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Electricity power purchase: determination of penalties for non-compliance

On April 10, the Energy Regulatory Commission (CRE) published in the Federal Official Gazette the Resolution No. A/004/2019, establishing the criteria for the imposition of sanctions in case of non-compliance of power acquisition obligations, either through electric coverage contracts or via the power balance market (the "Resolution").

It should be mentioned that, according to the Electricity Market Rules ("Rules"), the two main obligations related with power purchases that load-serving entities should comply with are the following:

- a) Signing electrical coverage contracts, in agreement with the minimum percentage required by the CRE.
- b) Meeting the annual power requirement during critical hours.

Load-serving entities are defined in the Rules as any load center representative, i.e. suppliers of basic services, qualified services and last resource, as well as qualified users participating in the market or intermediation generators.

By means of the Resolution, in force as of April 11, the CRE settles the guidelines to evaluate and determine sanctions for non-compliance relative to power purchases. Criteria are as follows:

1. The fine shall be imposed for each megawatt of non-compliance and for every hour that such non-compliance persists.
2. Fine shall amount between 6 and 50 minimum wages (min wg), as provided by the EIL.
3. Fine will be calculated in accordance with the percentage of non-compliance.
4. The severity of the infringement, the economic capacity of the offender, the recidivism, and any other element significant to the severity or mildness of the offence.

The Resolution includes the matrix for the determination of fines in case of breach of power requirement, as follows:

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| Non-compliance percentage | 0%-25% | 26%-50% | 51%-75% | 76%-100% |
|---------------------------|-----------|-----------|-----------|-----------|
| First time | 8 min wg | 10 min wg | 12 min wg | 15 min wg |
| Recidivism | 16 min wg | 20 min wg | 24 min wg | 30 min wg |
| 3th time or contumacy | 24 min wg | 30 min wg | 36 min wg | 45 min wg |

The Resolution makes clear that the matrix will serve only as guidance for the imposition of fines and that even though the maximum and minimum provided in the EIL for this sanction is between 6 - 50 min wage, the CRE reserves 2 min wg in case of a fine decrease and 5 min wg shall it be increased.

Once the percentage of non-compliance is determined by the formula described in the Resolution, the CRE should locate it in the matrix and identify whether it is a first-time offense or there is recidivism, based on each of the annual periods during which the obligation subsists.

The Resolution provides that, in case of non-compliance of minimum power coverage percentages, the total of 100 critical hours shall be considered for the penalty estimation.

The National Energy Control Center will be in charge of collecting the fines, previous instruction from the CRE, and all revenues obtained will be allocated to the Universal Electric Service Fund.

Finally, the Resolution clarifies that the payment of such penalties will not exempt offenders from the fulfillment of their obligations.

For information regarding this subject, please do not hesitate to contact us at 9178 7000 or through the following e-mail: contacto@ritch.com.mx