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# Opinion of the Federal Antitrust Commission regarding the Resolution issued by CENACE on April 29, 2020

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On May 7, 2020, the Federal Antitrust Commission (*Comisión Federal de Competencia Económica*, “**COFECE**”) issued the opinion No. OPN-006-2020 (the “**Opinion**”) <sup>1</sup> in regard to the “*Resolution to ensure the efficiency, quality, reliability, continuity and safety of the National Electric Grid, in recognition of the SARS-CoV2 (COVID-19) disease epidemic*” (the “**Resolution**”), published by the National Energy Control Center (*Centro Nacional de Control de Energía*, “**CENACE**”) as of May 1, 2020.<sup>2</sup> The Opinion is addressed to the Ministry of Energy, the Energy Regulatory Commission and CENACE.

## The Publication of the Resolution and its Effect

As informed by White & Case,<sup>3</sup> the Resolution issued last April 29 has seven measures (the “**Measures**”) that CENACE will implement to ensure the reliability of the National Electric Grid (“**SEN**”), considering the drop in electricity demand resulting from the suspension of non-essential activities as part of the Government’s measures to prevent and combat the COVID-19 pandemic.

Among such Measures are: (i) suspension of pre-operational tests of wind and photovoltaic power plants which are in the process of commencing commercial operation; (ii) dispatch of power plants in certain regions of the SEN in order to maintain reliability (*Must Run*); and (iii) review the feasibility licenses requests (for scheduled maintenance) in order to grant them based on the dates and times in which the reliability of the SEN is not compromised.

Several entities within the energy sector (including COFECE by means of the Opinion) have commented about the issuance of the Resolution and the effect the Measures may have in the development of generation projects in their final construction stages (specifically, wind and photovoltaic power plants) and in operating projects.

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<sup>1</sup> [The Opinion is available here.](#)

<sup>2</sup> [The Resolution is available here.](#)

<sup>3</sup> For further information in relation to the Resolution, please review our *client alert* “[Publication of actions to ensure the reliability of the National Electric Grid due to the COVID-19 pandemic \(suspension of pre-operational tests\)](#)”.

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## Considerations of COFECE to the Resolution

The Opinion of COFECE provides certain considerations regarding the actions established in the Resolution, among others, the following:

- (i) Certain provisions of the Resolution have contrary effects to economic competition in the power generation market;
- (ii) The Resolution does not clarify the reasons why the drop in the electricity demand results in instability in the SEN; being such the main purpose for CENACE to issue the Resolution; and
- (iii) The Resolution is not clear neither with regard to the implementation of the Measures by CENACE nor the criteria for cease applying such.

Regarding the Measures, COFECE states the following:

- (i) In relation to the suspension of pre-operational testing of wind and photovoltaic power plants which are in the process of commencing commercial operation, COFECE considers that the Resolution should define the technical and time-related parameters for its implementation, in order to provide certainty to the power generators and investments and not to delay their entrance to the market; and
- (ii) With reference to the dispatch of power plants to maintain reliability (*Must Run*), COFECE considers that it may privilege the dispatch of conventional power plants (which in Mexico are mainly owned by the Federal Electricity Commission (*Comisión Federal de Electricidad*)) over other more efficient power plants. Likewise, COFECE indicates that the Resolution do not establish criteria to choose such power plants, which could result in a discriminatory dispatch against the economic dispatch that regulates the Wholesale Electricity Market.

Finally, COFECE advises CENACE to review the appropriateness of the Resolution and to consider, among others, the following recommendations:

- (i) Implement measures in relation to the intermittent wind and photovoltaic power plants, based on technical criteria directly linked to reliability, continuity and stability of the SEN, and that such criteria are informed to the public;
- (ii) Define and make public the criteria under which the Measures will be ceased; and
- (iii) Apply the Measures only to the extent they are strictly needed to ensure the reliability of the SEN; provided that there are no alternatives which are less restrictive to competition.

Considerations stated by COFECE in the Opinion may be useful in the event of a potential claim against the Resolution.

In case of any question regarding the foregoing, please do not hesitate to contact us.

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