the authority of SENER, the Energy Regulatory Commission ("CRE") and the National Energy Control Center ("CENACE") to decide on matters related to the reliability, safety, continuity and quality of the SEN and to issue provisions to establish, among others, the following:

- With respect to matters related to the granting of generation permits, CRE must consider the information contained in the programs for the expansion and modernization of the general transmission and distribution networks, the Program for the Development of the National Electric System ("PRODESEN") and the relevant interconnection feasibility study issued by CENACE related to reliability. Also, the new provisions would need to include new requirements to interconnection applications and new events of early termination in respect of generation permits and interconnection contracts.
- SENER may define the development and implementation of certain power plants as strategic projects to comply with the national energy policy, which would have priority in terms of interconnection.

¹ http://dof.gob.mx/nota_detalle.php?codigo=5593425&fecha=15/05/2020

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- Energy generation and commercialization services will continue to be provided on the basis of fair and open competition, but without prejudice to the objective of strengthening and sovereign role of the Mexican State in electricity matters.
- Dispatch safety should have priority over economic efficiency when CENACE determines the allocation and dispatch of power plants.
- Provision of new ancillary services, for which CENACE may instruct the allocation and dispatch of out of merit power plants for the provision of ancillary services required to ensure SEN reliability.
- CENACE may reject applications for the interconnection of wind or photovoltaic power plants, on the basis of criteria having regard to sufficiency, dispatch safety and economic efficiency, when these are located in congested interconnection points, regions or systems, where there is insufficient generation to compensate for intermittency and achieve frequency and voltage control and reliability and selectivity of protection schemes.

The Official Communication repeals the reliability policy established by SENER on February 28, 2017, and orders CRE and CENACE to carry out the necessary adjustments to the market rules on matters related to the efficiency, quality, reliability, continuity, safety and sustainability of the SEN to comply with the provisions of the new reliability policy. The Official Communication also provides that while the adjustments to the market rules are put in place, the current rules will continue to apply to the extent such rules do not conflict with the Official Communication, vesting SENER with the authority to resolve any conflict between rules.

Because of the regulatory implications of the new reliability policy enacted through the Official Communication, there are conflicting views as to whether or not the new reliability policy complies with the requirements of the General Law for Regulatory Improvement (*Ley General de Mejora Regulatoria*), which may afford grounds for challenge. Also, to the extent that the Official Communication modifies the conditions of interconnection and dispatch that prevailed under applicable rules prior to its publication, the new reliability policy may affect acquired legal rights of market participants and private parties. Depending on the particular circumstances of each affected party, legal defense strategies to challenge the application of the Official Communication may be available.

We invite you to contact your usual contacts at Ritch Mueller to discuss any particular situation regarding the Official Communication and its consequences. If necessary, feel free to also reach out to us at contacto@ritch.com.mx so we can channel your queries to the appropriate members of our team.

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