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## BUFETE LAN / ANALYSIS

### NEW CONTROVERSIAL LEGAL AMENDMENTS ON ENERGY

April 7, 2021

As reported by Bufete Lan Law Firm in Mexico City in its previous newsletters, the federal administration gradually, step by step, has been dismantling the Mexican Energy Reform of 2013.

In our previous Bufete Lan/Analysis we discussed the amendments approved by Congress on the Law of the Electricity Industry which substantially alters Mexico's Electricity System and grants predominance to the Comisión Federal de Electricidad (Federal Electricity Commission-CFE) over private entities, allegedly affecting competition and the production of renewable energies.

These amendments, as reported, are the consequence of a major shift in economic ideology which sees the Nation through its productive companies, PEMEX and CFE, as the ones mainly entrusted with the exploitation of Mexico's energy resources.

Now, only a few days ago, it was announced that the federal government submitted to Mexican Congress relevant amendments to the Ley de Hidrocarburos (Law on Hydrocarbons). Today a vote in this regard will take place.



The Law on Hydrocarbons has as main purposes the regulation of the following areas: exploration and exploitation of hydrocarbons; the treatment, refining, commercialization, transportation and warehousing of oil; different aspects concerning natural gas; the transportation, warehousing, distribution, commercialization and sale to the public of oil products, and the transportation by ducts and warehousing related to ducts of petrochemicals. It also covers, among many other areas, the ones of permits, authorizations and contracts for exploration and exploitation.

Which are the main changes contemplated in this legislative bill?

The federal government may suspend, provisionally or definitively, permits granted to private entities in the areas of oil treatment and refining, natural gas, exportation and importation of hydrocarbons and oil products as well as transportation, warehousing, distribution, compression, liquefaction, decompression, regasification and sale to the public of hydrocarbons, oil products or

petrochemicals. This due to reasons of national and energy security or for causes pertaining to the national economy.

All of the above activities are subject to the granting of permits by the Secretariat of Energy or by the Comisión Reguladora de Energía (Energy Regulation Commission), depending of the specific circumstances.

A worrisome provision, constitutionally problematic, is the one that contemplates the possibility that the authority that granted the permit could take the administration and operation of the permit holder suspended in order to guarantee the interests of final users. Said authority could use the personnel of the permit holder, contract a new operator or a combination of both.

The bill also contemplates the revocation of permits related to fuel, diesel and gas distributors that deliver insufficient amounts of these products in relation to the amounts paid by consumers, among other causes.

As it can be appreciated, if the amendments are approved as submitted, the Energy Reform of 2013 in the area of oil and gas would be fundamentally transformed diminishing the role played by private investors as is also the case with the Law on the Electricity Industry.

In both instances and as mentioned, due to a major ideological shift that gives the State a fundamental predominance in the control and exploitation of the Nation's energy resources.

As with the amendments to the Law on the Electricity Industry, the ones to the Law on Hydrocarbons would be actively contested in Mexican courts. Likewise, they are likely to be challenged at the international level based in various trade agreements entered into by Mexico, including those with the United States, Canada and the European Union, among others.

In the case of amendments to the Law on the Electricity Industry, in about 90 cases administrative courts specialized in economic competition, broadcasting and telecommunications, have granted definitive suspensions against the reforms to said Law, and the number of cases brought before these court are likely to increase.

Among the reasons argued by these courts in granting said definitive suspensions are the negative effects that the amendments would have in the production of clean energies and, thus, in the health of the people and the environment.

Likewise, the courts argued that said amendments would negatively impact economic competition affecting consumers. This, due to the dominance that the CFE would enjoy in detriment of private companies mainly in the area of generation of renewable energies.

It is important to point out that these definitive suspensions to the Law on the Electricity Industry only provisionally stop the entering into force of the reforms, that is, until the corresponding appeal courts issue a resolution. Quite likely, these cases would end up in Mexico's Supreme Court.

The federal government has angrily reacted to the generalized use of courts by private investors and has warned that if judicial resolutions are contrary to these amendments, it would activate the corresponding constitutional mechanisms to amend the federal constitution and thus substantially transform the legal regime of the energy sector.

If that is the case, it could be argued that the Energy Reform of 2013 which empowered private investors to participate in practically all areas concerning oil and gas and electricity would be *res judicata*, that is, it would be over.

It is important that Mexicans reflect on these major issues for the Nation and that, above commercial and particular interests, that is, *au-dessus de la mêlée*, adopt the best and legitimate decisions concerning our national interest.

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