

COFECE-037-2020

## **COFECE issues comments and recommendations concerning the regulation that modifies the scheme of permits for self-supply and cogeneration of electric energy**

- *In the opinion of the Commission, the draft could have effects contrary to competition by generating uncertainty for investments, limiting the possibilities to compete in the electric market and granting exclusive advantages to CFE Suministro Básico*
- *COFECE sent its comments to Conamer, recommending to submit the regulation to the procedure of Regulatory Impact Assessment (AIR, as per its initials in Spanish) to assess its effects before its publication in the Federal Official Gazette.*
- *The regulation was approved in the Government Body of the CRE on October 6 without the AIR exemption having made public by Conamer, and was published in the Federal Official Gazette on October 7.*

**Mexico City, October 7, 2020.-** The Mexican Federal Economic Competition Commission (COFECE or Commission) submitted comments and recommendations to the National Commission for Regulatory Improvement (Conamer, as per its initials in Spanish) regarding a draft regulation presented by the Energy Regulatory Commission (CRE, per its initials in Spanish) – requesting exemption from the Regulatory Impact Assessment (AIR, per its initials in Spanish) – that modifies the scheme under which self-supply and cogeneration permits operate, as it considers that the proposed changes might have effects contrary to competition.

*The Draft Resolution of the Energy Regulatory Commission (CRE) that modifies the General Administrative Provisions which establish the terms to request authorization for the modification or transfer of permits for electric energy generation or electric supply, which has already been published in the Federal Official Gazette (DOF, per its initials in Spanish) eliminates the possibility that users who have already signed contracts with CFE Suministro Básico under the Electric Industry Law (LIE, per its initials in Spanish) can become partners in the self-supply and co-generation permits. In the opinion of COFECE, this could have the following effects:*

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- i) **Generate greater uncertainty, reducing the incentives to invest and limiting the possibility of competing in the market**, since it implies a substantive change in the rules of the electric sector, which could hinder the recovery of the investments made or projected, which could discourage investments for expansion or maintenance of power stations, delaying technological substitution. The uncertainty could also generate the exit of some suppliers, reducing the number of competitors in the market, which is aggravated in the context of the delay in granting new generation permits by the CRE (which makes it even more difficult to migrate to the new regime) and of the suspension of long-term auctions (which prevents the electricity generated being relocated in the market).
- ii) **The options of the users of the basic service are limited**, since there would be consumption points (industries) that could not register in the self-supply contracts and would be forced to remain or contract the services with *CFE Suministro Básico*, even when they could obtain better conditions partnering with self-generators or cogenerators.
- iii) **Exclusive advantages are granted to CFE Suministro Básico**, as the proposed modifications allow it to artificially retain its customers, and not by offering better conditions of service.

On October 5, the CRE presented the aforementioned draft regulation to Conamer and, in an extraordinary session on October 6, the CRE approved said draft, despite the fact that until yesterday it was not public or known that the Conamer had issued the final opinion of AIR exemption.

Self-supply and cogeneration permits emerged in December 1992, when the Electric Energy Public Service Law was reformed with the purpose of expanding and defining the participation of private parties in electricity generation. This gave industrial users a supply alternative to CFE.

With the publication of the LIE, in 2014, a transitory scheme was established so that said permits could coexist with those granted under the new regulatory framework, respecting



the conditions in which they were originally granted so that investments could be recovered.

Therefore, beyond competition considerations, COFECE noted to Conamer that if the regulator considers necessary to modify the transition regime under which these permits operate, it should do so while respecting the transitory provisions of the LIE, and avoiding granting exclusive advantages to *CFE Suministro Básico*.

It also pointed out the Draft should be submitted for the Regulatory Impact Assessment (AIR, per its initials in Spanish) before Conamer, prior being published in the DOF, which did not occur. COFECE reiterates the importance of submitting draft regulations to the AIR as this helps in revealing possible consequences (both positive and negative) of regulatory decisions and possible opportunity costs that they imply. Through this process, all interested parties have the opportunity to submit comments on the proposed regulation.

[Read the comments submitted to CONAMER \(in Spanish\)](#)

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*The Federal Economic Competition Commission is entrusted with safeguarding competition and free market access. This contributes to people's well-being and the efficient functioning of markets.*

*With its work, COFECE seeks better conditions for consumers, more services of higher quality and a "level playing field" for companies.*



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