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Energy Industry Group Newsletter



Modification and Transfer of Electricity Generation Permits. Means of Defense.

In connection with [our newsletter](#) published October 6, 2020, Resolution number RES/ 1094/2020 ("the Resolution"), reforming the terms for modifying or transferring electricity generation permits, was issued by the Energy Regulatory Commission ("CRE") and published in the Federal Gazette on October 7, 2020. The Resolution entered into force on October 8, 2020, affecting generators, self-supplied partners and end users that are already in the process of meeting their energy needs based on certain generation permits.

The main effects of the Resolution are:

- » The possibility of including new self-supplied partners (not included in expansion plans) in generation permits granted in accordance with the Law of the Public Electricity Service ("LSPEE"), was eliminated.
- » The inclusion of new load centers in the generation permits granted according to the LSPEE is prevented, when:
 - ◊ Said load centers have entered into a supply contract under the Electricity Industry Law ("LIE"), or
 - ◊ They have been registered in the Registry of Qualified Users.
- Thus, said load centers must enter into basic or qualified supply contracts in accordance with the LIE.
- » In order to modify permits granted in accordance

with the LSPEE, in the event of a merger or spin-off, the interested party must prove its status as beneficiary of electric power, without the possibility of including new load centers in the previous terms.

- » It is reiterated that for the following cases, it will not be possible to modify permits, but will be necessary to request a new one:
 - ◊ Changes in the location of power plants when the municipality changes or the NodoP is modified, for dispatch and settlement purposes.
 - ◊ Increases in capacity for generation or demand in import permits.
 - ◊ Change of modality.

In a questionable manner, the Resolution obtained from the National Commission for Regulatory Improvement an exemption from carrying out the regulatory impact analysis, despite the statements of a large number of private companies and even the Federal Economic Competition Commission itself. Likewise, the Resolution violates rights established in the LSPEE, its Regulations and in the Second, Tenth and Twelfth Transitory Articles of the LIE, as well as the rights of generators, self-supplied partners and end users related to requests for modification of permits entered before the CRE, and that to date have not been resolved by said Commission, among other violations.

In the event that your interests may be affected by the Resolution, there are means of defense to challenge it. In this case, we recommend considering the possibility of filing an Amparo lawsuit against the Resolution. However, under the Internal Regulations of the Federal Court of Administrative Justice's reform of October 7, 2020, it is also possible to file a federal administrative trial (nullity trial) before the Federal Court of Administrative Justice. Both procedures have particular benefits and the convenience of filing one or the other would be analyzed according to your particular case.

The Resolution is not related to the means of defense that had been filed in past months against the CENACE Agreement that affected power generation schemes from intermittent renewable sources, the SENER Reliability Policy, nor to the increases in the green electricity transmission rates and transmission rates for conventional power plants. Therefore, in order to challenge the Resolution, it would not be possible to expand the lawsuits that could have been filed against said acts, but it would be necessary to file new means of defense in order to protect Company's interests according to the particular case.

Our Energy and Administrative Litigation Practices have broad experience with the conduct of trials on Energy affairs. Please contact us if you require more detailed information regarding this newsletter.

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