

Alert | Energy & Natural Resources



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Amendments to Mexico's Electric Industry Law

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On March 9, 2021, the Decree that amends and supplements provisions of Mexico's Electricity Industry Law (LIE) (the Amendment) was published in the *Federal Official Gazette*.

The Amendment takes up aspects of the failed Policy of Reliability, Safety, Continuity and Quality of the National Electric System (*Política de Confiabilidad, Seguridad, Continuidad y Calidad en el Sistema Eléctrico Nacional*) issued by Mexico's Ministry of Energy (SENER) on May 15, 2020, in relation to the prioritization of dispatch and interconnection to the National Electric System (SEN); the issuance of Clean Energy Certificates (CELs); and in general to benefit the Federal Electricity Commission above other industry participants.

This GT Alert provides some of the most relevant aspects of the Amendment.

Sections V, XII, XVI of article 3 of the LIE are amended and a Section XII Bis is added, in the following terms:

“Article 3.- ...

I. o IV. ...

V. Grandfathered (Legacy) Power Plant: *Power Plants that are not included in a permit to generate electrical energy under the modality of self-supply, cogeneration, small production, independent production or continuous own uses, and:*

- a)** *It is property of the agencies, entities, or companies of the State, and*
- b)** *Whose construction and delivery are independent of the financing method;*

VI. to XI. ...

XII. Power Purchase Agreement: *Agreement amongst Market Participants by which an obligation is made to acquire electrical energy or Associated Products in a defined future time and date, or to make payments based on the prices of the latter. Basic Services Suppliers are exclusively entitled to enter into Power Purchase Agreements with Physical Delivery;*

XII Bis. Power Purchase Agreement with Physical Delivery: *Agreement between a Supplier of Basic Services and a Generator by which they are obliged to purchase and sell electrical energy or Associated Products at a defined future time and date, with a commitment to physically deliver the energy, Related Services and Power, and for which the Generator shall file before the Mexican National Center for Energy Control (CENACE) the generation programs for the Power Plants that are part of the Agreement, through fixed program offers in the Wholesale Market, in terms of the Market Rules;*

XIII. ...

XIV. Basic Supply Grandfathered Agreement: *Power Purchase Agreement that Suppliers of Basic Services will have the option of entering into, with prices based on the costs and respective agreements, that include the electrical energy and Associated Products of Grandfathered Power Plants and External Grandfathered Power Plants, with a commitment to physical delivery”*

The new definition of Grandfathered Power Plant assumes that every power plant owned by Mexico’s Federal Electricity Commission (CFE), regardless of its operation date or financing method, is included within such definition, thus providing all CFE power plants with a treatment different from other power plants.

The added definition of Power Purchase Agreement with Physical Delivery, and the amendment to the definition of Basic Supply Grandfathered Agreement, gain relevance in light of the amendments to articles 4 section VI, 26, 101 and 108 sections V y VI, that give priority to the Power Purchase Agreement with Physical Delivery (only entered into by CFE) in offering electrical energy, power and Related Services to the Wholesale Market (MEM), as well as the use of the National Transmission Grid and General Distribution Grid.

Articles 4 sections I and VI, 26, 101 and 108 sections V y VI of the LIE are amended, in the following terms:

“Article 4.- ...

...

I. Grant open access to the National Transmission Grid and General Distribution Grid, in non-discriminatory terms, when technically viable;

II. to V. ...

VI. Offer electrical energy, power and Related Services to the Wholesale Market based on the unit production cost in accordance with the Market Rules, guaranteeing, firstly, the Power Purchase Agreements with Physical Delivery and, secondly, the supply of clean energy, delivering said products to the National Electric Grid when technically viable, subject to CENACE instructions.

Article 26.- The Transporters and Distributors are responsible for the National Transmission Grid and General Distribution Grid and will operate their networks pursuant to the instructions of CENACE, who will grant priority in the use of these networks for the dispatch by Grandfathered Power Plants and External Grandfathered Power Plants with commitments of physical delivery. For the maintenance of the National Transmission Grid and General Distribution Grid that correspond to the Wholesale Market, Transmission and Distribution providers will be bound by the instructions and coordination of CENACE.

Article 101.- Based on the criteria of Dispatch Security and economic efficiency, CENACE will determine the allocation and dispatch of Power Plants, Controlled Demand and the import and export programs. Such allocation and dispatch will be executed regardless of the ownership of Power Plants, Controlled Demand or import and export offers. The foregoing is in consideration of the Power Purchase Agreements with Physical Delivery.

Article 108.- ...

I. to IV. ...

V. Determine the allocation and dispatch of Power Plants, Controlled Demand and import and export programs, in order to satisfy the demand for electricity in the National Electric Grid and maintain Dispatch Security, Reliability, Quality and continuity of the National Electric Grid;

VI. Receive the offers and calculate the prices of electrical energy and Related Products that derive from the Wholesale Market, and receive the generation and consumption programs associated with Power Purchase Agreements with physical delivery commitments, in accordance with the Market Rules;

VII. to XXXIV. ...

Articles 12 section I and Article 35 of the LIE are amended in the following terms:

Article 12.- ...

I. Grant the permits referred to in this law, considering the planning criteria of the National Electric Grid issued by the Ministry, and resolve on their amendment, revocation, assignment, extension or termination.

II. to LIII. ...

Article 35.- *When the works, extensions or modifications necessary for interconnection or connection are not included in the extension and modernization programs of the National Transmission Grid and General Distribution Grid, the Generators, Exempt Generators, Final Users and/or the applicants for interconnection of the Power Plants and connections of Load Centers may choose to execute them at own their expense or make contributions to the Transmission and Distribution providers for their execution and benefit from the same, in accordance with the terms, conditions and methodology of calculations provided in the Regulations, or, established by the CRE, through general administrative dispositions issues, in accordance with the following terms:*

I to V. ...

The amendment to section I of articles 4 and 35, contrary to what was formerly provided under the LIE, limits access to the National Transmission Grid and General Distribution Grid by conditioning access to technical viability and joint efforts of the applicant. Furthermore, the issuance of permits is conditioned on the planning criteria of the National Electric Grid.

Articles 53 and 126 section II of the LIE are amended in the following terms:

Article 53.- *Basic Services Suppliers may enter into Power Purchase Agreements through auctions carried out by CENACE. The terms for the auctions and allocation of the Power Purchase Agreements will be provided by the Market Rules.*

Article 126.- ...

I. ...

II. *The Ministry will establish the criteria for its granting in favor of Generators and Exempt Generators that produce electrical energy from Clean Energy. The granting of Clean Energy Certificates to Power Plants will not depend on the property, nor on the date of commencement of operation of the same.*

III. to V. ...”

The amended article 53 now allows CFE (as sole Basic Services Supplier), contrary to what was previously stated, to enter into Power Purchase Agreements outside of an auction. Furthermore, article 126 allows the granting of CELs to power plants that previously had no right to receive them.

** This GT Alert is limited to non-U.S. matters and law.*

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