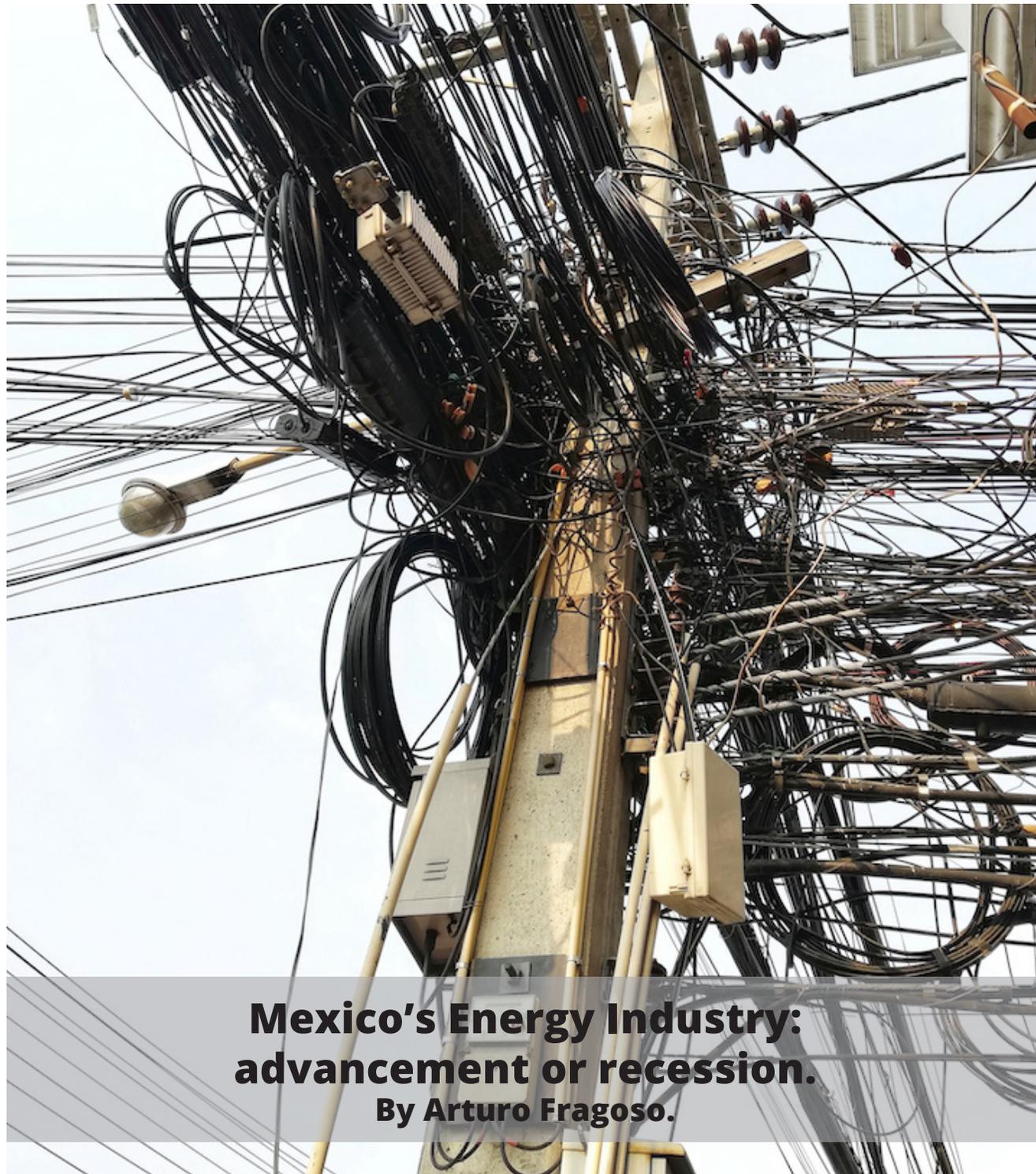


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Mexico's Energy Industry: advancement or recession. By Arturo Fragoso.

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Mexico's Energy Industry: advancement or recession.

by Arturo Fragoso.

During the last decades, the constant throughout the world has been to bet on the development and accelerated growth of global economies, permeated by a strong ideology of globalization and technological advances that left energy and resource issues aside. Said issues have undoubtedly become of utmost importance due to the climatic and overexploitation risks they represent, raising collective awareness about the use, implementation, and generation of clean and renewable energies that no longer rely on the use of resources that are not economically or ecologically sustainable. One of these avenues, specifically in Mexico and at the energy policy level, has been the proposal of regulations that support the ideals of a free market and minimal state intervention, being the postulates that in 2014 gave rise to the enactment of a law that regulates this industry, the Electrical Industry Law (*Ley de la Industria Eléctrica, LIE*).

However, in 2018, with the entry of a new leader and a different political party to power, the National Development Plan for this six-year term contain postulates such as 'energy sovereignty' and 'energy self-sufficiency' that would seek to close borders, cancel investments and centralize all regulatory and operational aspects of the Mexican energy industry in order to benefit State Productive Companies such as *Petróleos Mexicanos* (PEMEX) and the Federal Electricity Commission (*Comisión Federal de Electricidad, CFE*)¹. The plan began to be contextualized little by little since the creation of the Reliability, Security, Continuity and Quality Policies in the National Electric System (*Políticas de Confiabilidad, Seguridad, Continuidad y Calidad en el Sistema Eléctrico Nacional*), issued by the Ministry of Energy in May 2019, and until now, with the recent initiative to the LIE that seeks to add and reform several of its provisions. For this reason, with the recent preferential initiative filed by the Mexican president, Andrés Manuel López Obrador (AMLO), before the Federal Legislative Branch on February 1, 2020, to reform the LIE.

Said proposal, which, in general, seeks to modify the mechanism of the dispatch of power plants in the country to prioritize **(i)** energy produced by hydroelectric plants, mostly owned by CFE, **(ii)** energy generated in other CFE plants, **(iii)** wind or solar energy from individuals, and **(iv)** combined cycles of private companies², was turned over to the Chamber of Deputies and approved on February 23, 2021, with 289 votes in favor, 152 against, and 1 abstention; and subsequently approved by the Senate on March 3, 2021, with 68 votes in favor, and 49 against, passing it to the Federal Executive Branch for its enactment and publication. For this reason, and throughout this article, we will present some of its most notorious implications that for practical purposes have been divided into three aspects: first, the violation of the economic competition policy established at the constitutional level for the industry; second, the notorious lack of incentives for private investment and its decline; and third, the detriment of international agreements and their general repercussions.

Back to the State Monopoly

The so-called Electric Counter-reform, which contravened to a great extent the provisions that the previous government proposed on June 12, 2014, and which led to the promulgation of this new law published on August 11, 2014, entails as its main objective the strengthening of the CFE, as a productive state company. By doing so, it intends to guarantee the reliability of a rating system that will be updated solely due to inflation. However, innumerable controversies on the part of the economic agents involved with the electricity industry, which, instead of being benefitted, has come to harm, have brought about enormous repercussions that threaten the economic and ecological viability of the proposal made by the Federal Executive Branch by eliminating the obligation to buy the cheapest energy through the auction method to give priority to the CFE

1.- *Presidencia de la República. (2019, April 30) Plan de Desarrollo Nacional. Retrieved on February 25, 2021 from https://www.dof.gob.mx/nota_detalle.php?codigo=5565599&fecha=12/07/2019*

2.- *Presidente Andrés Manuel López Obrador. (2021, January 29) Iniciativa con Proyecto de Decreto por el que se reforman y adicionan diversas disposiciones de la Ley de la Industria Eléctrica, para trámite preferente. Retrieved on February 25, 2021 from http://archivos.diputados.gob.mx/portaHCD/archivo/INICIATIVA_PREFERENTE_01FEB21.pdf*

generating plants, mainly those that generate electricity from fuel oil and coal and that have higher costs than the rest, since hydroelectric plants cannot satisfy the country's demand for electricity³.

Thus, and derived from the notorious effort to turn the supply of electricity into a monopoly, the Federal Commission of Economic Competition (*Comisión Federal de Competencia Económica, COFECE*) of our country, an autonomous constitutional body in charge of promoting and protecting fair competition in the markets to contribute to the economic growth, issued on February 15 a recommendation to the Federal Congress to not approve said reform initiative by putting in check essential conditions of competition not only in the generation of electric power but also in its commercialization since:

- i. *it eliminates the cheapest electricity dispatch rule to benefit CFE;*
- ii. *it unjustifiably restricts open access to transmission and distribution networks, granting the National Energy Control Center (Centro Nacional de Control de Energía, CENACE) the discretion to provide access 'when technically feasible', without setting any criteria for it;*
- iii. *it allows CFE Basic Services Supplier (CFE Suministrador de Servicios Básicos, CFE SSB) to acquire electricity by non-competitive methods, eliminating the need for auctions, which implies that around 84% of the existing generation has the right to be acquired without further complication; and,*
- iv. *it grants wide discretion to the Energy Regulatory Commission (Comisión Reguladora de Energía, CRE) to decide on the granting of permits to operate as a generator or supplier without just cause⁴.*

Derived from the aforementioned, a first scenario that we could witness in a short term would be the filing of Amparo lawsuits and diverse judicial proceedings by those whose rights have been violated or acted to their detriment by the law. This, without leaving aside the action of unconstitutionality that could derive from the provisions that are contrary to the free-market policy that our Constitution currently supports. Similarly, there would be room for international mechanisms that enforce the commitments made by Mexico in matters of foreign policy and that affect the interests of foreign investors and the country itself by virtue of the trade agreements that Mexico has entered for such purposes.

Elimination of Incentives for Energy Investment

So, how is it that the President justifies the reason for his initiative? The answer is, as for this and most of his projects, the alleged corruption in the industry and the false promise to benefit the Mexican people, once again, without justified or substantiated evidence beyond the speech that we hear every day in his morning lectures, the famous "*mañaneras*". However, his presumed good intention is not sufficient for an economic context to guarantee efficient and low-cost access to electricity. Under this dialectic, one of the proposals revolves around the obligation imposed on the (CRE) to revoke permits that have been granted through acts constituting fraud to the law by self-supply generators, that is, those who generate energy to use it to satisfy the needs of those who produce it, and that has functioned as a great alternative to cover the needs of energy generation, which not only results in a lack of legal certainty for the entities that operated under this scheme, but also a notorious retroactive and arbitrary application of the law.

Likewise, said proposal sets forth the granting of Clean Energy Certificates (CEL) that could be granted to any producer regardless of whether the power plants where they are generated are new or old, or their date of

3.- Arturo Solís. (2021, February 10) *Reforma eléctrica de AMLO es la iniciativa más destructiva para la economía: sector renovable*. In *Forbes México*. Retrieved on February 25, 2021 from <https://www.forbes.com.mx/economia-reforma-electrica-amlo-iniciativa-mas-destructiva-sector-renovable/>

4.- Pleno de la COFECE. (2021, February 15) *COFECE-006-2021 Recomienda la COFECE al Congreso de la Unión no aprobar la Iniciativa de reforma a Ley de la Industria Eléctrica*. Retrieved on February 25, 2021 from <https://www.cofece.mx/recomienda-la-cofece-al-congreso-de-la-union-no-aprobar-la-iniciativa-de-reforma-a-ley-de-la-industria-electrica/>

entry into operation, which eliminates every incentive for new plants to be created. In this way, the effects are imminent and clear, from contravening the constitutional provisions that regulate healthy competition in the generation and supply of energy, to completely discouraging investment and carrying out projects based on renewable and sustainable energies, thus having a great impact on supply and price conditions to the detriment of consumers. The impact on companies that invested in the generation of clean energy is enormous, and the most worrying thing is the lack of incentives to continue their investment, or worse, without the possibility to continue operating despite the great potential that our country has for the generation of this type of energy.

Implications for the Environmental and International Scope

Undoubtedly, the world trend points towards the use of sustainable energies that not only seek a significant reduction in the prices of both generation and distribution of energy, but that in turn, and primarily, aim towards the preservation and care of the environment, which beyond a trend has become an emergency call to the catastrophic natural disasters that year after year have become more evident throughout the globe. Thus, various countries have sought, both in their local legislation and in multilateral treaties and instruments, the inclusion of various key provisions that promote the industry with the generation of clean energy, such as the United States–Mexico–Canada Agreement (USMCA), and the commitments made to maintain energy exports throughout the continent under a tariff-free scheme and supporting private investment.

It is in this sense that, considering the position of the Mexican state, the initiative could imply that Mexico does not comply with its commitments to generate clean energy, anticipating a wave of lawsuits of guarantees promoted by renewable energy companies, mostly with investors of foreign origin with the possibility of going to international courts under the protection of non-compliance by the Mexican State with the commitments provided in chapters 22, 28, 31 of the USMCA on good regulatory practices and non-discriminatory treatment⁵, having thus a large number of elements to prove a detriment to their investments that could not only be restored, but also compensated. We cannot set aside the principles that, at the time, encouraged the famous Energy Reform of 2014, such as those of transparency, effective regulation, free market, and a transition towards an energy industry paired with a State of minimal intervention; postulates that are absolutely contrary to what this recent initiative intends to create and regulate for the energy market of our country, and which, unlike what it intends, are the basis for the multilateral agreements that Mexico has signed.

Summary

Undoubtedly, the outlook is not at all favorable, and without the desire to exalt the pessimism of this criticism, I would like to exalt some conclusions that we can infer from what has been stated throughout this article. In the foreground, it is clear that beyond the economic and popular benefit, the initiative in question has no other purpose than to pursue that energy policy of 'sovereignty' and 'self-sufficiency' that is strongly rooted in the ideals of the current government. However, what is worrying is the lack of interest and expertise to evaluate each of the unavoidable repercussions and costs that the implementation of these agreements may bring to the Mexican State not only within itself but also vis-à-vis other countries. Second, it is unacceptable that the current situation in our country is reduced to a political battle to prevail interests that not only put its economy and development at risk but even seeks to violate and contradict legal provisions at the international and constitutional level, and to the total detriment of healthy economic competition and free-market policy. And, finally, but although equally or even more important and regrettable, we are not only talking about a position that seeks to eliminate all incentives for investment and generation of sustainable energy, but the Mexican government has not the slightest interest in betting on this type of energy that, as stated at the beginning of this article, is not only a trend but a necessity.

5.- Forbes Staff. (2020, July 14) T-MEC y Energía: Choque de ideologías. In Forbes México. Retrieved on February 25, 2021 from <https://www.forbes.com.mx/t-mec-y-energia-choque-de-ideologias/>

Sputnik V completes its long journey to Mexico.

After weeks of waiting, negotiations and political wrangling, the country has received the first 200,000 doses of the Russian vaccine against COVID-19. The Government's priority is to move forward with the vaccination of older adults in Mexico City, the most vulnerable population in the area that has been the most affected by the pandemic, which has already left more than two million confirmed cases and more than 180,000 deaths in the country. Sputnik V requires two applications and has become an attractive option for the country's authorities since its reported efficacy is close to 92%, and it does not require an ultrafreezing network for its distribution. In fact, it is being considered for combination with AstraZeneca's vaccine, Mexico's biggest bet, with an acquisition of close to 80 million doses. www.elpais.com/mexico/2021-02-23/la-sputnik-v-completa-su-largo-camino-a-mexico.html 22/02/2021.

The new enemy of the 4T ("Fourth Transformation").

President Andrés Manuel López Obrador (AMLO) disqualified the results of the Federal Superior Audit Office (ASF), which found probable irregularities for 67,498 million pesos in the review of the first year of his government. AMLO's reaction it is not very different from those of his PRI or PAN predecessors who did not like the ASF's reports either. What apparently bothered him the most is that these reports will serve up the opposition just when his political project is in the midst of an electoral campaign to maintain the majority in the Chamber of Deputies. For the President, any objective report against his administration means one more enemy on his opposition list. www.eluniversal.com.mx/nacion/bajo-reserva-expres-el-nuevo-enemigo-de-la-4t 22/02/2021.

More than 1.8 million anticovid vaccines applied in Mexico.

The Ministry of Health reported that 464,302 health workers who treat cases of coronavirus have already received the second dose from Pfizer, while 653,946 older adults have already been vaccinated. In Mexico, 1,801,156 applications of Pfizer and AstraZeneca's anticovid vaccine have been reported in older adults, health, and educational personnel, according to the registry of the Ministry of Health. Moreover, Dr. Gabriela Nacamendi Cervantes, Director of Epidemiological Surveillance, during the conference on the coronavirus in Mexico, stated that 40,684 doses were applied today in the 32 states, and that a total of 1,469 vaccines were lost, which represents less than one percent of the total number of inoculations carried out. www.milenio.com/politica/vacunacion-covid-19-mexico-millon-801-mil-dosis 23/02/2021.

Mexico's economy fell 8.2% in 2020, reports the National Institute of Statistics and Geography.

Mexico's Gross Domestic Product (GDP) registered an 8.2% drop with respect to 2019, marking the second consecutive year of declines in Mexico's GDP. The fall in GDP resulted from a 10% decline in secondary activities (mining, construction, manufacturing) and 7.7% in tertiary activities (trade and services), which was partially offset by the 1.9% increase in primary activities (agriculture, fishing, livestock). www.milenio.com/negocios/pib-mexico-cayo-2020-reporta-inegi 25/02/2021.

During the pandemic Mexico increased exports to China.

Estimates by the Center for China-Mexico Studies (CECHIMEX) indicate that 43% of Mexican exports to the Asian country are concentrated in oil and various minerals, while another 28% are related to auto parts and electronic products. According to data from Bank of Mexico, Mexico's shipments of goods and services in general to foreign countries fell 9.3%, from 460,703 million to 417,670 million dollars. This drop was the result of an 8% drop in exports to the United States, where more than 80% of Mexican goods go. www.jornada.com.mx/notas/2021/02/25/economia/durante-la-pandemia-mexico-aumento-exportaciones-a-china/ 25/02/2021.

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