

BERDEJA ABOGADOS, S.C.

PLANNING AHEAD:

PROGRESS IN IMPLEMENTATION OF MEXICAN NEW ELECTRICITY MARKET

Introduction

On August 7, 2014, the Mexican Congress passed legislation implementing the energy reform, which legislation was signed into law by the President on August 11, 2014 and was published in the Official Daily of the Federation on such date. The new legislation came into effect on the day following the date of its official publication. Please refer to our memorandum dated July 29, 2014 for a review of the implementing legislation.

The Ministry of Energy released Power Market Rules on September 8, 2015. The Power Market Rules regulate (i) the functions of various participants in wholesale electricity markets, (ii) rates applicable to transmission, distribution, National Center for Energy Control services, and other significant services required in the wholesale electricity market, (iii) disclosure and dissemination of market information, and (iv) disciplinary measures. The Rules set forth two main stages for implementation and a schedule to carry out the same. Please refer to our memorandum dated September 29, 2015 for a review of the Rules.

Electricity Market

Implementation of the Mexican new electricity market continued at a rapid pace in early 2016.

The day-ahead market started operations on January 26, 2016 in Baja California Norte and on January 28, 2016 in respect to the Mexican Interconnected System and is functioning satisfactorily. The real time market is being fine-tuned and is envisaged to start operations on July, 2016.

New Regulations

The Ministry of Energy (“SENER”) and other relevant regulators issued regulations further implementing the Power Market Rules of September 8, 2015 (the “Rules”). Such regulations include the Long Term Auctions Manual issued by SENER on November 19, 2015, the Rules for Transmission and Distribution of Electricity issued by the Energy Regulatory Commission (the “Commission”) on February 16, 2016 and the General Terms for Supply of Electricity issued by the Commission on February 18, 2016.

BERDEJA ABOGADOS, S.C.

The Long Term Auctions Manual sets forth the rules under which power producers may offer to sell at public auctions capacity, electricity and clean energy certificates. The Long Term Auctions Manual establishes the rules for construction and operation of new power plants.

The Rules for Transmission and Distribution of Electricity establish rules for the operation of private companies and state-owned corporations that render public services of transmission and distribution of electricity through the National Transmission Network and the General Distribution Network. The Rules for Transmission and Distribution of Electricity require execution of a market participant agreement, in order to participate in the wholesale electricity market. Such rules define also the elements for an electricity network to qualify as a private network.

The General Terms for Supply of Electricity set forth the terms for retail supply of electricity, “qualified” or wholesale supply of electricity between market participants and supply by suppliers of last recourse (contingency suppliers).

Forthcoming Regulations

Rules governing financial transmission rights (also known as “FTRs”) are at an advanced preparatory stage and are likely to be released soon.

When locational price differs between generator and the load, the load or generator may be subject to congestion fees. FTRs entitle holders of FTRs to receive the value of congestion, as established by the locational price difference. An FTR is also a forward contract, since it hedges against future uncertain locational prices.

Mexico is committed to a climate change policy that is both, environmental policy and energy policy.

Mexican law establishes set goals mandatorily defining the extent to which Mexico shall rely on clean renewable energy to meet future electricity supply needs.

Progress is being made in the preparation of trading rules for clean energy certificates (“CEC”) to be issued by the Commission. Trading of CEC is scheduled to start in 2018 pursuant to applicable regulations. Electricity suppliers and designated consumers may comply with a CEC by (i) owning a renewable energy facility and its production, (ii) purchasing clean energy certificates (instruments representing the environmental attributes of renewable energy that may be traded separately from the energy itself), or (iii) purchasing electricity and the accompanying renewable attributes from a renewable energy facility.

BERDEJA ABOGADOS, S.C.

Preparatory Measures

SENER and other relevant regulators are likely to continue publishing regulations at a rapid pace in 2016 as the implementation of the electricity reform continues.

Investments relating to the electricity market call for careful planning starting early in the consideration of the transaction. This advance planning is essential to ensure that you have identified the best possible structure to maximize the returns on the investment, created a record that will facilitate, not endanger, regulatory approval; and properly allocated the risks and potential burdens of dealings with counterparties. It is advisable to integrate these considerations into your deal timeline and the workflow for the company and its legal and financial advisors, maximize the prospects of timely approval, and protect against deal delay.

* * *

Please do not hesitate to contact us with any questions.

Berdeja Abogados, S.C.

April 19, 2016