

# New Constitutional Reform in Strategic Areas and Companies (Energy, Railroads, Telecommunications and Natural Resources)

On October 31, 2024, the Decree amending, adding, and repealing various provisions of Articles 25, 27, and 28 of the Political Constitution of the United Mexican States regarding certain strategic areas and companies (the “Decree”) was published. This Decree modifies the aforementioned articles of the Political Constitution of the United Mexican States (the “Constitution”).

## 1. CFE and Pemex transformation, from State Productive Companies to State Public Companies

The **Article 25** modifies the legal nature of the “State Productive Companies” of the Federal Electricity Commission (“CFE”) and *Petróleos Mexicanos* (“Pemex”) to transform them into “State Public Companies.” Through such modification, the object of such public companies is redefined to eliminate the corporate and mercantile nature, so that its object would not be to generate profits, but instead to provide a public service and “social welfare.”

The other amendment to Article 25 is with regards to the activities of: (a) planning and controlling the National Electricity System (“SEN”); (b) the public service of transmission and distribution of electricity; and (c) the exploration and production of hydrocarbons, since, it was established that the laws should regulate: (i) the execution of legal acts by the State Public Companies; and (ii) the remuneration regime of its personal, under the principles of efficiency, transparency, productivity and accountability, based on the *best practices*; however, such last principle will no longer be considered a constitutional parameter to regulate the activities of the State Public Companies.

## 2. Incorporation of Lithium as a strategic natural resource

For its part, **Article 27** considers *Lithium* as a “strategic” natural resource for which the government shall not provide concessions to private companies, like prohibitions on radioactive materials.

## 3. Restrictions on the planning and control of the SEN and the Transmission and Distribution Public Activities

Following the amendments of **Article 27**, with regards to: (a) the planning and control of the SEN; and (b) the transmission and distribution public service, the prohibition to give concessions to the private sector on such activities remains; however, the possibility of the State entering into contracts with the private sector to conduct such activities is now eliminated.

We consider that the elimination of the possibility of signing contracts with the private sector for the transmission and distribution public activities does not imply a constitutional prohibition; nevertheless, it appears that the position of the current Federal Administration is that the private sector shall not intervene in such activities. Therefore, we do not dismiss the possibility that such elimination is a result of a mistake in the legislative process, made to implicate an absolute prohibition.

#### **4. Non- prevalence of the private sector over CFE in the electricity activities**

**Article 27** establishes that the private sector may continue to participate in the electricity activities (other than those mentioned in section 3.), provided that its participation share does not prevail over CFE's participation share. CFE's objective would no longer be to compete with the rest of the participants of the Wholesale Power Market, but instead to comply with its social responsibility and guarantee the continuance and accessibility of the public electricity service.

We consider that the limitation on the percentage participation for the private sector and CFE is intended to promote the prevalence of CFE, which is in lined with the principles of electricity generation under the scheme of participation 54% (CFE) /46% (private sector). The Decree opens the door for the "laws" to further determine the participation of the private sector in the regulated activities, therefore we do not rule out the possibility that their participation in other activities may be limited.

#### **5. The activities related to Lithium, Internet Service, planning and control of the SEN and the activities conducted by the State Public Companies shall not be considered monopolistic activities of the State**

**Article 28** includes among the list of strategic areas that shall not be considered a monopolistic activity of the State: **(a)** the activities related to Lithium; **(b)** the internet service provided by the State; and **(c)** the planning and control of the SEN.

As for the planning and control of the SEN, the Decree establishes that its objective is to: **(i)** preserve the energy security and self-sufficiency of the State; and **(ii)** provide low electricity prices to the people, while avoiding profits, to guarantee the national security and autonomy of the State, through CFE.

Furthermore, said article establishes that the activities conducted by the State Public Companies and expressly indicated in the laws passed by the Congress shall not be considered a monopoly.

#### **6. Amendments to communication railways and incorporation of assignments**

The other amendment to Article 28 involves the distinction made in the railroad sector, by establishing that railroads, both for passenger and freight transportation, are priority areas for national development in terms of Article 25 of the Constitution. Furthermore, the Decree incorporates the figure of "assignments," so that, together with the concessions and/or permits, they may be granted for the railroad activities.

#### **7. Transitory Provisions**

Congress will have 180 natural days, after the publication of the Decree in the Official Federal Gazette, to conduct the corresponding amendments to the laws, in order to reflect the Constitutional amendments.

Moreover, all transitory articles of the Energy Reform of 2013 that contradict or go against the terms of the Decree are repealed.

Nonetheless, the transitory articles of the Decree do not mention anything regarding the current acquired rights for permit holders; therefore, it will be necessary await and review the amendments of the legislation to determine the impact, particularly to the Wholesale Power Market participants.

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S I N C E R E L Y

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