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FEATURED Q&A

Is López Obrador Upending the Power Sector's Landscape?

The government of Mexican President Andrés Manuel López Obrador has introduced major changes to the country's power sector since taking office in December 2018. // File Photo: Mexican Government.

Q Moody's Investors Service last month lowered its ratings outlook on the North American Development Bank from stable to negative, citing the Mexican government's proposed regulatory changes in the power sector, which it said would be "detrimental" to the renewable energy sector and the bank's lending portfolio. What are the most important changes that the government of Mexican President Andrés Manuel López Obrador has introduced in the country's power sector since taking office in December 2018? What effects have they had on the sector's investment climate? Are more and similar changes expected in the period ahead, and how can companies prepare for them?

A Pedro Niembro, senior director, and Geoffrey Jones, senior vice president, both at Monarch Global Strategies: "In a blow to private energy investment, the Energy Regulatory Commission (CRE) supported President López Obrador's call for the adoption of 17 key points to his energy policy, stating that most could be quickly implemented without major changes to the existing legal framework. While AMLO applauded CRE's conclusion, he left the door open to further changes should Pemex and CFE see further declines in their dominant market positions, including the possibility of changing the constitution to reverse the energy reform. The CRE's accommodation of AMLO's energy plan is just the latest of many measures from them and the Energy Ministry (SENER) that have placed private investments in Mexico's power sector at risk. Avoiding granting permits for renewable power generation or fuel imports has unofficially been the norm for some

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Bolivian Gov't Names Diedrich as YPFB President

The government of interim Bolivian President Jeanine Áñez has appointed Katya Diedrich as the new director of the country's largest state-owned company, oil firm YPFB. She is the first woman to hold that position.

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Brazil Lowers Biodiesel Blend Due to Supply

Brazil lowered the mandatory diesel blend to 11 percent from 12 percent for November and December because of potential supply problems.

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OIL & GAS

Maduro Gains Power to Sign Secret Oil Deals

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Maduro // File Photo: Venezuelan Government.

OIL AND GAS NEWS

Venezuela's Maduro Gains Power to Sign Secret Oil Deals

Venezuela's National Constituent Assembly, which is stacked with supporters of President Nicolás Maduro, last week passed a law allowing Maduro to confidentially sign new oil deals with private firms and other countries, a move intended to circumvent U.S. sanctions, Reuters reported. "We can provide President Nicolás Maduro with a legal instrument to continue fighting, confronting the blockade," said Diosdado Cabello, the legislature's president and the vice president of the ruling Socialist Party.

> **"Venezuela's days as a petrostate are gone."**
> **— Risa Grais-Targow**

Under the new law, changes can be made to the ownership of joint ventures between state oil company PDVSA and private companies, although it does not detail what percentage of participation PDVSA would have in future joint ventures, according to the report. Maduro is looking for greater investment in the oil sector through the legislation, sources told Reuters. By handing over more control of oil production to private companies, his government would be able to avoid sanctions linked to PDVSA, the sources added. Venezuela's oil sector has been crippled by years of mismanagement and corruption along with tough sanctions imposed by the administration of U.S. President Donald Trump. For the first time in a century, there are no rigs searching for oil in Venezuela, which has among the world's largest crude reserves, The New York Times reported last week. The government is also dependent on fuel shipments from Iran for gasoline supply, and most refineries in the country are out of service or leaking crude into the ocean. "Venezuela's days as a petrostate are gone," Risa Grais-Targow, an analyst at Eurasia Group, told The New York Times. The Andean nation a decade ago was the largest oil producer in Latin America, bringing in approximately $90 billion a year from oil exports. This year, Venezuela is expected to net about $2.3 billion, which is a lower aggregate amount than what Venezuelan migrants who have fled political and economic crises and basic goods shortages will send back home to support their families, according to Caracas-based economist Pilar Navarro, The New York Times reported. Additionally, the country's oil production has hit its lowest level in nearly a century, in part due to sanctions that have forced most oil firms to stop drilling or buying Venezuelan crude. However, Reuters also reported last week that PDVSA has increased crude blending and upgrading to their highest level in six months, citing company documents. The upgraders are essential to converting extra-heavy oil from the country's Orinoco Belt into exportable crude grades. Upgrading operations have been intermittent in recent months as Venezuelan oil exports plunged and technical issues at facilities continued.

Fall in Argentina's Gas Output Prompts Supply Concerns

Argentina could potentially face natural gas shortages in the Southern Hemisphere winter next year if production continues to fall, Argus Media reported last week. A continued decline in output could bring a rise in imports of gas and diesel, according to energy experts. "Argentina will have problems supplying domestic gas next winter if something is not done now," Juan José Aranguren, a former energy minister who now heads the Energy Consilium consultancy, said during an energy summit last week. The South American nation has seen gas output drop 13 percent in recent months, to 125.6 million cubic meters per day in August, as compared to 144.4 million cubic meters per day a year earlier, according to data from the Energy Secretariat. Most analysts cite the coronavirus pandemic and restrictions related to

NEWS BRIEFS

Brazil's ANP Lowers Biodiesel Blend For End of Year Due to Tight Supply

Brazilian hydrocarbon regulator ANP last week lowered the mandatory diesel blend to 11 percent from 12 percent for November and December because of potential supply problems after a procurement auction was suspended, Argus Media reported. The ANP had already lowered Brazil's mandatory blend from 12 percent to 10 percent twice this year, in June and again in September and October, due to limited supplies and rising feedstock costs.

Enel Green Power Starts Building 204-Megawatt Solar Project in Chile

Enel Green Power Chile has begun construction of the 204-megawatt Domeyko solar photovoltaic park in the Andean nation's Antofagasta region, Renewables Now reported last week. The company said it will invest $164 million in the project, which will be made up of 472,590 bifacial monocrystalline photovoltaic modules, covering an area of 700 hectares. Enel said it expects the solar park to be completed and in operation by July 2021.

Three Developers, One Consortium Bidding in Ecuador in Tender Process

Ecuador's Ministry of Energy and Nonrenewable Natural Resources announced that three developers and one consortium have presented offers in an auction round to award concessions for 310 megawatts of wind and solar projects, Renewables Now reported Tuesday. France's Neoen, Total Eren and Spanish consortium Cobra Zero-E have submitted technical bids for the Villonaco II and III wind farm projects. Neoen and Cobra Zero-E have also bid on the El Aromo 200-megawatt photovoltaic project, in addition to Solarpack.

it as the reasons behind the fall in production, Natural Gas Intelligence reported. The decline has prompted concerns that the country will have to boost imports to meet demand, a move the country has scaled back in recent years, Argus Media reported. Argentina's winter starts in June.

Bolivian Government Appoints Diedrich as New YPFB President

The government of interim Bolivian President Jeanine Áñez has appointed Katya Diedrich as the new director of the country's largest state-owned company, oil firm YPFB, Europa Press reported Tuesday. Diedrich is the first woman to ever hold that position, a move that the statement announcing her appointment called "historic." The announcement came after former YPFB President Richard Botello resigned, citing health reasons. Botello, who began his term in May, had been absent for several months after he contracted the novel coronavirus. Diedrich formerly worked as YPFB Transporte's general manager, El Deber reported. She also has previous experience in other subsidiaries of YPFB. She is the fourth person to take over YPFB during the 11 months that Áñez has been in power following the self-exile of President Evo Morales after the October 2019 vote, which has been marred by allegations of fraud. The re-do of the vote is scheduled for this Sunday. Áñez, who announced her intention to run for president earlier this year, recently withdrew her candidacy, hoping to unite support against the candidate of Morales' MAS party, Luis Arce. [Editor's note: See related Q&A on Bolivia's election in the Oct. 5 issue of the daily Latin America Advisor.]

Diedrich is the first woman to ever hold the post of YPFB president.

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time and will severely limit the NADB's growth potential by reducing the number of potential projects for investment. The policy most negatively affecting the NADB's portfolio in Mexico, however, is the decision by CENACE, at SENER's urging, to bypass price-based power dispatch in favor of CFE's more expensive generation. This would sharply curtail demand for renewable generation and hinder a project's ability to service its debt. To be sure, the investor protection clauses in the USMCA and other FTAs offer cover for existing investors who could bring a cascade of international challenges. But the fact is that more than 150 renewable projects under development and their $40 billion in investment are at risk. Meanwhile, it was discouraging to see that the electricity sector was not mentioned in the recent infrastructure plan, even though such projects would support the Mexican economy's recovery."

A **Natalia Cosio, attorney, and Larry Pascal, member of the Energy Advisor board and chairman of the Americas practice group, both at Haynes & Boone:** "Earlier this year, the López Obrador administration released a new power policy that in part modifies some of the goals of the 2013 energy reforms. First, the Mexican national grid operator (CENACE) issued an order suspending all pre-commissioning tests of intermittent wind and solar power plants. Later, the Energy Ministry (SENER) consolidated this idea and released its 'Policy on Reliability, Safety, Continuity, and Quality for the National Electric System,' which, among other things, grants the Energy Regulatory Commission (CRE) authority to require from generation permit applicants a new interconnection feasibility opinion, to be issued by CENACE, thereby placing an additional obligation on power developers. The current administration has also decided to favor CFE by prioritizing power generation in its plants, among other actions. Furthermore, the president's party has proposed a constitutional amendment to repeal the 2013 energy reform, which is pending legislative debate. Overall, these regulatory developments may discourage investment in future renewable energy projects, although in the past the government has successfully negotiated agreements out of court with generation companies. However, several environmental groups have challenged the CENACE order and the SENER policy in court actions, and the courts have temporarily suspended these measures until a definitive ruling. Finally, CRE's 2020 regulatory program envisions additional changes to the power sector, which will give market actors an opportunity to comment on proposed changes."

A **Juan Pomés, senior associate at Freshfields Bruckhaus Deringer:** "The López Obrador administration has taken several measures that negatively affect private investments in the electricity sector, including suspending long-term electricity auctions, interfering with clean energy certificates and spot market regulations, increasing transmission tariffs and delaying approvals for clean-energy projects. The government's interference in the power sector appears to be driven by its desire to regain control of the energy sector through state-owned CFE and Pemex. That political objective cannot be squared with Mexico's energy reform of 2013-2014, which limited state involvement in the sector in favor of private investment. Foreign investors responded to these reforms by investing billions of dollars in the country to develop clean energy projects. Many of these investors and their investments will be protected by investment protection treaties that Mexico has signed with more than 40 countries. These treaties require Mexico to protect the legitimate, investment-backed expectations of covered foreign investors at the time of investment, including expectations created by the regulatory framework that Mexico put in place to attract that investment. These treaties

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Mexico's Pemex Outlines Plans to Increase Production

Mexican state oil company Pemex expects to increase liquids production, particularly crude oil, to 296 million barrels per day (bpd) by the end of 2024, when President Andrés Manuel López Obrador's six-year term ends, Pemex chief executive officer Octavio Romero said on Wednesday, Reuters reported. In a presentation to a congressional committee, Romero said output could hit 1.94 million bpd by the end of this year as new developments bring more barrels. Romero added that private output is expected to reach only 70,000 bpd by the end of the year and 280,000 bpd by 2024. Bloomberg News reported last month that the company was facing a drastic plunge in oil exports in coming years as it faces the challenges of declining production and supplying crude to López Obrador's flagship $8 billion refinery. Citing two unnamed sources, Bloomberg News reported that Pemex expected a reduction of nearly 70 percent in exports of its Maya crude between 2021 and 2023. Pemex did not respond to Bloomberg News' request for comment.

POLITICAL NEWS

Amnesty Calls on Chile to Investigate Rights Violations

Chile's government must investigate allegations of human rights abuses by members of the country's National Police during last year's protests in the South American country, Amnesty International said in a report released Wednesday, the one-year anniversary of the beginning of the demonstrations. "Serious human rights violations, including that of the demonstrators' right to physical integrity, were committed on a widespread basis because those in strategic command did not take all the necessary measures to prevent them," Amnesty International said in releasing the report. The report covers actions of police officers between Oct. 18 and Nov. 30 of last year, but the human rights group said "cases of excessive use of police force continued to be recorded until mid-March 2020." The group added that new incidents have been recorded since then, including the case of a 16-year-old who fell from a bridge earlier this month after a police officer allegedly pushed him. The officer now faces charges of attempted murder. "Those

ADVISOR Q&A

Will Nunes Win Confirmation to Brazil's High Court?

Q Brazilian President Jair Bolsonaro on Oct. 2 announced his intention to nominate Kássio Nunes Marques to the country's Supreme Court, frustrating evangelicals whom Bolsonaro had promised he would nominate one of their own. Bolsonaro nominated Marques to replace Celso de Mello, who is retiring as he approaches the court's age limit of 75. Why did Bolsonaro nominate Marques? Will Marques be confirmed by Brazil's Senate? What are the most important cases coming before the court, and how might Marques sway its decisions?

A Peter Hakim, member of the Latin America Advisor board and president emeritus of the Inter-American Dialogue: "After an exceptionally chaotic and undisciplined first two years in office, including a deeply flawed approach to Covid-19, Bolsonaro finally seems to have turned to a somewhat more pragmatic, organized approach to pursuing his political objectives, rebuilding public support and getting himself re-elected two years hence. He has made impressive progress on all of these fronts in recent months and demonstrated an unexpected talent for Brazil's traditional political infighting and maneuvering. Despite Brazil's exceptionally high Covid-19 infection and death rates, a flailing economy and unprecedented job losses, the president has raised his national approval ratings, mainly by delivering a sizable aid package to lower-income Brazilians. Following months of open feuding, he has also improved his working relations with Congress and the Supreme Court, where Kássio's appointment was widely welcomed. In Kássio, Bolsonaro chose a conservative, but well-respected, jurist with considerable judicial experience, rather than an ideological bedfellow. The new judge, however, will replace Bolsonaro's most vocal critic on the court and its most forceful human rights defender. Still, the appointment will not be enough to end the high-visibility Lava Jato corruption probes, as Bolsonaro has called for, but it may help to protect his politically engaged sons from investigations already in progress. By lowering frictions with Congress and the courts and shifting toward the more traditional politics of Brazil, Bolsonaro has enhanced his allies' chances in this November's municipal elections, and may open the way for him to determine the next speaker of the house, a particularly vital political post. Most importantly, he has reduced the prospects of a conservative candidate emerging to challenge him in the 2022 presidential election. And aside from Lula, who will likely remain ineligible to run, the left seems to have no serious candidates at all."

EDITOR'S NOTE: More commentary on this topic appears in Wednesday's issue of the daily Latin America Advisor.

NEWS BRIEFS

Number of Migrants Attempting Illegal U.S.-Mexico Crossings Rises

The number of migrants found trying to enter the United States illegally across the country's border with Mexico was up in September, according to the latest U.S. government statistics, Reuters reported. U.S. Customs and Border Protection said Wednesday it had captured 55,000 people at the southwest border last month, more than triple the amount in April and up from 47,000 in August. Additionally, nearly 3,000 migrants were deemed "inadmissible" at ports of entry, the agency said.

Argentina Needs 'Political Determination' to Mend Economy: IMF Chief

Argentina's government will need "political determination" to get the country out of its dire economic situation, Kristalina Georgieva, the managing director of the International Monetary Fund, said Wednesday, the Buenos Aires Times reported. In the IMF annual meeting, Georgieva said the Argentine government should prioritize a "credible and comprehensive economic agenda" that supports the economy and the people. On Monday, the IMF said it would send a team to Buenos Aires to begin talks on a new loan program.

Venezuela Starts Trials for Russian Covid-19 Vaccine

Venezuelan officials have selected volunteers to participate in clinical trials of Russia's Covid-19 vaccine, known as Sputnik V, said President Nicolás Maduro, according to Russia's government-run Tass news agency. "The Russian vaccine is already in Venezuela, the trials are already starting, there are 2,000 volunteers," said Maduro. Venezuelan Vice President Delcy Rodríguez has previously said that Venezuela plans to produce the Russian vaccine locally.

in strategic command of the national police allowed acts of torture and ill-treatment to be committed against demonstrators because they considered them to be a necessary evil in order to disperse the crowds at all costs," said Erika Guevara-Rosas, the Americas director at Amnesty International. Guevara-Rosas said the human rights group documented violent incidents that were not isolated acts, but rather acts that were "likely to have been committed because of a policy whose ultimate aim was to discourage social protest." Chilean President Sebastián Piñera has denied allegations that police allowed excessive force to be used against protesters, and officials of his government have said cases of abuse would be investigated and prosecuted, Reuters reported. Chile's ministry of justice and human rights responded to the report saying that police did not have any "premeditated or generalized practice or policy of use of force with the intention of punishing protesters."

U.N. Envoy: Colombia Should Better Protect Ex-Combatants

The United Nations' envoy for Colombia on Wednesday called for better protection of former combatants who are being killed "in alarming numbers," voicing concern of increased violence and massacres by other groups that have emerged since the 2016 peace accord, the Associated Press reported. Additionally, the envoy, Carlos Ruiz Massieu, told the U.N. Security Council that more effort is needed to fight impunity for these crimes, "including by bringing intellectual authors to justice." The U.N. Secretary General's latest report to the council, which was made public last week, said the organization's political mission in Colombia has confirmed 19 murders of former combatants of the Revolutionary Armed Forces of Colombia, or FARC, rebel group over the past three months ending Sept. 25. Among them was a former high-ranking commander, Jorge Iván Ramos, alias Mario Morales, who became a leader of the FARC political party following the 2016 peace deal. He was killed on Aug. 28. According to local newspaper El Tiempo, at least 225 former FARC combatants who have been "reincorporated" into society as part of the peace deal have been killed since the signing of the agreement.

ECONOMIC NEWS

Venezuela Reportedly Increasing Coal Exports to Europe

Venezuela has been increasing its exports of coal to European nations as it seeks new sources of foreign income amid tightening U.S. sanctions, Reuters reported Tuesday. The Andean nation's coal exports tripled last year to 310,000 metric tons, generating almost $40 million, according to U.S. trade database Comtrade. The increased exports followed sanctions that the United States imposed on Venezuelan state oil company PDVSA in January 2019. This year, Venezuela's coal exports have already surpassed last year's total, with the country exporting 365,000 metric tons through the end of June, which generated $37 million, the database showed. Neither Venezuela's information ministry nor state-owned coal company Carbozulia responded to Reuters' requests for comment, and the U.S. State Department did not respond to the wire service's request for comment. Venezuela has lost billions of dollars in oil revenues amid the U.S. sanctions. So far this year, Venezuela's central bank has received just $477 million in hard currency, as compared to $40 billion in 2014. Venezuela's annual production of coal grew from less than 100,000 metric tons in 1988 to eight million metric tons in the mid-2000s, according to the U.S. Geological Survey, Reuters reported. That growth made Venezuela Latin America's third-largest producer of coal, behind Colombia and Brazil. The future of U.S. sanctions could change depending on who wins next month's U.S. presidential election. Marta Colomar Garcia, a partner at Miami-based law firm Diaz Reus, told the Advisor in an **interview** that if Trump is re-elected, his administration could slap "many more sanctions" on countries including Venezuela.

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also protect investors against arbitrary state conduct. Importantly, when an investor believes that Mexico has breached one of the treaty standards, the investor may file a claim for damages against Mexico before an independent international arbitration tribunal. That is, investors may have access to claims against the government outside of the Mexican court system. Foreign investors in Mexico's power sector should carefully consider whether they are protected by an investment treaty."

A **Dino Barajas, partner at DLA Piper:** "Mexico's renewable energy sector has faced a full-frontal assault from the administration of President López Obrador. The overt shift in federal policies favoring the development of fossil fuel power generation facilities and openly inhibiting the further development of the renewable energy sector has been rationalized as necessary to support Mexico's existing domestic hydrocarbon production and a means of limiting foreign investment in and control over the country's electricity sector. The country moved away from pure economic dispatch considerations, which would have provided the country's end users with the most cost-efficient power production available from its existing diversified power generation assets, and instead prioritized the utilization of power production from the government-owned or -contracted fossil fuel power generation assets. There is a rational government objective underlying this shift, given that the government wants to maintain a domestic market for natural gas produced by Pemex, and prioritizing generation of electricity from natural gas power facilities for domestic consumption helps achieve this goal. Maximizing the utilization of Pemex-produced natural gas avoids the need to return to a period, as it happened in the 1980s and early 1990s, when Pemex would simply flare unutilized natural gas. Additionally, given that many of the currently CFE-contracted natural gas-fired power plants that private investors own are structured as energy conversion plants to which CFE supplies Pemex-sourced natural gas and purchases dispatched electricity, the government has rationally prioritized the utilization of sunk costs by prioritizing the dispatch of these assets. The short-sightedness of the government's reversal in previously adopted market-driven policies favoring renewable energy is that Mexico was on the verge of becoming a world leader in renewable energy development. The development of renewable energy was also helping Mexico lower its natural gas imports from the United States, becoming more energy independent."

A **Fluvio Ruiz, former Pemex board member:** "In line with its electoral platform, the government has reoriented electricity policy with the aim of strengthening the CFE as the sector's main actor. However, the way in which the government has implemented its decisions has provoked a climate of growing hostility with private investment and has led to allegations that it belittles Mexico's commitments to the fight against climate change. In the power sector, the energy reform defined essential aspects, such as the vertical and horizontal separation of the CFE and a greater importance of the market in promoting renewable energies. Both are counter to the current government's political orientation. Thus, the brake on renewable energies is 'collateral damage,' a product of the contradictions between the government's electricity policy and the institutional design inherited from the previous administration. This has led to legal demands from operators, as well as a constitutional controversy. The legal and institutional limitations that the government's electricity policy faces will be difficult to overcome until the legislation is modified, respecting contractual commitments that have already been made. A modified framework should serve as a basis to decisively promote the energy transition, with an adequate socialization of its economic, social and political costs."

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