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Energy Trade Group Takes Aim At Mexican Law Amendments

By **Caroline Simson**

Law360 (May 7, 2021, 8:35 PM EDT) -- A trade group representing the U.S. energy industry has sounded the alarm on amendments to Mexico's electrical industry and hydrocarbon laws that allegedly discriminate against foreign investors, urging the Biden administration to ensure that Mexico lives up to its treaty obligations.

American Petroleum Institute President & CEO Mike Sommers pointed in his May 5 letter to recent amendments to two laws, the Power Industry Law and the Hydrocarbons Law, which it says changes market rules in favor of the state-owned Petroleos Mexicanos, or Pemex, and state-owned utility Comisión Federal de Electricidad, or CFE, and against private companies.

"The common denominator of both laws is to hinder new private investment in the energy sector as well as destroy the value of already operating private assets in violation of Mexico's commitments under both [the North American Free Trade Agreement] and [the U.S.-Mexico-Canada Agreement]," according to the letter, which is addressed to Secretary of State Antony Blinken, Secretary of Energy Jennifer Granholm, Secretary of Commerce Gina Raimondo, and U.S. Trade Representative Katherine Tai.

Sommers urged the Biden administration appointees to "urge the government of Mexico to uphold its USMCA commitments to treat U.S. investors and U.S. exporters fairly," and to keep the issue as a "top discussion item" for upcoming trade talks.

The amendments referenced in the letter were put forward by the administration of Mexican president Andrés Manuel López Obrador to upend reforms to the electricity and energy sectors enacted by his predecessor, Enrique Peña Nieto, who left office in late 2018.

The Peña Nieto reforms were aimed at opening up these sectors to private investors. López Obrador, meanwhile, ran on a platform aimed at improving the Mexican economy by bringing those sectors back under government control.

"Basically, that's what they're trying to do - strengthen Pemex and the government so they can have the leverage in the sector for trying to improve the economy," said Greenberg Traurig shareholder Erick Hernández Gallego.

The reforms to the electricity sector, which have been temporarily suspended due to ongoing court challenges, prioritize power provided for the country's electrical grid by the CFE over cheaper power provided by private investors, many of which built renewable energy facilities utilizing wind and solar power under incentives provided under the energy reform, according to the letter.

The amendments eliminate the bidding process CFE previously undertook when purchasing power. They would also allow the government to revoke so-called self-supply power generation permits under the law, under which generators could produce power for their own use.

Reforms to the country's hydrocarbons law, meanwhile, generate legal uncertainty affecting long-term investment projects and reassert the government's right to take over privately-held facilities and turn their operations over to Pemex if the government suspends or revokes their permits, according to API.

Another component of the amendments to the hydrocarbons law would end the powers of regulatory authorities in Mexico to impose certain rules on Pemex to limit its dominating power in the market.

The amendments seemingly make permitting for private companies more cumbersome and uncertain, in that permits will be subject to the Mexican regulatory authorities' discretion. For example, the authorities can check with Pemex to see if it's convenient to issue that permit, or they can eliminate permits that are determined to go against the Mexican national interest, according to Mayer Brown partner Vera de Gyarfas.

"That's why people are so concerned about the enactment of this amendment - because there could be real implications for companies, for example, that own terminals, or that own storage facilities," she told Law360.

--Editing by Ellen Johnson.
