

CCN NEWSFLASH

Defending the CRE


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Several weeks have passed since Mexico's President submitted his initiative to amend the Constitution on energy matters to the Chamber of Deputies. Since then, much has been written and said about its aims and the negative consequences it would have if approved. Most of the analyses have dealt with the substantive aspects of the initiative such as: (i) re-including all electricity generation and supply as activities belonging exclusively to the State; (ii) "canceling" permits granted for such activities; and (iii) ensuring that the Federal Electricity Commission ("CFE") generates at least 54% of the country's electricity requirements.

However, little discussion of the organic aspects of the proposal has taken place, which includes transforming the CFE into a federal agency with constitutional autonomy; integrating it vertically and horizontally, with certain exceptions; bringing the National Energy Control Center ("CENACE"), operator of the National Electric System, back to CFE; and lastly, but very importantly, eliminating the National Hydrocarbons Commission ("CNH") and the Energy Regulatory Commission ("CRE").

The initiative proposes to delete the eighth paragraph of Article 28 of the Mexican Constitution, a precept dedicated to enshrining free economic competition. Today, such a paragraph establishes that the Executive branch will have coordinated regulatory bodies in energy matters named the CNH and CRE. In the third transitory article of the reform decree, the initiative reiterates that the CNH and CRE are eliminated and that their structures and attributions would be incorporated into the Department of Energy ("SENER"), as appropriate.

Unfortunately, the initiative's explanatory note does not justify the elimination of the regulatory bodies, and merely argues that their creation took fundamental decisions away from the State and entrusted them to bodies that were "not politically responsible". If this refers to the successive institutional isolation of the CRE from electoral politics, this was indeed the intention since its creation in 1994 as a body of SENER but with deliberative and independent integration; with its own law and powers of authority since 1996, until it became the federal agency conceived in the 2013-14 reform, separate and at the level of SENER, yet coordinated by the latter.



Under the “Regulatory State” model adopted by Mexico during the last decades, regulatory bodies detail the rules of the economic market using technical knowledge, monitor the application of those rules, sanction non-compliance, and act as arbitrators with a claim of impartiality. In open energy markets where there are dominant players, natural monopolies, information asymmetries, and negative externalities, the existence of a state body that provides certainty to all investments is indispensable. But, above all, that serves as a body to protect end users, who are the ones to be benefitted by effective economic competition.

If the initiative is approved in its terms, the powers of CRE would become the responsibility of SENER, “as appropriate”, as stated in the third transitory article. However, none of what currently corresponds to the CRE in the electricity sector would correspond to SENER, since the reform would turn the CFE into the State agency responsible for the entire strategic area of electricity, including the activities of the sector’s value chain, but also its planning (currently in charge of SENER), control of the electricity system and dispatch of generation (currently the responsibility of CENACE), as well as determining transmission, distribution, and end user tariffs (currently determined by the CRE). In addition, there would no longer be any generation or supply permits to be granted, nor would there be any records in the registries of traders or qualified end users.

In the case of both electricity and hydrocarbons grids, the CRE now approves the general terms and conditions for rendering services, including the maximum rates that companies may charge, in order to meet the key principle of open and non-discriminatory access. Without a deliberative and independent body with transparent deliberation, Executive instructions would translate into direct orders down the public administration’s chain of command, eroding the certainty essential for investment.

Instead of making the constitutional mistake of eliminating the CRE, serious thought should be given to its definitive strengthening by providing it with greater autonomy, outside the sphere of the Executive branch. Regulators must be committed to the public interest and should not promote the specific interests of any company or companies, even if they are State-owned enterprises.

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