

## **SENER seeks to limit competition in the natural gas market**


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On June 13th, Mexico's Department of Energy ("SENER") issued an official communication instructing the National Center for Natural Gas Control ("CENAGAS"), as part of the requirements to transport natural gas from the import points where a State productive company (or its subsidiaries or affiliates; the "EPE") has reserved capacity upstream of said points, to observe the following mandatory aspects:

- 1** That shipper, or those interested in receiving the natural gas transportation service, prove within a period of 60 calendar days that they receive their supply from an EPE. In the points where an EPE has reserved capacity, contracting with such should prevail.
- 2** That the provision of transportation services in any modality within the system operated by CENAGAS ("Sistrangas" by its Spanish acronym) is ensured by contracting upstream transportation capacity with an EPE.
- 3** That the authorizations of requests for transportation services (technical feasibility) are conditioned on the fulfillment of any of the above points.

Additionally, in its official communication, SENER exhorted the Energy Regulatory Commission ("CRE") to modify the terms and conditions for the provision of services within Sistrangas in order to include the aforementioned rules.

In other words, SENER intends for Sistrangas' shippers to purchase natural gas from the Federal Electricity Commission ("CFE") or Petróleos Mexicanos ("Pemex"), or at least acquire the transportation capacity from them in U.S. territory. This is insufficiently grounded on SENER's authority to establish, conduct, and coordinate Mexico's energy policy. Thus, under the argument of using the EPE's idle capacity in Sistrangas, SENER seeks to impose the EPE, and especially CFE, as marketers, which would violate the constitutional principle of free economic competition and concurrence. This is called for instead of making available to any interested party the idle capacity of the EPE through an open season in accordance with current legislation.



Mexico's Federal Economic Competition Commission ("COFECE") has warned that this strategy seriously and irreparably damages the conditions of competition in the natural gas market, and in the electricity market since it prevents equal access to the capacity of Sistrangas to shippers who would not want to contract with State-owned companies. The strategy limits the entry of new natural gas marketers, preventing contracting with the most efficient suppliers by adding mandatory intermediation that could raise the prices of this fuel.

Meanwhile, CENAGAS has already notified certain transportation shippers via an official communication, requiring them to comply with SENER's strategy and to submit information showing that they have contracts with CFE or Pemex. In turn, Pemex issued a letter informing shippers of its available capacity to facilitate compliance with CENAGAS requirements.

As announced on July 20th, the United States Trade Representative decided to include the actions of SENER and CENAGAS in this field as one of the four items of Mexico's energy policy recently submitted to consultations in accordance with the United States, Mexico, and Canada Agreement ("USMCA").

As of today, some affected companies have filed amparo lawsuits against SENER's strategy and its initial implementation by CENAGAS. It has been made public that the First District Judge specialized in economic competition has granted at least one definitive injunction against the acts claimed in favor of ten companies, which implies that the new requirements would not be enforceable for them until their lawsuits have concluded.

We consider that the lawsuits initiated by companies and, especially, the consultations initiated by two of the USMCA parties, may exert some pressure on the Mexican federal administration to rethink an energy policy that has repeatedly proven in court to be contrary to currently applicable law.

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