

COFECE recommends to the Congress of the Union not to approve the *Initiative* to reform the Electric Industry Law

- *The Initiative, if approved on its current terms, would severely injure the competition conditions in the generation and commercialization of electric energy. Because: 1) it eliminates the rule for the dispatch of the cheapest electricity to artificially benefit CFE, to the detriment of other generators, 2) unjustifiably restricts open access to transmission and distribution grids, 3) allows CFE SSB to acquire electricity through non-competitive methods, eliminating the need to carry out auctions, and 4) grants CFE with broad discretion to decide on the granting (or denial) of permits to operate as generator or supplier.*
- *These rules would affect the electric industry model foreseen in the Constitution, which establishes a competition regime in the stages of generation and supply of the value-chain. In addition to discouraging the implementation of projects based on clean sources, supply conditions and prices of electricity would be affected to the detriment of Mexican companies and households.*
- *In an economic recovery context, it is especially important to encourage new investments and ensure efficiency conditions so that, through competition, electricity rates are as low as possible.*

Mexico City, February 15, 2021.- The Federal Economic Competition Commission (COFECE or Commission) submitted to the Congress of the Union an opinion in which it recommends not approving in the proposed terms the *Initiative with a Draft Decree by which several provisions of the Electric Industry Law are reformed and added (Initiative)*, as it could severely affect the process of competition and free market access in the generation and commercialization links of electric energy. If it comes into force, this could translate into higher final electricity supply fees, which will have to be paid by consumers and/or the government, through subsidies.

The current constitutional framework contemplates the possibility of competition in the generation and supply (commercialization) of electricity, activities in which, without exception, anyone can participate, both private actors and the Federal Electricity Commission (CFE per its acronym in Spanish). Transmission and distribution grids, as strategic areas in charge of the State, must be operated in a neutral manner and under an open access and non-unduly discriminatory principle. This dynamic incentivizes the



production and supply of energy at competitive prices. In contrast, if the *Initiative* is approved, competition in the generation and supply of electric energy would be prevented, because as it is proposed:

1. Eliminates the economic dispatch of electricity (which implies taking the cheapest first), and establishes the following priority order for its dispatch: 1) hydroelectric (which are mostly owned by CFE), 2) other plants of CFE, 3) wind and solar, and 4) private combined cycles. This order grants unjustified exclusive advantages to CFE generators, guaranteeing the sale of their energy without necessarily being the cheapest. This **would eliminate competition between generators through the reduction in costs and would discourage the installation of more efficient and cleaner generation projects, to the detriment of consumers and the environment.**

2. Breaches the guarantee of open access to the National Transmission Grid and the General Distribution Grids, which are an essential input for the existence of competition in generation and supply of electricity. To be able to compete and to bring the energy from electric power plants to final users, generators and suppliers unavoidably require non-unduly discriminatory open access to these grids. Contrary to this, the *Initiative* proposes that the National Energy Control Center (CENACE, per its acronym in Spanish) grants said access “when it is technically feasible”, without indicating the criteria for this and without considering that the legislation already regulates the conditions for connections and interconnections. **This grants CENACE broad discretion to deny access to certain plants, in situations when it should not be denied for technical issues.**

3. Allows CFE Suministrador de Servicios Básicos (CFE SSB) to acquire electricity without employing competitive mechanisms that guarantee the best prices. As a transition method, the Electric Industry Law (LIE, per its initials in Spanish) allowed *CFE SSB* to sign bequeathed supply contracts to acquire electricity from “Bequeathed Plants”, property of CFE, which, besides complying with certain viability criteria, were in operation at the time of entry into force of the LIE or projected in the 2014 Federal Expenditure Budget. Upon expiration of these contracts, *CFE SSB* could only acquire electricity through competitive methods, specifically, through auctions organized by CENACE. The *Initiative* proposes to catalogue as Bequeathed any of CFE’s plants, even new ones, and to eliminate the obligation of auctions to purchase electricity. **This implies that around 84% of the existing generation would have the right to be bought by the main supplier in the country through non-competitive methods. Thus, competition would cease to be the mechanism to guarantee that CFE SSB (and other qualified suppliers) acquire electricity at the lowest possible prices, which eventually would increase their rates or subsidies.**



4. **Allows the Energy Regulatory Commission (CRE, per its initials in Spanish) to deny permits**, considering the planning criteria of the National Electric System established by the Ministry of Energy. **The ambiguity of this power would allow the CRE, without justified cause, to stop granting permits and to close the generation market.**

It is important to underscore that recently, **the Supreme Court of Justice of the Nation invalidated diverse provisions of the *Policy of Reliability, Security, Continuity and Quality of the National Electric System* which move in the same direction that several of the modifications proposed in the *Initiative*.**

Additionally, the *Initiative* includes other elements that disarticulate the market of Clean Energy Certificates (CEL, per its Initials in Spanish), by multiplying its supply and eliminating this mechanism's effectiveness to promote the installation of greater clean generation capacity in the country. This could imply that Mexico fails to comply with its international commitments for clean generation, specifically to achieve the 35% committed by 2024.

In an economic recovery context, it is extremely important that Mexican companies have cheap and efficient access to electricity. It is equally important that families pay lower rates so that their money is better used. Finally, given the current pressure on public spending, it is important to keep subsidies applied to electric rates low, so that the Government has additional resources to support the recovery of the Mexican economy.

In order not to affect the principles of competition and free market access in the generation and supply of electricity, in breach of the constitutional order, and specially in detriment of users of this essential service, COFECE recommends not approving the *Initiative* in its terms.

[Read here the full opinion \(in Spanish\)](#)

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The Federal Economic Competition Commission is entrusted with safeguarding competition and free market access. This contributes to people's welfare 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.

