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“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”



Back to the... Past?
by Julio Vargas

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With all due respect to the different point of views and opinions, the truth is fossil fuel energy is on its way out, regardless how long will it take, how long will the oil industries will resist the change, green energies are in, despite its initial costs and prices, their fall outs, such as the natural interruption they might experience, regardless of many other factors, in fact regardless of anything, green energies are in and coming to stay.

Over the years, Mexico has been moving and becoming more open to green energies such as photovoltaic and eolic plants also known as solar or wind farms and has acquire certain international obligations regarding climate change policies.

From several years now this green or renewable energies have arrived and there are currently several million-dollar foreign and national investments in the building of solar and wind farms to provide electricity.

“...the suspension without any limit of time to the approval of new green energy farms, clearly denies the entry to Mexican market to new players/investors and affects the ones who have already made substantial investments in this new farms creating terrible uncertainty, damages and substantial losses.”

However, in my always surprising Mexico, the government has some astonishing ways to look at the past rather than the thrill of the sustainable future.

Under this environment plus the national lockdown due to the coronavirus pandemic, on April 29, 2020, amazingly, the mexican Centro Nacional de Control de Energía (CENACE) (National Center of Energy Control) issued certain provisions under the name of *“Acuerdo para garantizar la Eficiencia, Calidad, Confiabilidad, Continuidad y Seguridad del Sistema Eléctrico Nacional”* a national energy agreement, hereinafter referred to as the NEA, apparently intended for the government authorities to guaranty the quality, sufficiency, reliability, continuity and security of the National Electric Service.

This is a long, highly technical and complicated document allegedly created to establish controls over electric centrals with intermittent green energies, meaning solar and wind farms. The NEA explains in its issuance considerations, that due to the pandemic and in accordance with several specific regulations related to such pandemic and considering as an essential activity the electric services that authorities consider, allegedly, that these farms have presented failures in the electric web causing reductions in the electric energy consumes affecting the final consumer, therefor it is essential and high priority for authorities, to fortify the reliability of the electric supply during this national emergency phase.

Following those April provisions, on may 15, 2020, authorities issued additional and complementary

1.-<https://www.cenace.gob.mx/Docs/MarcoRegulatorio/AcuertosCENACE/Acuerto%20para%20garantizar%20la%20eficiencia,%20Calidad,%20Confiabilidad,%20Continuidad%20y%20seguridad%20del%20SEN%202020%2005%2001.pdf>

provisions, namely “Acuerdo por el que se emite la Política de Confiabilidad, Seguridad, Continuidad y Calidad en el Servicio Eléctrico Nacional” , the Policy Agreement.

Those two regulations targeted the green energy plants, both photovoltaic and eolic, providing among many provisions, that preoperative testing for the approval of new green farms will be suspended, without any determination of the lasting of such suspension. In the review of both agreements there is not a co-relation of cause and effect related between wind and solar farms intermittent production of electricity with the reduction in the electric consumes.

“...our Supreme Court, has granted a definitive stay order against CENACE with regards to the coming into effect of NEA and Policy Agreement until the case filed by COFECE is judged on the merits, which strengthens the stay orders granted by several high federal courts...”

Furthermore and in line with several newspaper publications with opinions collected from several experts in the energy field, I agree with the general conclusions that states that, all the critics to the intermittent production of electricity by green means, ends up benefitting conventional sources of energy, namely those from fossil fuels. This constitutes, by all means, clear discrimination of renewable energies expressly forbidden by law, since the CENACE has the legal obligation to operate the wholesale electricity market under conditions that promote fair competition, efficiency and illegal discrimination.

There is no sufficient nor convincing evidence that the alleged failures of the electricity production has any relation, or is the result of, the operation of eolic and solar farms.

As mentioned above the suspension without any limit of time to the approval of new green energy farms, clearly denies the entry to Mexican market to new players/investors and affects the ones who have already made substantial investments in this new farms creating terrible uncertainty, damages and substantial losses.

Also, these new regulations dilutes the market for credits, which are sold to big electricity users required by the government to buy a certain amount of renewable power and NEA regulation affects the value of renewable energy project assets already in operation. The credits were the principal mechanism by which the country was to meet its national and international clean electricity generation goals.

These new provisions prevent, practically any national and foreign investment in electricity generation projects through renewable energy means, going back to the past by moving the balance towards dirty fossil fuels energies as the main source of electricity generation.

Fortunately, Mexico has a constitutional lawsuit remedy named “amparo” suit available to all individuals or corporations to challenge government and authorities acts, including new legislation like the one referred in this article, in any case were the individual believes its constitutional and human rights are being affected with the governmental authority act. The sitting administrative district judges hearing these amparo suits have the authority to issue temporary injunctions or

“suspension of the governmental acts” until the lawsuit is tried and judged. In the initial filing of an amparo, the petitioner is entitled to request an injunction or suspension order against the authority claimed act, in these case, that will be the petition to suspend the coming to effect or enforcement of the new regulation until the case is tried and judged.

In that fashion, many local news reported that many affected investors in the renewable energies sector, have filed their respective amparo lawsuit, against the NEA and its policy agreement.

Among the many arguments raised in federal courts against such new regulation, is for example that the governmental CENACE, failed to obtain as a conditions precedent to issue the NEA and Policy Agreement, a non-binding opinion from the anti-trust Mexican authority, Comisión Federal de Competencia Económica (COFECE) in order to be allowed to issue the provisions established in the new agreements.

With the admission of the constitutional lawsuit, injunctions have been obtained by the plaintiffs against the new regulation, so for now, green farms are able to be built and the existent ones, to continue operating.

As an example, we found a case precedent that cannot be fully disclosed since it is an ongoing case, were the appointed district judge ruled granting the suspension of the governmental act consisting in denying the authorities capacity to suspend at its own discretion the construction of new green energy farms, illegally benefiting the fossil fuels energy plants.

Furthermore, in the process to grant the suspension in the amparo, in accordance with the “good law” principle, judges must make a procedural previous test, without stepping into the merits of the lawsuit, to determine prima facie, if there is the potential of constitutional violations. Suspension orders were entered against NEA provisions to become into effect, after the referred test because the judges considered that avoiding the non-binding opinion of the COFECE by the CENACE in issuing the rules of the agreement seems, prima facie, illegal.

Up to date, no case has been judged on the merits, but judges, when granting the suspension of the NEA and policy rules, have sustained that besides of the lack of the COFECE non-binding opinion, the authorities also incurred in a violation to the Caution Principle, which consists that CENACE authorities are abide to, when issuing new energy regulations, conduct studies related to the environmental potential damages or impacts, all of which lacked in the case in study.

As I write this article, the COFECE not only issued its non-binding measures pointing out several irregularities of the new rules, but also such authority filed before the Supreme Court a constitutional controversy remedy also regarding the NEA; according to COFECE, the new rules violate fundamental principles of free competition, as well as several constitutional guaranties applicable to the creation and provision of electric energy and stated that this NEA and its Policy Agreement clearly intended to leave out of the market an important number of private electricity creators through renewable energies.

On June 30, 2020, news releases state that our Supreme Court, has granted a definitive stay order against CENACE with regards to the coming into effect of NEA and Policy Agreement until the case filed by COFECE is judged on the merits, which strengthens the stay orders granted by several high federal courts, in the amparo cases filed by the private players in the green energy market.

Women are being killed in Mexico at record rates, but the president says most emergency calls are 'false.'

Women are being murdered in Mexico at an alarming rate. However, Mexico's president has stated that the emergency calls, most of them, are false. Since stay-at-home measures were ordered March 23 to slow the spread of the coronavirus, there has been an increase in homicides where women are the main victims, according to government data released last week; in fact, April was the deadliest month in the last five years with a record 267 murders of women. www.edition.cnn.com/2020/06/05/americas/mexico-femicide-coronavirus-lopez-obrador-intl/index.html 05/06/2020.

Mexico receives a \$1 billion loan from The World Bank to support financial access.

Due to the consequences of COVID's-19 pandemic, the Mexican Government was forced to apply for a loan from The World Bank on the 19th of May, which was approved on May 31, 2020 with a 0.25% upfront fee of the total loan amount. Mexico's Government has declared that it does not imply a debt that has not been foreseen but that it is related to public policy actions part of the general financing agenda and that are not linked to any specific activity. www.eleconomista.com.mx/economia/Mexico-obtiene-un-prestamo-por-1000-millones-de-dolaresdel-BM-para-enfrentar-efectos-del-Covid-19-20200607-0003.html 07/06/2020.

COVID causes the worst global crisis in 80 years; Mexican economy could decline 7.5%.

According to The World Bank (TWB), the COVID-19 pandemic has caused a fast blow to the world's economy. Thus, TWB has estimated a drop of 7.5% for Mexico and 5.2% for the rest of the world. As for Latin America, the economic contraction could result in 7.2% and the most affected country in the region will be Brazil, where a drop of 8% was expected, followed by Mexico and Argentina with 7.3%. www.animalpolitico.com/2020/06/covid-crisis-mundial-economia-mexicana-podria-caer-7-5/ 08/06/2020.

The Mayan Train has begun its construction on the Palenque-Escárcega stretch.

The project of President's Lopez Obrador mandate began on June 17, 2020 with the construction of the first 228 kilometers of length of the 1,500 kilometers of track that it will have and that will connect the states of Chiapas, Tabasco, Campeche, Yucatan and Quintana Roo. Despite all criticisms that have been lately received regarding environmental matters, this first phase is expected to generate more than 20,000 jobs in Chiapas, Tabasco, and Campeche. www.expansion.mx/bespoke-ad/2020/06/17/tren-maya-inicia-su-construccion-en-palenque-escarcega 17/06/2020.

Lopez-Gatell assures we are on a stabilizing period of the pandemic.

Mexico's Health Sub-secretary, Hugo Lopez-Gatell, assured we are on a stabilizing period regarding COVID-19 pandemic, in which, apparently, the speed of the cases has diminished. During Andres Manuel Lopez Obrador's conference, Gatell explained there has been registered 450 deaths average per day, without any major assent. He also stated that in Mexico City, where at least 50% of the cases are concentrated, the occupation on hospitals was reduced. www.eluniversal.com.mx/nacion/estamos-en-un-periodo-de-estabilizacion-de-la-pandemia-asegura-lopez-gatell 23/06/2020.

Earthquake in Mexico: an earthquake of magnitude 7.5 and epicenter in Oaxaca leaves at least 10 dead and was strongly felt in Mexico City.

The earthquake occurred at 10:29 local time (16:29 GMT) and had its epicenter 23 km southeast of Crucecita, a town on the coast of the state of Oaxaca. Even though it occurred more than 300 km from Mexico City, it could be felt in the capital. Only minor damages were reported, but President Andrés Manuel López Obrador asked the population to be on the lookout for possible replicas of the earthquake. www.bbc.com/mundo/noticias-america-latina-53156987 24/06/2020.

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