

THE RENEWABLE ENERGIES AND FINANCING OF THE ENERGY TRANSITION LAW

On the 23rd of October, 2008, a proposal for the approval of the **Renewable Energies and Financing of the Energy Transition Law** (“**Law**”) was sent for the approval of the Mexican House of Representatives, and on the 25th of October, 2008, this same proposal was approved by the Energy Committee of the same House.

Before beginning with the analysis of the proposal in question, it is important to establish exactly what is meant by **renewable energy**, as these shall be the object of regulation under the cited proposal. The Law proposes the following as a definition: *energy sourced from natural phenomena, processes or materials able to be transformed into energy for human use, that regenerate naturally, are continuously or periodically available, and which consist of one of the following: a) wind, b) solar radiation, in all its forms, c) the movement of water in natural or artificial bodies, d) oceanic energy, such as tidal and wave energy and ocean thermal energy conversion, e) geothermal energy, f) bioenergies, as determined by the Promotion and Development of Bioenergies Law¹, and g) any other energies as determined by the Ministry of Energy (“**ME**”) the source of which complies with the first paragraph of this section.*

The reform project consists of 31 articles spread out over four chapters, and in this

¹ In conformity with the Promotion and Development of Bioenergies Law, published in the Official Gazette of the Federation on the 1st of February, 2008, “Bioenergies” are understood as: *fuels obtained from organic materials derived from agricultural, fishing, forestry, acuacultural, domestic, commercial and industrial activities, by-products of microorganisms and enzymes and their derivatives, which are processed through sustainable technology and processes that comply with the specifications and quality standards established by the relevant competent authority under the terms of this Law.*

present document we shall analyze the most relevant points.

We must not overlook that this proposal is derived from the necessity to promote the vital concept of sustainable development in Mexico, and with the ultimate purpose of promoting the use of renewable sources of energies.

Within the **First Chapter**, we find that the primary objective of the Law in question is to regulate the use of renewable sources of energy and clean technologies for the generation of electricity not intended for public provision of electrical energy, and also to establish the national strategy and instruments for financing the energy transition as the Mexican economy moves from one dependant on the combustion of fossil fuels, to one in which diverse sources of renewable energy become competitive.

It is also stated that radioactive minerals for the generation of nuclear energy, hydraulic energy with a generation capacity greater than 30 megawatts, industrial waste or any other waste to be incinerated or to receive any other type of thermal treatment, and municipal landfills that fail to comply with legal environmental requirements, shall not be considered renewable sources of energy.

The **Second Chapter** covers the authorities concerned with regulating the utilization of renewable sources of energy, all of which shall be under the supervision of the **Ministry of Energy** (“**ME**”), which shall create and coordinate the most important instruments for the application of the Law.

As mentioned above, the **ME** shall be responsible for promoting the utilization of renewable sources of energy, which it shall achieve through the **Special Program for the Utilization of Renewable Energies** (“**The Program**”).

Said **Program** shall be coordinated by the **Renewable Energies Advisory Council**, whose objective shall be to aggregate and analyze the opinions of the various sectors and stakeholders involved in the industry, and to offer advice and consultation to them in relation to the use of renewable sources of energy. Linked to this, the **ME** will establish and regularly update the **National Renewable Energies Inventory**.

The **Energy Regulatory Commission** (“**ERC**”)² shall be responsible for issuing the guidelines and administrative standards related to the generation and exchange of electricity from renewable sources, and also the methodologies for determining the share of generation capacity to the National Electricity Network to which each renewable energy technology shall be entitled, as well as the rules for their connection.

This Chapter also grants faculties to the Ministries of the Economy and of the Environment and Natural Resources (“**SEMARNAT**”) to coordinate with the **ME** in the areas in which they are competent. In this sense, the **ME**, together with **SEMARNAT**, the Treasury and Public Credit Ministry (“**SHCP**”) and the Ministry of Health (“**MH**”) shall issue a methodology for the analysis of the potential externalities³, in relation to which **SEMARNAT** will design a mechanism for environmental regulation for the utilization of renewable energies.

Within Chapter Three are described the methods through which the **Program** will function and its specific contents. Further, the mechanisms established by the **ERC** for payment of consideration to generators⁴ for

² See Article 7 of the Act for a description of its faculties and competencies.

³ An “externality” is to be understood as: *A positive or negative impact generated by the provision of a good or service and which affects a third party. Externalities occur when the costs or benefits to the producers or buyers of a good or service are different to the total social costs or benefits involved in their production or consumption.*

⁴ A physical person of Mexican nationality or legal person duly constituted in conformity with Mexican law and with a registered domicile within Mexican

territory, which generates electricity from renewable sources of energy.

the provision of electricity from renewable sources are detailed. Such consideration will depend on the technology being used and the geographical location of the project from which the energy is sourced.

Any surpluses of energy generated by cogeneration of self-service projects will be assimilated into the National Electricity Network. For the generation, transformation and distribution of electricity, the generators will commit themselves to complying with the conditions issued by the **ERC**.

Projects for the generation of electricity from renewable sources with a generation capacity greater than 2.5 Megawatts must attempt to engage local communities and regions, promoting their social development, and must pay any relevant rents to which they may be subject to the owners of the lands and properties in which they are located.

Finally, **Chapter Four** establishes that, through the **National Strategy for the Energy Transition and the Sustainable Use of Energy**⁵, programs and action plans to obtain the optimal utilization of renewable sources of energy and clean technologies will be implemented.

As around 90% of energy generated in Mexico today is through non-renewable resources such as oil, gas and coal, this strategy will attempt to search for a reduction in the dependence on such hydrocarbons as the primary source of energy in Mexico.

The constitution of the **Sustainable Use of Energy and Transition Fund** is also proposed in this section of the Law. Such a fund would serve to ensure the energy transition is realized through the support of well structured financing mechanisms. Such mechanisms shall be reserved for projects which have been presented, evaluated and

territory, which generates electricity from renewable sources of energy.

⁵ Its principal objective is to promote the utilization and development of, and investment in, renewable energies.

approved and which comply with the guidelines issued by the Technical Committee⁶, to be presided over by the **ME**.

The Federal Executive shall send a decree proposal for an announcement in the Federal Budget to the Mexican House of Representatives, with which it is intended that the financial resources needed to ensure the success of the abovementioned National Strategy will be identified and approved. Such amount shall be reviewed and updated every three years, considering relevant factors of economic growth.

Finally, it is also worth mentioning that the Federal Executive, State and Municipal Governors and the Governor of the Federal District may enter into public agreements with the suppliers of electricity with the purpose of jointly carrying out projects for the generation of electricity for public service from the sustainable use of renewable sources of energy.

We conclude that the institutions, projects and programs established by the Law, and herein described, will successfully complement one another in the search for the implementation and development of renewable energies, and with the intention of reducing the negative environmental impacts caused by our consumption of energy and promoting clean technology which will separate Mexico from its dependence on oil and other hydrocarbons.

The present opinion is merely an informative bulletin and may not be reproduced, wholly or partially, without prior written authorization.

Leopoldo Burguete Stanek
Environmental and Sustainable Development
Practice
lbarguete@gcsc.com.mx
+ (5255) 5202.7622
Montes Urales 632 – Piso 3
Lomas de Chapultepec
11000, México, D.F.

⁶ The Committee will be comprised of the **ME**, **SHCP**, **SEMARNAT**, the Ministry of Agriculture, Livestock, Rural Development, Fishing and Food (“**SAGARPA**”), the Federal Electricity Commission (“**FEC**”), the electrical services distributor Luz y Fuerza del Centro, the Mexican Petroleum Institute, the Institute for Electrical Research and the National Science and Technology Council.