

Amendments to the Terms for the Strict Legal Separation of the CFE

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Background

Following the constitutional energy reform in 2013, the Federal Electricity Commission (“**CFE**”) was subject to an organizational and administrative restructure with the purpose to achieve, among other objectives: (i) to participate efficiently and competitively in the new Mexican electrical regime; and (ii) to generate economic value to the Mexican state as its owner. The Law of the Federal Electricity Commission and the *Terms for the Strict Legal Separation of the Federal Electricity Commission* (the “**TESL-CFE**”) established this organizational and administrative restructure.

Said legal provisions set forth that the CFE’s corporate structure would consist of a corporate entity and a certain number of productive subsidiary entities (“**EPS**”) and affiliate entities (“**EF**”) in charge of the activities of: (a) generation; (b) transmission; (c) distribution; (d) basic supply; (e) commercialization (other than basic supply); and (f) provision of basic inputs.

Furthermore, the TESL-CFE prescribed that the EPS and EF would carry out the above-mentioned activities under a strict legal separation regime. To do so, the EPS and EF of the CFE are obliged to follow certain rules in order to participate adequately in the markets and to operate in an efficient and independent way. Said rules comprised mainly of: (i) the transfer of information; (ii) coordination for the installation and operation of power plants, transmission lines and distribution networks; (iii) investments; (iv) human resources; (v) remunerations; (vi) transfer prices; (vii) exploitation of scale economies; among others.

Amendments to the TESL-CFE

On March 25, 2019, the Ministry of Energy (“**SENER**”) published in the Official Federal Gazette an agreement to amend the TESL-CFE (the “**Amendments to the TESL-CFE**”), in order to adequate said terms to the new federal administration policies in electricity. The amendments to the organization and operation of the CFE are, among others:

- The provision that at least four EPS or EF will carry out the generation activities of the power plants in charge of the CFE was deleted, and the concept of “Business Unit” was introduced. This amendment would allow a possible decrease on the number of EPS that currently perform generation activities.
- The EPS that carry out generation activities are allowed to share information related to the operation, planning, maintenance and commercial strategy of power plants.

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- The new wording leaves out the reaffirmation that CFE Transmission and CFE Distribution could associate with or execute agreements with private parties to provide those public services¹.
 - It is provided that CFE Distribution can carry out commercialization activities when that leads to a better operational efficiency and a reduction of costs, through a service contract and an independent business unit.
 - The General Director and the Management Board of the CFE must guarantee the strict legal separation set out by the TESL-CFE, but privileging lower prices to the final user.

Please note that, for the effective implementation of any amendment to the corporate structure of the CFE, other complementary acts to the Amendments to the TESL-CFE may be required. For example, in case of an eventual decrease in the number of EPS that carry out the generation activities and a possible reassignment of assets between said entities, it will be necessary that:

- (I). SENER issues an agreement through which it reassigns the assets and contracts that the relevant EPS currently own;
- (II). CFE modifies its organic statute and amends (or abolishes accordingly) the creation agreements of the relevant EPS;
- (III). The Energy Regulatory Commission authorizes the transfer of the relevant generation permits; and
- (IV). The National Center for Energy Control makes the relevant changes in the Wholesale Electricity Market, among other acts.

If you have any question regarding this client alert, please do not hesitate in contact us.

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¹ This amendment is related to the cancelation of two bidding processes for the construction and operation of the following transmission line projects: (i) the “*Project: 303 TL in Direct Current Ixtepec Capacity-Yautepec Capacity*”, called by the CFE; and (ii) the “*Award of the Management and Operation Agreement for the Electric Transmission Infrastructure for the interconnection between the Baja California Electric System and the National Interconnected System*”, called by SENER.