
The Mexican Government's Electricity Counter-Reform Bill.

by Carlos A. Chavez.

On February 1, 2021, Mexican President Andres Manuel Lopez Obrador submitted a draft preferential bill to the Federal Congress, aiming to amend the Mexican Electric Industry Law, while continuing to push his intention of rolling back the pro-private sector investment changes introduced by the previous federal administration's Energy Reform, and boosting the participation and relevance of the embattled *Comisión Federal de Electricidad* or *CFE*, the state-owned electricity utility, in the national power market operation (the "Counter-Reform Bill").

In essence, the Counter-Reform Bill claws back some of the claims and elements contained in the highly controversial and currently suspended CENACE Resolution and SENER Resolution issued on 2020 (the "2020 Policies" - read our main takeaways of such policies, [here](#)). The 2020 Policies were soundly criticized, and in some cases contested, by the Mexican federal antitrust agency (the "COFECE"), several NGO's, opposing political parties, subnational governments, a bipartisan group of U.S. lawmakers, among others, and finally partially struck down by the Mexican Federal Supreme Court on February 3, 2021. In a similar fashion to the 2020 Policies, the reasoning behind the Counter-Reform Bill is the supposed safeguard of the efficiency and reliability of the national grid and it too pushes unsubstantiated claims of fraudulent acts and abuse by the private electricity generators, as well as a supposed intentional weakening of the CFE's role in the sector. Both chambers of the Federal Congress must hold discussions on the Counter-Reform Bill within 30 days and a simple-majority vote (which the President's party holds) is required to approve the bill. Below we briefly review the key matters of the Counter-Reform Bill and some potential impacts of its potential approval in its terms.

I.- Key Matters of the Counter-Reform Bill.

- Modifies, albeit not in clear terms, the dispatch order of power plants, moving away from a cost-based mechanism and providing the following priorities: (i) hydroelectric power plants (owned by CFE); (ii) CFE-operated power plants, irrespective of technology; (iii) combined-cycle power plants of Independent Power Producers ("IPP", deliver all the energy to CFE); (iv) wind or solar energy from private parties; and (v) combined-cycle power plants from private parties;
- Removes the mandate for CFE, as basic service supplier, to acquire electricity and capacity through power auctions;
- Amends the rule of "open access" to the national grid, in order to allow for its denial in "not technically feasible" cases.
- Amends the rule for the granting of clean energy certificates to power plants, extending them to all clean power plants notwithstanding their owner or launch date, thus favoring old CFE clean power plants;
- Creates a new type of agreements for basic service suppliers, the PPAs with physical delivery of energy, capacity or ancillary services.

- Orders a review of the “legality and profitability” of current IPP agreements, for their renegotiation or termination.
- Orders the Energy Regulatory Commission (the “CRE”) to revoke the current self-supply permits “secured by fraud”.

II.- Potential Implications and Consequences.

Much like the 2020 Policies, there is a myriad of potential impacts and implications of the Counter-Reform Bill for all the value chain of the power sector in Mexico and in general for the investment environment of the country, even more so, considering the vagueness of these new rules and the fact that they would be included in the federal law. Below we list the key potential implications of the Counter-Reform Bill and some short-term reactions we expect to see in coming weeks.

a) Key Potential Implications.

- End of Auctions. This bill could represent the final nail in the coffin for the highly successful power auctions held by the CENACE, which secured the then-lowest prices for electricity in the world.
- Higher Energy Prices. The proposed dispatch rule, along with the elimination of the auctions could translate in higher energy prices for the consumers.
- Assets’ Value Decline. The proposed dispatch rule and the changes to the clean energy certificates mechanism would diminish the value of existing private power plants and such financial instruments.
- Investment. Along with the decline in value of existing investment, the unilateral cancellation or renegotiation of existing agreements and permits would severely affect the investors’ confidence.
- CFE’s Position. Evidently, the CFE would strengthen its position, essentially turning it back into a monopoly.
- Environment. Compliance with local and international environmental regulations would be greatly discouraged.
- Corruption. Moving away from the transparent auctions could foster corrupt practices in the public procurement with CFE.

b) Expected Reactions.

- International. Much like with the 2020 Policies, imminent reaction from foreign governments is expected. Violations to the United States Mexico Canada Agreement (USMCA), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and other bilateral treaties may be claimed concerning potential indirect expropriations, preferential treatment to the CFE, discriminatory regulatory actions, among others.
- Amparo lawsuits. If passed, the Counter-Reform Bill will surely be challenged through *amparo* constitutional protection lawsuits, which were highly successful against the 2020 Policies. The basis for those lawsuits would definitely vary, but potential violations to due process, legal certainty, the principle of non-retroactivity of the law, as well as to economic rights concerning free market and human rights concerning access to a healthy environment, could be claimed by consumers, generators, suppliers, NGO’s, among others.
- COFECE. The COFECE played a key role in the successful challenge to the 2020 Policies and considering the similarities of the Counter-Reform Bill, if the latter is passed, COFECE could repeat its role with a constitutional challenge based on the antitrust issues surrounding the bill.

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For more information on the Mexican Energy Sector, please read our [Practical Handbook and Introduction to Mexico's Energy Sector](#).

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