

Initiative to Amend the Constitution Regarding the Energy Sector

October 12, 2021 Eduardo Corzo

PRACTICES Mexico, Energy, Power and Natural Resources, International

On October 1, 2021, President Andrés Manuel López Obrador presented to the Mexican House of Representatives an “Initiative to Amend Articles 25, 27 and 28 of the Mexican Constitution Regarding the Energy Sector” (the “Initiative”). The Initiative is pending discussion and approval from both Chambers of Congress before its publication and entry into force. Below is a summary of the salient features of the Initiative:

- The Initiative establishes CFE as the sole authority responsible for the national electricity system, with the permanent mandate to supply 54% of the national power demand.¹
- The private sector will only be able to generate 46% of the national power demand. It will only be able to sell the electricity and capacity generated to the CFE through the National Energy Control Center (“CENACE”),² based on contract terms and regulations that will be issued by the CFE.³ The electricity generated by self-supply permits and the surplus production from independent producers will not be recognized by the CFE for purposes of purchasing power from private generators (this is the textual provision, whose meaning is unclear).
- Upon the Initiative’s entry into force, the following will be cancelled: (a) all power generation permits and those that are pending resolution, (b) all power purchase agreements (PPA’s) executed by private companies with CFE, and (c) all Clean Energy Certificates (CELs).⁴
- The “Energy Regulators,” such as, the Energy Regulatory Commission (“CRE”) and the National Hydrocarbons Commission (“CNH”),⁵ will disappear and their structure and authority will be incorporated into the Ministry of Energy (“SENER”), including the incorporation of specific functions to the CFE. It’s not clear under the Initiative if any of CNH’s specific functions will be incorporated to PEMEX.
- CRE, as a technical and specialized authority, regulated the CFE and all other Wholesale Electricity Market (“MEM”) participants; and had the authority to: (i) establish the general conditions for the provision of the public electric power transmission and distribution service, as well as for the provision of the electric supply, (ii) to issue and apply methodologies to determine the calculation and adjustment of the transmission, distribution and basic supply services rates and (iii) issue the interconnection contracts models.⁶ These specific functions will, under the Initiative, be absorbed by the CFE.
- State-Owned Companies, such as CFE and Petroleos Mexicanos (“PEMEX”) are transformed into “Agencies of the State”⁷, with autonomy in the execution of its activities and management.

- CFE will have authority to (i) control the national electricity system; (ii) determine the procedures for the delivery of electricity from its own power plants and for those privately owned; (iii) assure energy transition in the power industry; (iv) be the exclusive power supplier, (v) acquire power and capacity produced by private companies, and (vi) set the rates for the transmission and distribution networks and end-users.
- CFE's subsidiary entities will disappear, (CFE Generación I-VI; CFE Distribución; CFE Suministrador Servicios Básico; CFE Transmisión)⁸, and the National Energy Control Center ("CENACE") will be incorporated into the CFE.
- Lithium and "other strategic minerals for the energy transition" will be resources reserved to the State, and no concession may be granted. However, the Initiative provides that the concessions that have been already granted will not be canceled. To date, there are 36 lithium exploration and exploitation projects in Mexico, all financed by foreign capital. Currently, the most relevant project is one in the northeast part of Sonora.
- In addition, the development of the industries required for the energy transition will be considered as a strategic area and the State may benefit from the natural resources necessary to fulfill such purposes.⁹

The Initiative will become effective the day following its publication in the Federal Gazette. Once in force, all the provisions that are contrary to the Initiative are to be deemed to have been automatically repealed, and Congress will have a period of 180 days to make the necessary adjustments to the legal framework. During this period, the CFE will assume control of the national electric system and will be able to make the necessary decisions for the full implementation of the Initiative.

In summary, the Initiative seeks to limit the participation of private companies in the Mexican electricity sector, by reducing their participation and subjecting the commercialization of electricity they generate to what the CFE determines. It also anticipated that the CRE, CNH and CENACE must disappear, and the aim is to concentrate their authority in the CFE and SENER.

For more information, please contact any of the lawyers listed below.

[To read en español, see here.](#)

¹ The Initiative does not provide the analysis or reasons to determine this participation percentage.

² Currently, CENACE is responsible for the operation of the Wholesale Electricity Market ("MEM") and determines the access and dispatch of electricity into the national transmission network and the general distribution networks. The Initiative provides that CENACE will be absorbed by the CFE.

³ It's not clear whether CFE, under this new model, will be backed by the Mexican State for the fulfillment of its payment obligations to private companies.

⁴ These certificates are issued by the CRE based on the amount of electricity generated from clean energies, such as solar, wind, geothermal, tidal energy, biomass, among others. They are negotiable through the MEM and suppliers, qualified users, market participants and end users that are supplied by isolated supply, as well as legated interconnection contracts, should acquire CELs.

⁵ The Initiative does not provide reasons or an analysis for the decision to dissolve CNH. Also, it does not address what will happen to exploration and extraction contracts signed by CNH after it is

incorporated into SENER.

⁶ In accordance with Article 12 of the Electricity Industry Law.

⁷ This is a new concept created with by the Initiative. The legal nature of these Agencies will have to be determined. They seem to move away from the character of a commercial business, which is the nature of the State-Owned Companies, to become another agency of the Federal Government.

⁸ The subsidiaries “CFE Telecomunicaciones e Internet para Todos”, “CFEnergía”, “CFE International” and “CFE Capital”, will continue to operate as they are currently.

⁹ The Initiative does not provide a definition or elements to identify which industries could be considered necessary for the energy transition, nor does it provide more detail regarding the natural resources that could be used or extracted by the State for this purpose. This may lead to CFE’s use of its broad discretion to determine when and in what cases to use this constitutional provision.